

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

TDI USA Holdings Corp.,)	
)	
Complainant,)	
)	
v.)	Docket No. EL15-33-000
)	
New York Independent System Operator, Inc.,)	
)	
Respondent)	

ANSWER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

In accordance with Rule 213 of the Commission’s Rules of Practice and Procedure,¹ and the December 19, 2014 *Notice of Complaint* in this proceeding, the New York Independent System Operator, Inc. (“NYISO”) respectfully submits its answer to the *Complaint and Request for Fast Track Processing and Shortened Comment Period* (“Complaint”) filed by TDI USA Holdings Corporation (“TDI”) in this proceeding. The NYISO previously submitted a preliminary answer addressing TDI’s request for fast track processing,² and an answer addressing TDI’s proposed protective order.³

The Complaint does not allege that the NYISO violated its Market Administration and Control Area Services Tariff (“Services Tariff”) or misapplied its buyer-side capacity market power mitigation rules (“BSM Rules”).⁴ Instead, it argues that TDI’s Champlain Hudson Power Express

¹ 18 C.F.R. § 385.213 (2014).

² *Preliminary Answer Opposing Fast Track Processing; and Motion Requesting Additional Time to Answer, a Shortened Answer Period to Motion, and Expedited Action of the New York Independent System Operator, Inc.*, Docket No. EL15-33-000 (Dec.18, 2014).

³ *Answer Addressing Complainant’s Proposed Protective Order of The New York Independent System Operator, Inc.*, Docket No. EL15-33-000 (Jan. 5, 2015).

⁴ The BSM Rules are set forth in Section 23.4.5.7, *et seq.* of the Services Tariff.

Project (“CHPE Project”) should receive an individual exemption from the BSM Rules because it is a competitive entrant that, to date, has received no subsidies.

The NYISO and the independent Market Monitoring Unit (“MMU”) have long supported the creation of a clear, generally applicable, tariff-based competitive entry exemption in the BSM Rules.⁵ The question of whether there should be such an exemption in the NYISO-administered markets is already pending before the Commission in Docket No. EL15-26-000 (the “CEE Proceeding”).⁶ Concurrent with its submission of this Answer, the NYISO is submitting a response in that case (the “NYISO CEE Answer”)⁷ supporting the creation of a competitive entry exemption rule that would be available to all projects that meet specified criteria.⁸ The NYISO CEE Answer asks the Commission to act promptly so that a competitive entry exemption rule will be in place when the NYISO next makes determinations under the BSM Rules concerning generators and controllable transmission lines.⁹ If the Commission rules favorably in the CEE Proceeding and promptly on the subsequent NYISO compliance filing containing CEE tariff provisions, the NYISO

⁵ The NYISO has worked in its stakeholder process since December 2012 to develop a competitive entry proposal. Similarly, the independent MMU supported a competitive entry exemption in its *State of the Market Reports* for 2012 and 2013. See *2013 State of the Market Report for the New York ISO Markets* (May 2014) at xii, 25-26, 95 available at <https://www.potomaceconomics.com/uploads/nyiso_reports/NYISO_2013_SOM_Report.pdf>. See also *2012 State of the Market Report for the New York ISO Markets* at vii, 23-24, 80 (April 2013) available at https://www.potomaceconomics.com/uploads/nyiso_reports/NYISO_2012_SOM_Report_2013-04-17.pdf and Comments of MMU on the 2014 Reliability Needs Assessment (Aug. 13, 2014), available at http://www.nyiso.com/public/webdocs/markets_operations/committees/mc/meeting_materials/2014-08-27/MMU%20Review%20of%202014%20RNA_final.pdf>.

⁶ See *Complaint of the Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., New York State Electric and Gas Corporation, Rochester Gas and Electric Corporation, and Central Hudson Gas and Electric Corporation* (the “CEE Complaint”), Docket No. EL15-26-000 (filed Dec. 4, 2014) and NYISO CEE Answer (filed Jan. 15, 2015). TDI is a party in Docket No. EL15-26-000; see *Motion to Intervene of TDI USA Holdings Corp.*, Docket No. EL15-26-000 (Dec. 17, 2014).

