

143 FERC ¶ 61,217
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

New York Independent System Operator, Inc.

Docket No. ER12-360-001

ORDER CONDITIONALLY ACCEPTING PROPOSED TARIFF REVISIONS

(Issued June 6, 2013)

1. On June 29, 2012, in compliance with the Commission's September 8, 2011 order¹ the New York Independent System Operator, Inc. (NYISO) filed proposed revisions to its Market Administration and Control Area Services Tariff (Services Tariff) to implement buyer-side and supplier-side market power mitigation measures for new capacity zones. NYISO requests an effective date of September 1, 2012, or the effective date the Commission accepts for the tariff revisions submitted in NYISO's November 7, 2011 filing in this proceeding. For the reasons discussed below, the Commission accepts NYISO's June 29, 2012 filing, to be effective September 1, 2012, subject to conditions.

I. Background

2. NYISO administers the installed capacity (ICAP) markets for the New York Control Area (NYCA) which is comprised of 11 load zones and three installed capacity zones. The ICAP markets are based on the obligation placed on load-serving entities (LSEs) to procure enough ICAP to meet the required minimum level of ICAP. The New York State Reliability Council (NYSRC) calculates an overall minimum capacity necessary for the NYCA as a whole and for each of two "localized" capacity zones, i.e., the New York City Locality (NYC capacity zone) and the Long Island Locality (LI capacity zone).² Because of physical constraints, a certain percentage of Long Island's

¹ *N. Y. Indep. Sys. Operator, Inc.*, 136 FERC ¶ 61,165 (2011) (September 8, 2011 Order).

² Section 2.12 of the Services Tariff defines "Locality" as: "A single LBMP Load Zone or set of adjacent LBMP Load Zones within one Transmission District within which a minimum level of Installed Capacity must be maintained."

and New York City's capacity must be located in or deliverable to those zones. NYISO refers to the capacity zone encompassing load zones in the NYCA other than in New York City and Long Island as "Rest of State."³ Every three years, NYISO establishes ICAP Demand Curves for each capacity zone and uses them to set monthly spot market capacity prices for each of the three capacity zones in the NYCA.

3. NYISO's monthly spot ICAP market encompasses market power mitigation rules to prevent the exercise of both buyer and seller market power that would distort competitive outcomes in the New York City electric markets. These provisions are necessary to assure that market clearing capacity prices reflect a competitive outcome even when some buyers and/or sellers may have the ability and incentive to exercise market power.

4. Buyer-side mitigation measures, currently only in effect in the NYC capacity zone, provide that, unless exempt from this mitigation, new capacity resources must be offered at a price no lower than the applicable offer floor.⁴ The NYC mitigation offer floor for non-SCR capacity resources⁵ is defined as the lower of (1) 75 percent of the net cost of new entry (CONE) of the two-unit peaking plant in New York City that is used to establish the NYC ICAP Demand Curve (Default net CONE), or (2) the net cost of new entry of the NYC ICAP supplier's specific proposed unit (Unit net CONE). Non-SCR capacity from facilities that went into service on or before March 7, 2008, is exempt from NYC buyer-side mitigation.⁶ Further, the current NYC mitigation rules provide that new units are exempt from the offer floor if they pass either prong of NYISO's market mitigation exemption test.⁷

³ Services Tariff § 2.18.

⁴ Services Tariff § 23.4.5.7.

⁵ Special Case Resources (SCR), which includes demand response, are subject to special NYC buyer-side mitigation applicable only to SCR in section 23.4.5.7.5 of the Services Tariff.

⁶ Services Tariff § 23.4.5.7.6. SCR are exempt from NYC buyer-side SCR mitigation if they meet special criteria in section 23.4.5.7.5 of the Services Tariff.

⁷ Services Tariff § 23.4.5.7.2. The NYC buyer-side mitigation exemption test for non-SCRs consists of a Default exemption in subsection (a) and a Unit exemption in subsection (b). If the generator shows that either the projected Default Offer Floor (i.e., Default net CONE) or the Unit Offer Floor of its project (i.e., Unit net CONE) is less than the projected ICAP prices over the relevant time period with the inclusion of the ICAP

(continued...)

5. Supplier-side mitigation measures, currently only in effect in the NYC capacity zone, provide that the offers of “Pivotal Suppliers” (as defined) are subject to bid caps equal to the default offer reference level unless they can show that their estimated going-forward costs are higher than that price. NYISO currently defines a Pivotal Supplier as a market party that, together with any of its affiliated entities, (a) controls 500 MW or more of unforced capacity (UCAP) and (b) controls UCAP some portion of which is necessary to meet the NYC locational minimum ICAP requirement in an ICAP Spot Market Auction.⁸ NYISO defines the UCAP offer reference level as a dollar value equal to the projected clearing price for each ICAP Spot Market Auction determined by NYISO on the basis of the applicable ICAP Demand Curve and the total quantity of UCAP for all ICAP suppliers in the NYC locality for the period covered by the applicable ICAP Spot Market Auction.

6. Mitigated UCAP currently must be offered in each ICAP Spot Market Auction unless it has been exported to an external control area or sold to meet ICAP requirements outside the NYC locality in a transaction that does not meet NYISO’s standards for physical withholding. Section 23.4.5.4.1 of the Services Tariff provides that external sale of UCAP constitutes physical withholding if the responsible market party for the external sale could have bought out of its external capacity obligation and the net revenues from the sale in the NYC locality would have exceeded by 15 percent or more the revenues from the external sale.

7. In an order issued June 30, 2009,⁹ the Commission accepted NYISO’s proposal to work with stakeholders to address dynamic changes to the NYCA that might warrant additional local capacity requirements (outside of NYC and LI), and thus, the creation of new capacity zones within the NYISO ICAP market. In the September 8, 2011 Order, the Commission accepted, in part, subject to modification, NYISO’s proposed criteria for determining when additional load zones, or combinations of load zones, should also be specified as capacity zones with local capacity requirements. The Commission found that NYISO should use the methodology contained in the existing Attachment S deliverability test in section 25.7.8 of Attachment S to the NYISO OATT in determining whether to create new zones. The Commission accepted NYISO’s recommendation to

supplier’s capacity for the relevant periods starting with an imputed entry date of the new capacity, it is exempt from offer floor mitigation.

⁸ Services Tariff § 23.2.1.

⁹ *N. Y. Indep. Sys. Operator, Inc.*, 127 FERC ¶ 61,318 (2009) (June 30, 2009 Order).

apply the test for determining whether to create new zones every three years in conjunction with the ICAP Demand Curve reset process but directed NYISO, along with its stakeholders, to consider the desirability and feasibility of creating new zones on an annual basis rather than only once every three years.

8. On November 7, 2011, NYISO submitted proposed tariff revisions in partial compliance with the September 8, 2011 Order and requested an extension of time to make a further compliance filing in order to address the issue of market power mitigation in new capacity zones.¹⁰ On June 29, 2012, NYISO filed proposed revisions to its Services Tariff to implement market power mitigation measures for new capacity zones, which we address below.