⁷ See *Answer of the New York Independent System Operator, Inc. in Support of Complaint*, Docket No. EL15-26-000 (Jan. 15, 2015).

⁸ This Answer refers to the tariff revisions proposed in the CEE Proceeding, with the modifications proposed in the NYISO CEE Answer as “the proposed CEE rules.”

⁹ The BSM Rules refer to such projects, interchangeably as “UDR facilities” and “UDR projects,” with “UDR” meaning Unforced Capacity Deliverability Rights that would be the means by which the controllable transmission lines could participate in the NYISO’s capacity market.

would be able to review the CHPE Project for a competitive entry exemption if it enters Class Year 2015 or a subsequent Class Year.¹⁰

While individual exemptions (outside of those available in the BSM rules) might be appropriate under certain circumstances, the competitive entry exemption issue raised by TDI in this proceeding should be addressed through the adoption of the generally applicable rules now pending in the CEE Proceeding. The fact that long-lead time projects, such as controllable transmission lines, are not subject to the PJM Interconnection LLC (“PJM”) capacity market Minimum Offer Price Rule (“MOPR”) is not an adequate basis for the Commission to grant the CHPE Project an individual exemption under the BSM Rules.

I. BACKGROUND

The Complaint states that the NYISO evaluated the CHPE Project under the BSM Rules as part of Class Year 2012. The Complaint discloses that the NYISO determined that the CHPE Project would be subject to an Offer Floor, *i.e.*, that it would not be exempt from mitigation.¹¹ TDI states that this determination has “informed” its decision to drop out of Class Year 2012¹² and is influencing its evaluation of whether to enter Class Year 2015.

The Complaint requests that the Commission determine that applying the BSM Rules to the CHPE Project would be unjust and unreasonable and seeks a prospective exemption.¹³ TDI does not

¹⁰ Capitalized terms that are not otherwise defined in this Answer shall have the meaning specified in the Services Tariff, and if not defined therein, then as defined in the NYISO’s Open Access Transmission Tariff (“OATT”).

¹¹ For purposes of ensuring an accurate record, the NYISO notes that pursuant to Section 23.4.5.7.3.3 of the Services Tariff, the exemption and Offer Floor determinations made following each round of the Class Year Project Cost Allocation process are not final. Final determinations for Examined Facilities in a Class Year are only made for projects that remain in the Class Year at the time of its completion in accordance with OATT Attachment S, *i.e.*, after the final round of the Project Cost Allocations and the satisfaction of security requirements by all entities remaining in the Class Year. Thus, like any other Examined Facility in a Class Year, if the CHPE Project enters a new Class Year, the NYISO would examine it under the BSM Rules and issue a determination at the time prescribed in the tariff.

¹² Complaint at 2.

¹³ Complaint at 1, 8, referring to such tests as the “Mitigation Exemption Test.”

argue that the NYISO applied the BSM Rules or any other provision of the Services Tariff improperly. Rather, it asserts that the CHPE Project should not be subject to an evaluation under the BSM Rules because it presently is a competitive entrant that is not benefitting from subsidies. TDI also acknowledges that the NYISO attempted, but was ultimately unable to achieve, sufficient stakeholder support for a generally applicable competitive entry exemption.¹⁴

TDI does not directly challenge the principle that the BSM Rules should apply to controllable transmission lines. It acknowledges that the Commission's 2008 Order ruled that controllable transmission lines are subject to the BSM Rules. However, in support of its request for an exemption from the BSM Rules, TDI argues that the rationale supporting the PJM MOPR supports exempting the CHPE Project from mitigation under the NYISO's rules.

TDI requests fast track processing but indicates that "as a preliminary matter, [it] believes that "timely resolution cannot be achieved in [the CEE Proceeding],"¹⁵ that it should receive an *ad hoc* individual exemption based on its assertion that it had not received any subsidies as of the date of the Complaint, that it would qualify for an exemption under PJM's MOPR, and that it has a Commission-recognized right under the Federal Power Act ("FPA") to seek an individual exemption.