II. Summary of NYISO's Filing

9. NYISO proposes revisions to its market power mitigation measures in order to implement, with certain exceptions, supplier-side and buyer-side mitigation measures for new capacity zones comparable to those currently in effect for New York City. NYISO's proposed mitigation measures are contained in section 23 (Attachment H) of its Services Tariff. NYISO also proposes revisions to certain relevant definitions contained in sections 2.12 and 2.13 of the Services Tariff, and to its market monitoring plan, which is contained in section 30 (Attachment O) of the Services Tariff. NYISO's filing includes the affidavit of Dr. Patton, president of the firm that serves as NYISO's Independent Market Monitoring Unit (MMU), supporting the application of market mitigation measures to all new capacity zones and grandfathering projects meeting certain criteria.

10. NYISO proposes that its new capacity zone market mitigation measures utilize the conceptual framework of the currently effective ICAP market mitigation measures applicable to the NYC locality with modifications as necessary to accommodate the differences between new capacity zones and the NYC locality, as discussed below. Additionally, NYISO proposes a new term, "Mitigated Capacity Zone" defined as "New York City and any Locality added to the definition of 'Locality' accepted by the Commission on or after March 31, 2013."

11. NYISO also proposes to replace references to the "New York City Locality" or "In-City" in the NYC buyer-side and supplier-side mitigation provisions with the term Mitigated Capacity Zone in order to make those Pivotal Supplier provisions that currently apply only to the NYC locality applicable to Pivotal Suppliers in any new capacity zone.

¹⁰ NYISO November 7, 2011 Filing at 8. The new capacity zone tariff compliance provisions were accepted by order issued August 30, 2012. *N. Y. Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,160 (2012).

NYISO proposes to define Mitigated Capacity Zone as “New York City and any Locality added to the definition of ‘Locality’ accepted by the Commission on or after March 31, 2013.” NYISO states that this term excludes Long Island, which is an existing Locality that is presently not subject to buyer-side and supplier-side mitigation measures.

12. NYISO proposes to modify the current NYC mitigation measures to ensure that the application of the supplier-side market power mitigation measures in any Mitigated Capacity Zone is restricted to Pivotal Suppliers. In particular, NYISO proposes to revise the definition of “Pivotal Supplier”¹¹ to make that term applicable to market parties that control at least the MW of unforced capacity (UCAP) specified for the Mitigated Capacity Zone except NYC, i.e., new capacity zones. In addition, because an ICAP supplier could be a Pivotal Supplier in some, but not all, of the Mitigated Capacity Zones in which it has resources, NYISO proposes to modify section 23.4.5.2 to provide that, in such case, the supplier’s offer to sell shall not be higher than the higher of “the lowest of the UCAP Offer Reference Levels for each Mitigated Capacity Zone in which such Installed Capacity Supplier has Resources”¹² or, “if an Offer for a Resource has an applicable Going-Forward Cost, such Going-Forward Cost.”¹³

13. In contrast to the current NYC buyer-side market power mitigation provisions, which exempt facilities that went into service on or before March 7, 2008, NYISO proposes provisions for new capacity zones to exempt (i.e., to grandfather) from the

¹¹ Currently, section 23.4.5 of the Services Tariff defines “Pivotal Supplier” as: “[A] Market Party that, together with any of its Affiliated Entities, (a) Controls 500 MW or more of Unforced Capacity, and (b) Controls Unforced Capacity some portion of which is necessary to meet the New York City Locational Minimum Installed Capacity Requirement in an ICAP Spot Market Auction.”

¹² Section 23.2.1 of the Services Tariff states: “For purposes of Section 23.4.5 of this Attachment H, “UCAP Offer Reference Level” shall mean a dollar value equal to the projected clearing price for each ICAP Spot Market Auction determined by the ISO on the basis of the applicable ICAP Demand Curve and the total quantity of Unforced Capacity from all Installed Capacity Suppliers in the New York City Locality for the period covered by the applicable ICAP Spot Market Auction.”

¹³ “Going-Forward Costs” is defined in section 23.2.1 of the Services Tariff generally as either the costs, net of energy and ancillary services revenues, that the supplier would avoid if the supplier ceases operations for at least a year or if it retires, or the opportunity costs of foregone sales outside of the New York City Locality, net of costs that would have been incurred as a result of the foregone sale if it had taken place.

buyer-side market power mitigation measures (1) generation and Unforced Capacity Deliverability Rights (UDR)¹⁴ projects that, among other things, have “Commenced Construction” (as defined in the proposal) prior to NYISO’s March 31 filing proposing a new capacity zone in which the project is located; and (2) certain SCRs in new capacity zones. For projects in new capacity zones that are not grandfathered, NYISO proposes to conduct an offer floor mitigation exemption/offer floor determination comparable to the mitigation exemption test it conducts for new capacity resources in NYC using the Commission-accepted Locality Demand Curves.¹⁵ For projects that are not in a completed class year, NYISO proposes revisions to section 23.4.5.7.2 of the Services Tariff to provide for an indicative buyer-side mitigation determination to provide, for information purposes only, an indication of whether the project might be exempt, or an estimate of the offer floor that might apply to the project.

14. NYISO proposes additions to the Services Tariff applicable to new projects in new capacity zones that: (1) require the submission of data and information needed to allow NYISO to make the required exemption determinations; (2) explain how NYISO will compute the reasonably anticipated ICAP Spot Market Auction forecast price used in making the exemption determination; and (3) post on its web site prior to making offer floor or exemption determinations (i) the inputs and ICAP Spot Market Auction forecast prices in accordance with any confidentiality requirements, and (ii) expected retirements and new capacity zone examined projects (NCZ Examined Project). Finally, NYISO provides that it will ask its market monitoring unit to review its calculations and that it will promptly inform investors in NCZ Examined Projects of the relevant determinations.

III. Notice of Filing and Responsive Pleadings

15. Notice of NYISO’s June 29, 2012 filing was published in the *Federal Register*, 77 Fed. Reg. 41,177 (2012), with interventions and protests due on or before July 20, 2012. Consolidated Edison Solutions, Inc.; the City of New York; Hess

¹⁴ NYISO defines UDRs as rights, measured in MWs, associated with new incremental controllable transmission projects that provide a transmission interface to a NYCA locality. NYISO Installed Capacity Manual, section 4.14.

¹⁵ NYISO also proposes revisions to its pending new term, “Mitigation Net Cone,” to provide for new capacity zone buyer-side mitigation exemption determinations prior to the effectiveness of new capacity zone demand curves based on the accepted or filed demand curves.

Corporation; Multiple Intervenors;¹⁶ PSEG Energy Resources & Trade, LLC, PSEG Power LLC, and PSEG Power New York filed motions to intervene.

16. Entergy Nuclear Power Marketing, LLC and GenOn Parties (collectively, New York Suppliers); Empire Generating Co., LLC (Empire); the New York Transmission Owners (NYTOs),¹⁷ Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc (collectively Constellation) filed motions to intervene and protests. The New York State Public Service Commission (NYPSC) filed a notice of intervention and protest. On August 24, 2012, TC Ravenswood, LLC (Ravenswood) filed a motion to intervene out of time and comments.