¹⁴ Complaint at 15. However, the Complaint's characterization of the NYISO and MMU as supporting "rule changes to exempt privately-funded controllable lines" (Complaint at 6) is incomplete because the competitive entry exemption concept supported, and NYISO proposal, would be available to all technology types. The NYISO's competitive entry exemption proposal was part of a package of BSM Rule exemptions and other revisions voted on by the NYISO's stakeholder Business Issues Committee and Management Committee. The package included a competitive entry exemption, a revision to the Offer Floor, and exemptions for renewable generators and for certain municipal utility and cooperative utility generators. See Agenda Item 7 materials for the May 12, 2014 Business Issues Committee Meeting, *available at*: <http://www.nyiso.com/public/markets_operations/committees/meeting_materials/index.jsp?com=bic>; Agenda Item 6 materials for the May 28, 2014 Management Committee Meeting, *available at*: <http://www.nyiso.com/public/markets_operations/committees/meeting_materials/index.jsp?com=mc>, and Exhibit C to Complaint. See also, CEE Complaint at Section III.B, Section III.C, and NYISO CEE Answer at Section I.

¹⁵ Complaint at 23.

II. ANSWER

The Complaint has not made the showings required under Section 206 and 306 of the FPA to justify granting the CHPE Project an individual exemption in this proceeding. Instead, the Commission should address the competitive entry issue identified by TDI by granting the complaint in the CEE Proceeding and accepting the proposed CEE rules.

A. TDI Has Not Accused the NYISO of Misapplying the BSM Rules

The Complaint does not claim that the NYISO violated the Services Tariff or otherwise acted wrongly. It does not contend that all controllable transmission projects should be exempt from the BSM Rules.¹⁶ Instead it argues that the CHPE Project alone should receive a special, one-time exemption.

The NYISO agrees in principle that truly competitive entrants should be exempted from Offer Floor mitigation regardless of whether they are projected to be “uneconomic” under either of the current BSM Rule exemption tests.¹⁷ As discussed in the CEE Answer,¹⁸ the NYISO has previously stated that “[n]ew entrants that satisfy specified criteria defining truly competitive entrants are unlikely to serve as vehicles for artificial price suppression.”¹⁹ Creating an exemption

¹⁶ To be clear, the NYISO disagrees with the Complaint’s claim that “flaws associated with applying buyer-side mitigation rules to long lead-time transmission projects ... have become readily apparent since the Commission initially determined six years ago that controllable transmission lines should be mitigated on a basis comparable to generators.” See Complaint at 6. To the extent that this statement is construed to be a challenge to the general applicability of the BSM Rules to controllable transmission projects, it is a collateral attack on multiple Commission precedents and should be rejected. See, e.g., *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,211 at P 121 (2008) (“Controllable transmission and generating capacity should be subject to the same mitigation.”) and *Linden VFT, LLC v. New York Independent System Operator, Inc.*, 141 FERC ¶ 61,008, at P 29 (2012) (“because both transmission and generating capacity are paid based on the same principle of making capacity available in-City, there should be no special exemption.”) See also *Hudson Transmission Partners, LLC v. New York Independent System Operator, Inc.*, 145 FERC ¶ 61,156 at P 4 n. 7 (reciting rule that controllable transmission lines are subject to BSM Rules).

¹⁷ See Services Tariff Section 23.4.5.7, such tests commonly referred to as the “Part A Test” and the “Part B Test.”

¹⁸ NYISO CEE Answer at Section II.A.1.

¹⁹ See *Post-Technical Conference Comments of the New York Independent System Operator, Inc.* at 13, Docket No. AD13-7-000 (filed Jan. 18, 2014).

for competitive entrants “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.”²⁰ An exemption 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.”²¹ While the Complaint makes similar arguments in calling for an individual exemption for the CHPE Project, it overlooks the reasons why it is preferable for the CHPE Project to be evaluated under clear, transparent, and consistently applicable criteria that are established in the Services Tariff.