17. On July 31, 2012, New York Suppliers filed an answer to the NYTOs' protest. Also on July 31, 2012, the City of New York filed an answer to the protests filed by the NYTOs, New York Suppliers, and the NYPSC. On August 6, 2012, NYISO filed an answer to the protests filed by New York Suppliers and the NYTOs. Also on August 6, 2012, the NYTOs filed an answer to the New York Suppliers' protest. On August 10, 2012, the MMU filed an answer to the NYTOs' protest and NYISO's answer. On August 14, 2012, the Independent Power Producers of New York (IPPNY) filed an answer to NYISO's answer. On August 15, 2012, the NYTOs filed an answer to the New York Suppliers' answer and on August 21, 2012, the NYTOs filed an answer to NYISO's answer. On September 10, 2012, the NYTOs filed an answer in response to Ravenswood's motion to intervene out-of-time and comments.

IV. Discussion

A. Procedural Issues

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notice of intervention and timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

¹⁶ Multiple Intervenors is an unincorporated association of over 55 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State.

¹⁷ NYTOs consist of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

19. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012) we will grant Ravenswood's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

B. Substantive Issues

1. The Need for Market Power Mitigation Measures in New Capacity Zones

21. NYISO states that its proposed market mitigation measures for new capacity zones are necessary because new capacity zones (with corresponding local capacity requirements) are more likely to contain market participants with the ability and incentive to exercise market power. NYISO asserts that because new capacity zones are not expected to have significant amounts of surplus capacity in equilibrium, relatively small amounts of withholding or uneconomic entry can cause market clearing prices to deviate from a competitive level. Moreover, according to NYISO, over-mitigation in new capacity zones is not an issue because the proposed market mitigation measures are not punitive and do not create risk for market participants without market power. Further, application of supplier-side and buyer-side mitigation measures to all new capacity zones will reduce future uncertainty regarding the formation of new capacity zones over time, for buyers and sellers in the ICAP market. In order to implement supplier-side and buyer-side mitigation measures, NYISO proposes revisions to its market power mitigation measures (section 23, Attachment H), to certain relevant definitions (section 2), and to its market monitoring plan (section 30, Attachment O) of NYISO's Services Tariff.

22. In his affidavit attached to the filing, Dr. Patton agrees with NYISO, asserting that new capacity zones would "be much more sensitive to withholding or uneconomic entry than NYCA as a whole."¹⁸ He illustrates the market power concern by first estimating a \$1.40/kW-month price effect during the summer capability period in the unconstrained NYCA attributable to a withholding of 600 existing megawatts (a hypothetical exercise of seller market power) or the addition of 600 new megawatts offered as a price taker (a hypothetical exercise of buyer market power). Dr. Patton notes that the price effect

¹⁸ NYISO June 29, 2012 Filing, Patton Aff. ¶ 11.

attributable to a 600 megawatt change is about five times larger for the constrained NYC capacity zone and would equal more than \$3 per kW-month in the largest new capacity zone currently under consideration. He adds that these price effects are sufficiently large to create substantial incentives to withhold UCAP in order to raise prices or to engage in uneconomic conduct in order to lower capacity prices. He concludes that implementing supplier-side and buyer-side mitigation measures in future new capacity zones would be necessary to “ensure that prices within [new capacity zones] remain just and reasonable.”¹⁹ Dr. Patton also asserts that the supplier-side mitigation measure includes structural tests that would help assure that it is only applied to suppliers that likely have market power.

a. Protests

23. The NYPSC argues that the Commission should reject the NYISO filing, without prejudice, until such time as a need for new mitigation measures can be adequately justified by NYISO.²⁰ The NYPSC contends that where the ability to improperly exercise market power exists, effective mitigation rules are needed to help ensure that competitive outcomes are obtained. However, a detailed market power analysis of a defined market is necessary before concluding that such ability exists, and mitigation measures should be narrowly tailored to not impede efficient entry and efficient exit. The NYPSC states that the NYISO filing prematurely imposes mitigation measures upon any new capacity zones/markets. The NYPSC argues that the automatic imposition of mitigation measures on any newly-created capacity zone is unjust and unreasonable, given that it ignores the actual structural competitiveness within a yet-to-be-determined zone, and improperly presumes that mitigation measures are warranted therein. As a result, NYISO's presumption in favor of mitigation will deter new entry and act contrary to its suggestion that it will reduce market uncertainty and facilitate long-term investment decisions.²¹

24. The NYPSC states that NYISO's suggestion that its filing constitutes compliance with the Commission's September 8, 2011 Order is incorrect, because the Commission's September 8, 2011 Order is reasonably interpreted as supporting the opposite of the NYISO filing, i.e., market power mitigation measures should be developed, as appropriate, *after* the establishment of a new capacity zone. The NYPSC asserts that NYISO's current proposal inappropriately departs from the approach NYISO presented in

¹⁹ *Id.*

²⁰ NYPSC July 20, 2012 Comments at 8-9.

²¹ *Id.* at 4.

its January 4, 2011 filing, which proposed that market power mitigation issues should be identified on a case-by-case basis following an established need for a new capacity zone/market. The NYPSC adds that NYISO improperly ignores its prior position that “because each potential new capacity zone could present unique issues, which may not be identified or fully understood until after a full analysis of the candidate new capacity zone was complete, no specific proposed market power parameters or measures should be included.”²²

25. The NYPSC contends that there have been various disputes before the Commission and in courts over virtually every aspect of the New York City mitigation rules, and that the automatic application of these same rules to all new capacity zones, regardless of whether or not they are needed, is inviting future complaints and litigation, which will only serve to undermine confidence in the markets and deter new entrants.²³

26. Similar to the NYPSC, the NYTOs contend that the Commission should direct NYISO to modify the mitigation measures so that NYISO will be required to assess, based on the potential for exercise of market power, whether market mitigation measures are required when it files to create a new capacity zone, and the application of such measures should be limited to cases where NYISO can show they are warranted. The NYTOs disagree with Dr. Patton’s analysis regarding the price effects of a new combined-cycle unit in a new capacity zone. They assert that Dr. Patton does not provide any explanation of how he arrived at his conclusion that a hypothetical new combined-cycle unit would affect summer capacity prices by more than \$3 per kW month. The NYTO’s consultant, Michael Cadwalader, posits his own hypothetical in which, at some point in the future, deliverability constraints arise on the Highway interface between NYISO load zone D in the northeast corner of the state and load zone E, limiting the amount of capacity that can be delivered from load zone D to the rest of NYCA. Mr. Cadwalader states that NYISO would have to define a new capacity zone that would consist of the portion of NYCA that is downstream of the constraint, a zone which would be nearly as large as the entire NYCA. Mr. Cadwalader asserts that the estimated impact of a 600 MW combined cycle unit on capacity prices in this large new locality would be a drop in price of no more than \$1.55/kW-month, about half of Dr. Patton’s claimed impact “for even the largest [new capacity zone] that may emerge.”²⁴ The NYTOs argue that

²² *Id.* at 4, 7-8 (citing NYISO and New York Transmission Owners, Filing, Docket No. ER04-449-023, at Page 9 (filed January 4, 2011)).

²³ *Id.* at 8.

²⁴ NYTOs July 20, 2012 Protest, Cadwalader Aff. ¶ 15.

neither NYISO nor Dr. Patton has presented any evidence to demonstrate that a large new capacity zone should be subjected to mitigation and Dr. Patton's calculation should be seen as preliminary at best.

27. The NYTOs also take issue with Dr. Patton's claim that applying these mitigation measures to all new capacity zones raises no significant concerns of over-mitigation because the measures are not intended to be punitive or to create substantial risk for suppliers that do not have market power. The NYTOs respond that this rationale is inconsistent with the reasoning that NYISO and Dr. Patton have advanced in the past, specifically in 2002, when NYISO's current conduct-and-impact approach to mitigating its energy markets was first proposed. The NYTOs also assert that even if NYISO did not intend for a mitigation measure to be punitive, it may cause significant harm if it fails to operate as intended or if it is inadequately designed to meet the broader purpose for which it is intended.

28. The NYTOs also argue that additional exemptions from offer floors are needed, that the NYISO proposal does not reflect guidance offered by the Commission in recent PJM Interconnection, LLC (PJM) and ISO-New England (ISO-NE) dockets,²⁵ and that it is not clear that the proposal strikes the right balance between mitigating uneconomic entry and avoiding the creation of barriers to entry. The NYTOs state that there are costs and risks associated with seeking an offer floor exemption even for those who successfully qualify for that determination, as it will almost certainly be challenged in section 206 complaints filed by competitors. At best, they add, contending with such challenges is burdensome and costly, while, at worst, the associated uncertainty and financial risk may discourage some developers from entering the New York market.

29. The NYTOs further state that the buyer-side mitigation tests may result in "false positives." They explain that the prong (a) mitigation exemption test requires NYISO to forecast future prices according to a rigid methodology that may differ from an entrant's view of future market conditions. They add that it also requires NYISO to look exclusively at potential market price during two capability periods beginning three years in the future, even though a new entrant will likely consider its returns over a longer period when deciding whether to make an investment and may not even plan to be in service during the period of NYISO's forecast. Similarly, according to the NYTOs, the prong (b) test requires evaluation of a new entrant's costs according to a rigid methodology that may or may not reflect the entrant's own view of the project's potential costs and revenues. They add that it also requires examination of potential costs during a

²⁵ *Id.* at 12 (citing *PJM Interconnection, LLC*, 135 FERC ¶ 61,022, at PP 153, 155 (2011); *ISO New England, Inc.*, 135 FERC ¶ 61,029, at P 171 (2011)).

three-year period beginning three years in the future that will not likely correspond to the period used in the unit's own financial analyses and may include periods when the unit is not intended to be in service. The NYTOs assert that they are not suggesting that superior methodologies exist, but rather that these shortcomings demonstrate burdens associated with the application of buyer-side mitigation.

30. The NYTOs argue that, even accepting that the existing buyer-side mitigation procedures are appropriate in their current form for New York City, it is not clear that they should be applied, virtually without change in other parts of the state, where conditions may be very different. In particular, the NYTOs contend that outside of New York City, (1) generation resources are more likely to be small in size and to rely upon fuels other than natural gas and/or oil, and (2) the economy is more focused on industrial businesses, which may affect the availability and type of demand response potentially available to the capacity market. Thus, according to the NYTOs, applying New York City buyer-side mitigation measures could create significant barriers to entry. In addition the NYTOs argue that market participants cannot know how New York City procedures will be applied and therefore, the NYTOs expect that challenges to NYISO determinations will be routine.

b. NYISO's Answer

31. NYISO responds that it is reasonable for NYISO, and the Commission, to expect that structural local market power will exist within new capacity zones and that effective mitigation measures, including buyer-side mitigation, are appropriate. NYISO states that acting to address these concerns in advance is reasonable and also consistent with Commission precedents and policy requiring that market power be effectively mitigated.²⁶

32. NYISO responds to the NYTOs and the NYPSC by asserting that it is not premature to establish mitigation rules for all new capacity zones in advance if NYISO is to implement new capacity zones in a timely manner after determining that their creation is appropriate. NYISO asserts that waiting to establish specific mitigation rules for each

²⁶ NYISO August 6, 2012 Answer at 4 (citing *e.g.*, *PJM Interconnection, LLC*, 137 FERC ¶ 61,145, at P 24 (2011) (accepting PJM's MOPR finding that both seller and buyer mitigation measures may be necessary in RTO capacity markets to address the potential to exercise market power); *Midwest Independent Transmission System Operator, Inc.*, 120 FERC ¶ 61,250 (2007) (eliminating sunset date for Broad Constrained Area mitigation measures upon finding that these mitigation measures address locational market power)).

new capacity zone at the time the new capacity zone is created would create litigation, risk, and uncertainty regarding the timing of implementation. NYISO adds that the risk of delay would be compounded if NYISO were expected to justify a “customized” mitigation regime for each new capacity zone, and unnecessarily delaying the establishment of new capacity zones would be contrary to Commission policy as articulated in the September 8, 2011 Order.²⁷ By contrast, making the conceptual framework and basic parameters of future new capacity zone mitigation rules clear in advance will provide the market with greater certainty.

33. NYISO argues that assertions that it should be required to conduct a competitive market structure study before adopting mitigation measures in “new ICAP markets” are misplaced.²⁸ NYISO asserts that establishing a new capacity zone is not the creation of a new “market,” which is the situation in which the Commission has required studies to be conducted.²⁹ Instead, NYISO asserts, it is the creation of a new locational zone within the conceptual framework of an existing capacity market and established market design.

34. NYISO also asserts that the NYTOs wrongly challenge Dr. Patton’s statement that the application of these measures to all new capacity zones does not raise concerns of over-mitigation, or that Dr. Patton is being inconsistent with the position he took in 2002 with energy market mitigation.³⁰ NYISO argues that there is no inconsistency between NYISO’s and Dr. Patton’s more numerous and more recent statements in support of the New York City buyer-side mitigation measures, on which the new capacity zone mitigation measures are conceptually built. NYISO contends that the underlying rationale for buyer-side mitigation is the same for new capacity zones as it is for New York City, namely, that structural local market power issues should be addressed by rules that neither over- nor under-mitigate and thus balance, as best as possible, the need to guard against uneconomic entry and the need to not unreasonably discourage economic entrants.

35. NYISO further responds that the differences between the proposed new capacity zone buyer-side mitigation rules and those of New York City are appropriate and fully

²⁷ *Id.* at 5 (citing September 8, 2011 Order, 136 FERC ¶ 61,165 at P 70).

²⁸ *Id.* (citing NYPSC July 20, 2012 Comments at 4).

²⁹ *Id.* (citing *e.g.*, *Midwest Independent Transmission System Operator, Inc.*, 119 FERC ¶ 61,311 (2007) (market power analysis required when proposing market design for a new market predicated on sales being made at market-based rates)).