B. TDI’s Competitive Entry Concerns Should be Addressed Through the Proposed CEE Rules Rather than an Individual Exemption

1. Establishing the Proposed CEE Rules and Allowing the CHPE Project to Apply for an Exemption Under Them Would Be Preferable to Granting an Individual Exemption

Truly competitive entrants should not be subject to mitigation because exempting them will not result in the “artificial suppression” of capacity prices. As stated in the NYISO CEE Answer,²² the NYISO supports a competitive entry exemption in the basic form proposed in that proceeding, with certain limited modifications. Importantly, the proposed CEE rules include clear, predictable, and implementable requirements that would enable the NYISO to consistently distinguish competitive entrants from others. The proposed CEE rules also include carefully designed safeguards against potential errors or abuse. In particular, they require a developer seeking a competitive entry exemption to certify that it does not have, and will not have at any time before its project first produces or transmits energy, “non-qualifying contractual relationships.”²³

²⁰ *Id.*

²¹ *Id.*

²² See NYISO CEE Answer at Sections II.A. and II.C.

²³ See CEE Complaint at Exhibit B and NYISO CEE Answer at Section II.C.1.a., and Attachments 3 and 5.

The proposed CEE rules establish detailed and transparent procedures for the NYISO to analyze competitive entry exemption requests. Projects must submit documentation regarding their finances and investors. Project officers must certify the accuracy of that documentation.²⁴ These procedures reduce the risk that a project would inappropriately qualify for a competitive entry exemption and harm the capacity market.

It is preferable for mitigation exemption determinations to be made under a generally applicable rule rather than in response to individual exemption requests. The proposed CEE rules provide a clear and reasonable process and standard for determining whether a particular project should be exempt, and safeguards to ensure the project continues to be eligible on the date it first produces or transmits energy. Further, potential developers, *i.e.*, those with projects in the NYISO's Interconnection Queue, and Examined Facilities in a current Class Year, would benefit from predictable rules that are applied fairly to all proposed entrants. The same transparency and predictability would also benefit existing Market Participants as they make investment decisions regarding existing facilities. They also advance the Commission's interests in promoting market stability and transparency. Making determinations at the same time for all projects that are in the Class Year process concurrently, and applying the same criteria, will help to ensure that similarly situated projects are treated comparably.

Finally, as the Commission is aware, the implementation and application of the BSM Rules involve complex issues. Mitigation exemption determinations have consequences for all developers and Market Participants. The BSM Rules must be designed and applied in a way that avoids the dangers of under- and over-mitigation, and that provides appropriate levels of transparency and

²⁴ See CEE Complaint at 14 and at Exhibit A at P 33 and NYISO CEE Answer at Section II.C.1.c.

predictability.²⁵ Applying generally applicable tariff-based rules is more likely to balance the risks of over- and under-mitigation than addressing individual exemption requests on an *ad hoc* basis.

2. TDI Has Not Yet Demonstrated that it Should Receive an Individual Competitive Entry Exemption

As noted above, TDI states that the CHPE Project has not received any subsidies at the time of its filing and therefore ought to be exempt from mitigation. The NYISO is not in a position to confirm, or rely on, this assertion. The Complaint did not include the information, documentation, and certifications that it would be required to present under the proposed CEE rules. There is no assurance that the CHPE Project will not enter into future arrangements that would disqualify it from an exemption. Under the proposed CEE rules, the NYISO would confirm that an entrant did not have material “non-qualifying contractual relationships” with “Non-Qualifying Entry Sponsors” at the time of its request for an exemption review and at any point up to the time that the entrant first produces or transmits energy. The requirements under the proposed CEE rules are appropriately broad in scope, stringent, and clear, and require more than a simple assertion that an entrant has not received “subsidies” in the past.

3. TDI Has Not Demonstrated that it Would Be Harmed by Waiting for the Adoption and Application of a Generally Applicable CEE Rule

Case-specific exemptions may be justifiable under certain circumstances but, especially given the existence of the CEE Proceeding, TDI has not justified an individual exemption here. TDI asserts, but has not demonstrated, that it will be harmed if it does not receive an exemption, and speculates that it cannot wait for Commission action in the CEE Proceeding.²⁶ Indeed, the NYISO has asked the Commission to act promptly in that docket so that the tariff exemption rule is available

²⁵ See, e.g., *Midcontinent Independent System Operator, Inc.*, 123 FERC ¶ 61,297 at P 63 (2008); *Midcontinent Independent System Operator, Inc.*, 122 FERC ¶ 61,172 at P 121 (2008); and *Southwest Power Pool, Inc.*, 117 FERC ¶ 61,110 at P 21 (2006).

²⁶ See Complaint at 23-24.

to projects in Class Year 2015 and thereafter. Thus, the proposed CEE rules could be accepted by the Commission in the near future.²⁷

TDI points to its upcoming decision on whether to enter Class Year 2015 as the driver for needing certainty on whether the project is exempt from BSM.²⁸ Under the NYISO's interconnection procedures, the CHPE project, in its current Queue Position, has the option to enter either Class Year 2015 or the Class Year immediately following Class Year 2015.²⁹ If CHPE elects to enter Class Year 2015, it must notify the NYISO within five Business Days of March 1, 2015.³⁰

The NYISO notes that, while Class Year 2015 starts on March 1, 2015, Commission action on the CEE Rules after that date would not preclude their application to Class Year 2015 or the next Class Year. The OATT estimates that the Class Year process will take 12 to 18 months.³¹ The Final Decision Round is the final step in that process and is the stage at which all remaining eligible Class Year Developers accept their Project Cost Allocations and post required Security.³² The BSM Rules specify that the NYISO is to take certain actions and make exempt or non-exempt determinations during the Project Cost Allocation process. Therefore, even if the Commission does not act prior to the deadline for entering Class Year 2015, TDI has not shown that there is any reason why waiting for a Commission order in the CEE Proceeding would materially harm the CHPE Project.

²⁷ See NYISO CEE Answer at II.B.

²⁸ Complaint at 3. The Class Year Start Date is in accordance with OATT Section 25.5.9. Class Year 2012 was the first Class Year Study the CHPE Project was eligible to enter. Having entered Class Year 2012 and rejected its Project Cost Allocation for System Upgrade Facilities, the CHPE Project may enter one of the next two Class Year Studies. See OATT Section 25.6.2.3.4.

²⁹ See OATT 25.6.2.3.4.

³⁰ The March 1, 2015 date is the Class Year Start Date, and not, as stated in the Complaint (at 3) the date by which TDI must notify the NYISO if it wished to enter the CHPE Project in Class Year.

³¹ See OATT 25.5.9.

³² See OATT 25.8.2.1.

C. PJM's Capacity Market Rules Do Not Support the Complaint

TDI argues that because long-lead time projects, including controllable transmission lines, are not subject to the MOPR, an individual exemption for the CHPE Project is justified. It states that “fundamental principles recognized and adopted by the Commission” in an earlier order involving PJM (the “PJM Order”)³³ are “equally applicable to the Project and support the issuance of an order granting this Complaint.”³⁴

TDI's reliance on the PJM Order is misplaced for two reasons. First, PJM and the NYISO have different capacity market designs, auction structures, and market rules. The Commission has never required a “standardized” design for capacity markets.³⁵ The fact that a particular rule or requirement exists in one region is not ordinarily treated as binding “precedent” that dictates its implementation in others.

There are significant relevant differences between the capacity markets, and the capacity market power mitigation rules, in the NYISO and PJM. Notably, PJM's MOPR currently applies only to gas-fired combustion turbine, combined cycle, and integrated combined cycle units.³⁶ It has never applied to controllable transmission lines. By contrast, since their inception in 2008, the BSM Rules have applied to controllable transmission lines, like the CHPE Project. These and other differences appropriately reflect differences between the regions, their systems, market rules, and resources. Given these material differences, the fact that the CHPE Project would not be subject to mitigation in PJM is not dispositive here.

Second, PJM is a much larger market than the NYCA, let alone the New York City or the G-J Locality Mitigated Capacity Zones. Competition in the Mitigated Capacity Zones is more limited,

³³ Complaint at 16-19, citing *PJM Interconnection, LLC*, 143 FERC ¶ 61,090 (2013).

³⁴ Complaint at 18.

³⁵ See, e.g. *New York Independent System Operator, Inc.*, 135 FERC ¶ 61,170 at P 89 (2011).

³⁶ Section 5.14(h) of Attachment DD of the PJM OATT.

the potential market impact of new entry is commensurately greater, and market power mitigation measures will often need to be more stringent than they are for the entire PJM market. For example, the Commission approved a narrower renewable energy exemption from capacity market mitigation in the New England market than it did in the larger PJM market.³⁷ Similar considerations justify mitigating projects in a Mitigated Capacity Zone that would not be mitigated in PJM.