³⁰ *Id.* at 7 (citing NYTOs July 20, 2012 Comments at 6-7).

justified. NYISO states that its filing reasonably proposes to use the conceptual framework of the New York City mitigation rules but, appropriately, did not propose to adopt them in their entirety and that it can be appropriate to have different, but conceptually consistent, rules in New York City and in new capacity zones, given a valid reason for the variation. NYISO notes that the New York City rules were created for the known circumstances and conditions of New York City in the 2007-2008 period with an eye toward future conditions that were expected at that time. In contrast, NYISO asserts, the new capacity zone mitigation rules will potentially apply to multiple new capacity zones that have not yet been defined and whose exact conditions cannot yet be known.

36. NYISO states that arguments that rules based on the New York City buyer-side mitigation rules should not be applied to new capacity zones because they are likely to result in excessive litigation that will deter economic entry should be rejected.³¹ NYISO argues that the solution is for the Commission to discourage unjustified and purely strategic challenges to exemption (or non-exemption) determinations under buyer-side mitigation rules that are made by NYISO and “confirmed” by the MMU. NYISO points to the recent order in Docket No. EL11-42-000,³² which it asserts emphasized reliance on independent MMU review of independently-made NYISO determinations, as an important step in this direction. NYISO states that to the extent that litigation over new entry decisions nevertheless proliferates, the Commission could take additional steps to restore a reasonable balance, such as establishing an explicit presumption that challenges to MMU-confirmed determinations will be disfavored. Moreover, the notion that deferring action on the question of whether, and how, market power in new capacity zones should be mitigated will reduce litigation is dubious. NYISO argues that it seems far more likely that litigation would only be delayed, not avoided. In addition, assuming that multiple new capacity zones are established, it can be expected that litigation over proposed mitigation rules will begin anew each time a new capacity zone is proposed.

37. NYISO argues that the main thrust in the NYTOs’ attempted attack on applying mitigation to all new capacity zones is the example offered by Mr. Cadwalader. NYISO asserts that, while Mr. Cadwalader creates a hypothetical new capacity zone within which theoretically there would not be significant market power concerns,³³ this hypothetical

³¹ *Id.* at 8.

³² *Id.* (citing *See N. Y. Independent System Operator Inc.*, 139 FERC ¶ 61,244, at P 130 (2012)).

³³ *Id.* at 6 (citing NYTOs July 20, 2012 Protest at 23-26, Cadwalader Aff. ¶¶ 17-35).

new capacity zone is unlikely, as shown by analyses performed in the NYISO class year Facilities Study process. According to NYISO, the Highway tests conducted by the NYISO Class Year 2010 Deliverability Study identified no deliverability constraints from a single load zone to a group of load zones. In addition, NYISO states, Mr. Cadwalader's hypothetical new capacity is unlikely to be created because it would encompass the entire NYCA, except for load zone D, i.e., it would include more than 98 percent of the NYCA load. NYISO asserts that the very fact that the NYTOs had to rely on such an extreme example to "refute" Dr. Patton's reasoning reinforces, rather than undermines, NYISO's position.

c. Commission Determination

38. We find that NYISO has demonstrated a need for the creation of buyer- and supplier-side mitigation measures in advance of the creation of new capacity zones. Supplier-side market power issues generally arise because transmission constraints limit competitive alternatives. The creation of a new capacity zone is needed because transmission constraints restrict deliverability of resources and procurement of a specified quantity of capacity internal to the new capacity zone is required for reliability. Further, the new capacity zone local capacity requirement cannot be satisfied by resources in Rest of State, but only by resources in the new capacity zone. Consequently, the factors that give rise to the creation of a new capacity zone also give rise to seller-side market power concerns within that zone. Therefore we conclude that it is appropriate to have and to apply supplier-side market power mitigation rules at the time the first capacity auction is conducted to secure capacity for the new capacity zone.

39. A new capacity zone may also contain one or a few larger buyers that possess buyer-side market power and have an incentive to support uneconomic entry in order to suppress market clearing prices in the new capacity zone. As NYISO notes about its market structure, NYCA has eight large load-serving entities that are also large buyers, making it likely that any new capacity zone will be dominated by one or two large buyers with an economic incentive to lower prices through uneconomic entry.³⁴ In a new capacity zone with effective supplier-side market power mitigation, an efficient market

³⁴ "The NYCA has eight large distribution companies that are Load Serving Entities and that are large wholesale purchasers of electricity in their mostly geographically contiguous service territories. There are other large Load Serving Entities whose load may be geographically concentrated. It is thus highly likely that any new capacity zone will be dominated by one or two large buyers." NYISO August 6, 2012 Answer at 4.

outcome—one not affected by either buyer- or supplier-side market power—must include effective buyer-side market power mitigation measures to assure a competitive outcome.

40. Although we agreed with NYISO in the September 8, 2011 Order that market power concentration studies may be necessary after a new zone is determined to be needed, we did not intend, and certainly did not preclude, NYISO from developing appropriate generic mitigation measures prior to the creation of a specific new capacity zone. By developing mitigation measures now, NYISO is avoiding the risk of delay in the implementation of a needed new capacity zone and is thereby reducing the uncertainty regarding the timing of the implementation of a new zone. As we held in our September 8, 2011 Order, there is a risk that the reserve margin may not be met in the long run if a new capacity zone is not created where it is needed because new capacity resources will not be given the proper price signal to invest in the areas where new capacity is needed.³⁵ By contrast, making the conceptual framework and basic parameters of future new capacity zone mitigation rules clear in advance, NYISO will not only reduce the risk of delay, but also reduce barriers to entry by providing potential new market entrants with greater assurance about how mitigation determinations will be made. This will reduce the uncertainty of how a new entrant's capacity will be assessed in the new capacity zone.

41. Moreover, we agree with NYISO that the market power mitigation used in New York City with appropriate modifications to recognize differences between New York City and the newly proposed capacity zones provides a reasonably consistent mitigation framework across all Mitigated Capacity Zones. We disagree with protestors with respect to the balance struck between mitigating uneconomic entry and avoiding the creation of barriers to entry. We have previously found that NYISO's mitigation measures for New York City are a just and reasonable methodology for mitigating market power, while maintaining revenue adequacy,³⁶ and we find here that NYISO's modifications to such measures to accommodate differences between NYC and other newly proposed capacity zones maintain such balance.

2. Supplier-Side Market Power Mitigation for New Capacity Zones

42. NYISO proposes to revise section 23.4.5 of the Services Tariff to implement supplier-side mitigation measures for new capacity zones. NYISO states that its proposed tariff revisions include provisions to ensure that the application of the supplier-side mitigation measures in any Mitigated Capacity Zone is restricted to Pivotal

³⁵ September 8, 2011 Order, 136 FERC ¶ 61,165 at P 70.

³⁶ *N. Y. Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,211, at PP 32, 110 (2008).

Suppliers, as defined in its proposal. NYISO adds that this restriction is necessary to ensure that there are no adverse impacts on suppliers without market power. Specifically NYISO proposes to revise the definition of Pivotal Supplier to make the current definition³⁷ applicable only to the NYC capacity zone and to add a new subsection applicable to market parties that control at least the amount of MW of UCAP specified for a Mitigated Capacity Zone other than NYC in its filing proposing the new capacity zone.