D. The Fact that TDI Has a Right to File a Complaint Under FPA Section 206 Does Not Mean that the Commission Must Act on it Before Acting on the Proposed CEE Rules

TDI correctly notes that it has a Commission-recognized statutory right to challenge the application of the BSM Rules to the CHPE Project.³⁸ However, the Commission has ample discretion to deny, or to decline to act on, the Complaint, and clear authority to manage its own dockets.³⁹ In this case, it should defer action on TDI's request for an individual exemption and, instead, act on the proposed CEE rules. Establishing a generally applicable CEE rule will foster market stability, certainty, and transparency.

III. COMPLIANCE WITH RULE 213(c)(2)(i)

Attachment A to this Answer addresses the formal requirements of Commission Rule 213(c)(2).

³⁷ See *ISO New England, Inc. and New England Power Pool Participants Committee*, 147 FERC ¶ 61,173 (2014).

³⁸ Complaint at 19, n.42.

³⁹ *Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity at Wholesale into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western Systems Power Pool Agreement*, 143 FERC ¶ 61,020 at P 24 (2013) ("The Commission controls its own dockets and has substantial discretion to manage its proceedings."). See also *Ameren Energy Generating Co.*, 108 FERC ¶ 61,081 at P 23 (2004) ("The courts have repeatedly recognized that the Commission has broad discretion in managing its proceedings.").

IV. CONCLUSION

For the reasons set forth above, the NYISO respectfully requests that the Commission not grant an individual exemption to the CHPE Project at this time. Instead, the Commission should promptly accept the proposed CEE rules in the CEE Proceeding and permit TDI to seek an exemption under them.

Respectfully submitted,

/s/ Gloria Kavanah

Counsel for

the New York Independent System Operator, Inc.

January 15, 2015

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

Attachment A

Attachment A

Compliance with Commission Rule 213(c)(2)

A. Specific Admissions 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 factual allegations in the Complaint.¹ To the extent that any fact or allegation in the Complaint is not specifically admitted below, it is denied. Except as specifically stated below, the NYISO does not admit any facts in the form or manner stated in the Complaint.

1. Denials

- The NYISO denies all allegations that it would be unjust and unreasonable to deny the CHPE Project an individual exemption from the BSM Rules in this proceeding. Complaint at 1, 7-8, 13, 20. Complainant has not yet shown, and it is not yet known, if this is the case.
- The NYISO denies all allegations that subjecting the CHPE Project to an Offer Floor would necessarily prevent its transmission customers from fully participating in the New York City capacity market. The NYISO neither admits nor denies that the application of an Offer Floor would prevent the Project from earning capacity revenues. Whether or not the Project would offer capacity or whether the offer would clear in an auction is not relevant to the question of whether the granting the CHPE Project an individual exemption would be just and reasonable. Complaint at 2, 5, 24.
- The NYISO denies all allegations that mitigation of the Project would necessarily impair Complainant's ability to market and sell transmission rights on the CHPE Project. The NYISO neither admits nor denies that the application of an Offer Floor would prevent Complainant from earning revenues from the sale of transmission rights. Whether or not Complainant would earn revenues from transmission rights is not relevant to the question of whether granting the CHPE Project an individual exemption would be just and reasonable. Complaint at 2, 5, 24.
- The NYISO denies that mitigation of the CHPE Project would necessarily prevent Complainant from "appropriately" capturing the value associated with the risk of undertaking the CHPE Project. Whether or not Complainant would capture the value associated with its risk is not relevant to the question of whether granting the CHPE Project an individual exemption would be just and reasonable. Complaint at 2, 5, 24.
- The NYISO denies the allegation that there is no basis for subjecting the CHPE Project to buyer-side mitigation. Complaint at 2, 20. Complainant has not yet shown, and it is not yet known, if this is the case.

¹ Capitalized terms that are not otherwise defined in this Attachment or the Answer shall have the meaning specified in the Services Tariff, and if not defined therein, then as defined in the NYISO's Open Access Transmission Tariff.