43. In addition, NYISO proposes to modify section 23.4.5.2 to establish the UCAP offer reference level³⁸ for an ICAP supplier that is a Pivotal Supplier in some, but not all, of the Mitigated Capacity Zones in which it has resources. NYISO proposes to modify section 23.4.5.2 to establish that the UCAP offer reference level shall not be higher than the higher of “the lowest of the UCAP offer reference levels for each Mitigated Capacity Zone in which such ICAP supplier has resources” or, if applicable, the resource’s going-forward cost.

a. Commission Determination

44. We accept NYISO’s supplier-side mitigation measures for new capacity zones. As with the NYC capacity zone, we believe it is appropriate to apply supply-side mitigation only to Pivotal Suppliers, i.e. to those who can potentially exercise market power. We recognize that the determination of a “pivotal” number of megawatts may differ by zone and thus we leave it to NYISO to propose that figure at the same time it proposes the new capacity zone.

³⁷ Currently, section 23.2.1 of the Services Tariff defines “Pivotal Supplier” as a Market Party, together with its affiliates, that controls 500 MW or more of UCAP, some portion of which is necessary to meet the New York City locational minimum ICAP requirement.

³⁸ Section 23.2.1 of the Services Tariff states: “For purposes of Section 23.4.5 of Attachment H, “UCAP Offer Reference Level” shall mean a dollar value equal to the projected clearing price for each ICAP Spot Market Auction determined by the ISO on the basis of the applicable ICAP Demand Curve and the total quantity of Unforced Capacity from all Installed Capacity Suppliers in the New York City Locality for the period covered by the applicable ICAP Spot Market Auction.”

3. Buyer-Side Mitigation Measures for New Capacity Zones

a. Grandfathering Generators and Unforced Capacity Deliverability Rights (UDR) Projects

i. NYISO's Proposal

45. NYISO proposes to grandfather projects that, as of the date of NYISO's filing proposing a new capacity zone, have "Commenced Construction" (as proposed to be defined) and have received Capacity Resource Interconnection Service (CRIS) or, met specific requirements regarding a CRIS transfer at the same location. NYISO states that in order to ensure that the proposed mitigation measures do not act as a barrier to new investment, it proposes a new section 23.4.5.7.7 of the Services Tariff that would apply to any Mitigated Capacity Zone except the NYC capacity zone.

46. Proposed section 23.4.5.7.7 also provides that NYISO is to consult with the MMU prior to determining whether an existing or proposed generator or UDR project has Commenced Construction, and the MMU is to provide a written opinion and recommendation regarding whether the existing or proposed project has Commenced Construction as well as a public report on its assessment of a NYISO determination.

47. NYISO states that its proposed tests reasonably balance the concerns of exposing investors to the risk that a project could be denied capacity revenues when initiated long prior to the creation of a new capacity zone and not allowing strategic uneconomic investments. NYISO asserts that the two proposed tests for Commenced Construction will determine whether a project has advanced enough prior to the announcement and filing of the new capacity zone to warrant an exemption from buyer-side mitigation.

48. NYISO also proposes to revise section 23.2.1 of its Services Tariff to define "Commenced Construction" as:

(a) all of the following site preparation work is completed: ingress and egress routes exist; the site on which the project will be located is cleared and graded; there is power service to the site; footings are prepared; and foundations have been poured consistent with purchased equipment specifications and project design; or (b) as approved by the ISO in accordance with ISO Procedures, a financial commitment comparable to (a) has been made, which includes costs incurred, and costs of cancelling, discontinuing, or suspending the project; and may consist of a combination of actions or commitments. Such actions or commitments may include: major equipment has been purchased; an engineering, procurement, and construction contract for the project has been executed by all parties and is effective; or financing has been completed.

NYISO asserts that the criteria specified in (a) of the definition above provides milestones that will likely only be satisfied if the project has been under development for a number of years, long before the new capacity zone was announced by NYISO and the project has incurred significant costs. NYISO further asserts that the part (b) test allows NYISO to exempt a project if that project can demonstrate other actions or commitments that are comparable to those in the first test, an alternative that is beneficial because not all projects follow the same developmental milestones.

49. NYISO also proposes to add a section 23.4.5.7.6(b) to its Services Tariff to exempt from the offer floor existing generators or UDR projects in Mitigated Capacity Zones outside of New York City that have been grandfathered from the deliverability requirements pursuant to OATT Attachment S. NYISO states that this exemption is supported by the MMU and is consistent with those described above because generators and UDR projects that are “existing” now would generally have taken actions that satisfy the Commenced Construction test long before NYISO’s March 31 filing proposing a new capacity zone. NYISO also states that to be eligible for this exemption, an entity must have been an existing facility as of the date of the instant filing, i.e. June 29, 2012, and that such entities will be exempt at the level of CRIS MW at which they were grandfathered from deliverability. NYISO adds that any subsequent increase in CRIS MW for such a facility greater than two MW are ineligible for the section 4.5.7.6(b) exemption explained above, but would have the opportunity to be considered for an exemption under the test set forth in section 23.4.5.7.7. If ineligible for either of these tests, such subsequent increase in CRIS MW would be subject to NYISO’s examination for an offer floor or exemption.

ii. Protests and Comments

50. New York Suppliers argue that NYISO has materially and unjustifiably proposed to deviate from the existing facility grandfathering exception that the Commission approved as a core component of the New York City existing capacity mitigation rules. New York Suppliers state that the Commission found that buyer market power mitigation applies to new uneconomic entrants, not existing capacity, as the point of the mitigation is to affect future actions and deterrence of the entry of existing units is no longer possible.³⁹ New York Suppliers add that the Commission did not, however, extend grandfathering to projects that remained under development, and it specifically refused a request to exempt East Coast Power, LLC’s Linden VFT project that was under construction but not yet operational. According to New York Suppliers, the Commission

³⁹ NYTOs July 20, 2012 Protest at 13 (citing *N. Y. Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,211 at PP 118-119).

adopted a bright-line test that only grandfathered existing facilities from buyer-side mitigation. New York Suppliers argue that grandfathering provides a new entrant the absolute and unconditional right to secure a full exemption and allows the new entrant to avoid the offer floor bidding requirement entirely without any showing whatsoever that its project is economic. Further, according to New York Suppliers, once conferred, there is no mechanism within the Services Tariff to revoke a new entrant's right to bid as it chooses for the life of its project, and if granted to an uneconomic project, the effect will be immediate, significant, and long-lasting. New York Suppliers add that NYISO's proposed expansion of the grandfathering exception should be rejected for transparency reasons because information concerning whether a project has met the Commenced Construction milestones under NYISO's proposal may not be publicly available at all, much less in a timely manner.