- The NYISO denies all allegations that mitigation of the CHPE Project would be entirely unsupported by market principles, would not achieve the objectives of mitigation, and would be unfair. Complaint at 7, 19. Complainant has not yet shown, and it is not yet known, if this is the case.
- The NYISO denies that TDI must notify the NYISO by March 1, 2015 if it wishes to enter Class Year 2015; but states that such notice is due to the NYISO five business days prior to March 1, 2015. Complaint at 3, 23.

2. Admissions

- The NYISO admits that it provides open access transmission service, facilitates reliability services, and administers competitive wholesale markets for electricity, capacity, and ancillary services in New York State pursuant to its Services Tariff and OATT. Complaint at 9.
- The NYISO admits that that it implements the BSM Rules pursuant to Attachment H of the Services Tariff. Complaint at 10.
- The NYISO admits that new entrants to the ICAP Market in Mitigated Capacity Zones are subject to an Offer Floor unless the NYISO determines that an entrant passes one of two mitigation exemptions test based upon a comparison of cost of new entry and forecasted capacity prices conducted in accordance with the rules set forth in Attachment H. Complaint at 11.
- The NYISO admits that, as the Complaint discloses, on November 13, 2014, as part of the Class Year 2012 study process, it issued a confidential letter to Complainant stating the outcome of each of the two mitigation tests and, as indicated in the Complaint, the letter stated that the CHPE Project would be subject to an Offer Floor. Complaint at 2, 13. The letter was issued in relation to the Initial Project Cost Allocation.
- The NYISO admits that it has proposed a competitive entry exemption but that its proposals were not approved by the supermajority of the NYISO's stakeholders, as is required to submit the rule changes to the Commission under Section 205 of the FPA. Complaint at 6, 15.
- The NYISO admits that Attachment S of the OATT provides that, within 30 calendar days of the approval of the cost allocation studies by NYISO's Operating Committee, a project developer must notify the NYISO if it will accept its project cost allocation. Complaint at 22.
- The NYISO admits that Class Year 2015 commences on March 1, 2015, Complaint at 2, 3, but the NYISO denies, as Complainant states, that if Complainant wants to enter Class Year 2015 it must inform the NYISO by that date. Class Year 2015 commences on March 1, 2015, but notice is due to the NYISO five business days before March 1, as stated above. Complaint at 3, 23.
- The NYISO admits that a developer must post security for the full amount of its project cost allocation as soon as 35 days after receiving its mitigation exemption test determination, (but notes that there are no rounds after the Initial Project Cost Allocation)

results and all or a portion of the security can be subject to forfeiture should the project not proceed. Complaint at 22.

- The NYISO admits that it met with Complainant's representatives on November 18, 2014. Complaint at 23.
- The NYISO admits that it made a good faith effort to resolve TDI's concerns. Complaint at 23.

B. Defenses

In accordance with Commission Rule 213(c)(2)(ii), which requires answers to set forth every defense "to the extent practicable," the NYISO sets forth the following defenses.

- Complainant has failed to meet its burden of proof under Section 206 and 306 of the FPA, or under Commission Rule 206.
- Complainant has not yet shown that the application of the BSM Rules to the CHPE Project is unjust and unreasonable or that the Commission should grant the CHPE Project an individual exemption from the BSM Rules.
- Complainant has not yet shown why the Commission should approve its individual exemption request when a request to approve a generally applicable tariff-based competitive entry exemption is currently pending before the Commission in the CEE Proceeding.
- Complainant has not shown that it will suffer from competitive harm if required to wait for the establishment of a competitive entry exemption in the CEE proceeding.
- Complainant has not shown that the fact that the PJM MOPR does not apply to controllable lines is an adequate basis for it to receive an individual exemption from the BSM Rules.

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." As explained in the Complaint, Complainant and the NYISO have discussed the application of the BSM Rules to the Project and Complainant states that more discussions will not resolve the issues that prompted the Complaint. The NYISO requests that the Commission decline to grant the CHPE Project an individual exemption from the BSM Rules and instead allow it to apply for an exemption under the rules currently pending before it in the CEE Proceeding.

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 15th day of January, 2015.

/s/ Mohsana Akter

Mohsana Akter
New York Independent System Operator, Inc.
10 Krey Blvd.
Rensselaer, NY 12144
(518) 356-7560