51. New York Suppliers disagree with Dr. Patton's assertion that NYISO's grandfathering exception strikes a reasonable balance between deterring uneconomic entry and encumbering efficient market-based investment.⁴⁰ They contend that, contrary to NYISO's arguments, a new entrant cannot be disadvantaged when the larger zone in which it initially has proposed its project is converted into a new capacity zone. New York Suppliers state that, as demonstrated in Mr. Younger's affidavit, if the project is tested and found to be uneconomic in the new capacity zone, it also was uneconomic in the previous larger zone; thus, grandfathering such a project is not justified and will artificially suppress the market clearing prices in the new capacity zone.

52. New York Suppliers also argue that NYISO's proposal does not require a project to be developed long before and without any regard for a potential new capacity zone.⁴¹ Indeed, according to New York Suppliers, a project with CRIS rights may go forward a mere few months before a new capacity zone filing is made, and it could still qualify under NYISO's proposed definition of Commenced Construction. Mr. Younger also states in his affidavit that new entrants that are economic will pass the exemption test and be granted an exemption.

53. New York Suppliers also argue that the grandfathering exception can be easily gamed by developers seeking to implement an uneconomic entry strategy and thus, is not just and reasonable.⁴² They note that the impending creation of the first new capacity zone, the Lower Hudson Valley new capacity zone has been well known in the markets

⁴⁰ New York Suppliers July 20, 2012 Protest at 18.

⁴¹ *Id.* at 17-19 (citing NYISO June 29, 2012 Filing, Patton Aff. ¶ 16).

⁴² *Id.* at 19.

for several years and thus, new entrants have had ample opportunity to proceed with projects in this zone that now may be poised to meet the limited milestones proposed by NYISO to secure a grandfathering exception.⁴³ Moreover, according to New York Suppliers, NYISO only analyzes the need for additional new capacity zones on a three-year basis, while the Class Year deliverability tests, which identify the precursors for the creation of a new capacity zone, are conducted on an annual basis. Thus, New York Suppliers state that it is likely the need for additional new capacity zones will continue to be well-known by market participants well in advance of a NYISO filing to create any other new capacity zones in the future.⁴⁴ Mr. Younger posits that a new entrant could learn of a binding constraint from deliverability studies completed in the first year of the three-year cycle, and thus, would have two years to game the system by satisfying the limited requirements of NYISO's grandfathering exception. Further, according to New York Suppliers, because NYISO will be starting the new capacity zone study roughly nine months before it makes its new capacity zone filing with the Commission and will share the results with market participants, a new entrant that either already has CRIS rights or accepts them during the nine months may have sufficient time to enter into the financial commitment that NYISO has defined as constituting Commenced Construction.

54. Finally, New York Suppliers assert that if the Commission accepts NYISO's proposal to apply a grandfathering exception to projects that are not yet commercially operable, then the test for that exception must be more narrowly drawn.⁴⁵ New York Suppliers state that the proposed definition of Commenced Construction permits a new entrant to choose between a relatively minimal level of site preparation, i.e. subpart (a), or a vaguely defined financial commitment, i.e. subpart (b). They add that the Commission-approved, existing facility grandfathering exception required all of the development costs to be invested, thus the 20 percent investment that Dr. Patton approximates will be manifested is not sufficient standing alone. New York Suppliers propose revisions to the proposed definition.⁴⁶ They argue that, at a minimum, the Commission must require a developer to have completed both of the subpart (a) and subpart (b) requirements to be considered to have commenced construction. Second, they assert that to make sure the developer has made a significant investment, the Commenced

⁴³ *Id.*

⁴⁴ *Id.* at 19-20.

⁴⁵ *Id.* at 21.

⁴⁶ *Id.* at 21-23.

Construction definition should be clarified to specify that the subpart (b) financial commitment must be at least equal to the investment in subpart (a) and any penalty included in the cancellation provision is equal to at least the subpart (a) investment. Third, they argue that the proposed “financial commitment” prong gives NYISO too much discretion and propose to revise it to remove permissive language.

55. New York Suppliers also assert that the grandfathering test must be applied as of the date that NYISO commences the triennial new capacity zone study. They argue that absent this change, it is not possible to assure that only new entrants that have made substantial progress in moving forward with their projects without the assurance of the creation of a new capacity zone would be grandfathered. They add that, as Mr. Younger demonstrates in his affidavit, these revisions would not be sufficient to preclude conduct that would not be rational for a competitive supplier but assert that the revisions would put requirements into place that are needed to limit to some degree the ability of new entrants to artificially suppress capacity market clearing prices in new capacity zones.

56. Empire states that it shares the concerns of New York Suppliers and that NYISO’s proposal does not comport with NYISO’s asserted aim of using the same conceptual framework of the existing market mitigation measures currently applicable to New York City Locality.⁴⁷ Empire adds that expanding the current exemption from the offer floor, which is limited to generators that were in commercial operation when the floor was adopted, provides both the incentive and opportunity to depress prices through uneconomic entry.⁴⁸

iii. NYISO’s Answer

57. NYISO asserts that there are valid reasons for the differences between the proposed grandfathering exemption and the existing grandfathering rule for New York City. NYISO also asserts that the grandfathering proposal is consistent with the principle behind the Commission’s acceptance of the grandfathering provisions in the New York City rules, which was to “affect future actions” by deterring uneconomic new entry.⁴⁹ NYISO argues that the grandfathering proposal will exempt only those units that have taken significant steps and made substantial investments to enter the market, as evidenced by either completion of specified construction milestones, or comparable actions or

⁴⁷ Empire July 20, 2012 Protest at 2-3.

⁴⁸ *Id.* at 3.

⁴⁹ NYISO August 6, 2012 Answer at 13 (citing *N. Y. Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,211 at P 118).

commitments. NYISO adds that it would thereby avoid unfairly mitigating an entrant that has not acted strategically and that incurs significant development costs before it is clear that its project would be located in a newly created capacity zone where it would be at risk of being subjected to an offer floor.

58. NYISO states that the mere fact that a single East Coast Power project (Linden VFT project) was not grandfathered from the New York City mitigation rules is not a valid reason for adopting an overly restrictive rule for new capacity zones. NYISO adds that the Commission has never ruled that it would be unjust and unreasonable to grandfather entrants in New York City that had taken the steps required to satisfy the proposed Commenced Construction test. NYISO further states that the East Coast Power dispute principally had to do with whether buyer-side mitigation rules should apply to all new entrants, including controllable transmission lines, rather than be confined to new resources owned or controlled by “dominant buyers.” The instant proceeding, according to NYISO, involves different issues; moreover, the fact that New York City has been universally recognized as an area with structural local market power issues, and has been subject to some form of capacity market mitigation since NYISO’s inception distinguishes East Coast Power’s circumstances from those that might arise in future new capacity zones.

59. NYISO also argues that New York Suppliers focus on potential harm of strategic entry without serious regard for preserving the balance between competing interests. NYISO contends that the ability to demonstrate that a project fulfills the requirements for grandfathering through either physical or financial commitments allows the flexibility necessary to account for the fact that different types of resources may have different construction processes. NYISO states that it will not implement the rule in a permissive manner, it will consider the MMU’s input, and the MMU will act as a check and will, presumably, raise any concerns in its public reports. Further, according to NYISO, its proposal would have none of the disadvantages of New York Suppliers’ suggested alternative definition of Commenced Construction, which NYISO argues is overly prescriptive, impractical and addresses a “gaming” argument which is speculative, overstated, and does not justify over-mitigation.

iv. NYTOs’ Answer

60. In their August 6, 2012 answer, the NYTOs respond that New York Suppliers’ witness, Mr. Younger, is incorrect in claiming that the Commission determined that only existing units should be grandfathered under New York City buyer-side market power rules. Rather, according to the NYTOs, the Commission did not address whether projects under development should be grandfathered.

61. With respect to gaming, the NYTOs argue that circumstances surrounding the application of mitigation measures in new capacity zones will differ significantly from

those prevailing at the time such measures were first applied in New York City. The NYTOs add that, in particular, the financial commitment required in the interconnection process for a unit under development is potentially far larger than in the past.⁵⁰ They also point to other significant milestones for obtaining CRIS rights, such as demonstrating site control or completing a System Reliability Impact Study, and they assert that these would prevent gaming as they are difficult to achieve in two years unless the project has already commenced development in earnest at the time NYISO identifies a new constraint.⁵¹

62. Further the NYTOs disagree with Mr. Younger's implication that all units under development should be subject to buyer-side mitigation because market participants have known for several years that the Hudson Valley would likely be defined as a new capacity zone. The NYTOs contend that a key decision on how NYISO would implement mitigation measures was not made until April 16, 2012, and market participants cannot know whether a Lower Hudson Valley capacity zone will actually be put into effect until the NYISO completes its new capacity zone assessment in January 2013, files tariff sheets to establish the new capacity zone on March 31, 2013, and receives approval from the Commission some time thereafter.⁵² They also assert that gaming would be challenging because new capacity zones may be created with little warning as changes in New York's generation and transmission mix occur, and may be triggered not only by a well-known transmission constraint, but by the unexpected retirement or entry of generation and transmission.⁵³

v. Commission Determination

63. We accept NYISO's proposal to grandfather projects that have Commenced Construction as that term is proposed to be defined in section 23.2.1(a) of its Services Tariff, prior to the March 31 new capacity zone filing as an equitable measure to apply to entities initially located in the Rest of State where buyer-side market power mitigation measures do not apply. We share NYISO's concern that without such grandfathering, investment in the Rest of State could be unduly discouraged. The concept underlying the grandfathering of projects that have Commenced Construction as defined in proposed section 23.2.1(a) prior to the March 31 filing date is that not all non-operational projects

⁵⁰ NYTOs August 6, 2012 Answer at 4.

⁵¹ *Id.* at 5.

⁵² *Id.* at 6-7.

⁵³ *Id.* at 7.

are necessarily on an equal footing at the time a new capacity zone is created and that application of the rules should account for this fact.

64. We agree that projects that have achieved the specified physical milestones, and are significantly advanced, should be allowed to participate in capacity markets under the terms that guided their initial investment decision when their locality was in the Rest of State. In our view, requiring such projects to be economically reevaluated on new capacity zone terms could limit their ability to receive expected capacity revenues and unduly discourage investment in the Rest of State. Since new capacity zones may be created every three years, we conclude that grandfathering provides an important assurance that non-operational Rest of State investment will not automatically face the added risk of justifying its economic merit in order to participate in capacity markets.

65. In contrast, we find that it is reasonable to require less advanced projects—those that do not meet the specified physical milestones—to be evaluated under proposed new capacity zone rules. Although less advanced projects would be faced with the added risk of satisfying buyer-side mitigation rules, we find that the market benefits of discouraging uneconomic entry outweigh the added cost of demonstrating a project's economic merit at a sufficiently early stage of a project's development. The proposed physical milestones rely on judgments, but those judgments are necessary if NYISO is to identify those projects that have made significant investment commitments under Rest of State rules and that should, therefore, not be subject to additional requirements as a condition for receiving capacity revenues. We find that the added economic justification for less advanced projects provides an important protection against uneconomic entry without unduly discouraging investment in the Rest of State, and is, therefore, warranted.

66. The New York Suppliers object to the grandfathering rule and argue in favor of applying buyer-side mitigation to all non-operational facilities with no exemptions, just as entry is treated in New York City where the Commission adopted a bright-line test that only grandfathered existing facilities from buyer-side mitigation. In their view, the proposed grandfathering is unnecessary because a project started in the Rest of State only becomes more profitable when it ends up in a new capacity zone because new capacity zones have higher prices. Thus, a project that was profitably undertaken in the Rest of State can only be more profitable under a new capacity zone designation and should not be harmed if a mitigation exemption test were to apply to it because all profitable Rest of State entry would be even more profitable in the new capacity zone.

67. We disagree with New York Suppliers' arguments that oppose grandfathering and exemptions for incomplete projects as was the case in New York City. New York City has been a designated capacity zone from the inception of NYISO's markets. Over time, one or more load zones in the Rest of State may be designated as a new capacity zone, but unlike NYC, new capacity zone boundaries and the timing of their creation are unknown. Moreover, before the new capacity zone designation, a project may have

commenced in the Rest of State where there is no requirement to support its profitability as a pre-condition to providing capacity as a price taker. In the Rest of State, in contrast to the NYC capacity zone, all new capacity may be offered as a price taker because in the Rest of State there has been little concern that a buyer has the incentive and ability to suppress price with uneconomic entry. Thus, in our view, investment risk in the Rest of State would be unreasonably increased absent NYISO's proposed grandfathering provision.

68. While we generally support the use of a Commenced Construction test in determining which projects may be grandfathered from the new capacity zone mitigation provisions,⁵⁴ we agree with the New York Suppliers' concern that the definition is too vague. Subsection (a) of the proposed definition requires certain specific site preparation work to be completed to meet the requirement that construction has commenced, while the alternate subsection (b) of the definition is not specific. In contrast, subsection (b) only provides that Commenced Construction would mean "as approved by the ISO in accordance with ISO Procedures, a financial commitment comparable to (a) has been made." We find that the phrase "as approved by the ISO in accordance with ISO Procedures" is vague and provides NYISO with too much discretion as it authorizes, in advance and without review, procedures that NYISO chooses to put in its business manuals rather than in filed tariff provisions. Any necessary further specificity should be included in the tariff provision rather than left to such unidentified future "ISO Procedures." We therefore require NYISO to revise the language of subsection (b) of the Commenced Construction definition to eliminate the "as approved by the ISO in accordance with ISO Procedures" language and include, instead, specific criteria for its proposed "financial commitment." NYISO must file a revised tariff provision reflecting this new language as part of a compliance filing no later than 30 days after the date that this order is issued.

b. Treatment of SCR, Small Suppliers, and Renewables

i. NYISO's Proposal

69. NYISO proposes to treat SCRs in new capacity zones according to the same mitigation rules it currently applies in NYC⁵⁵ with the exception of the grandfathering

⁵⁴ See NYISO transmittal letter at 7.

⁵⁵ Under the current New York City mitigation measures, unless exempt, an SCR is subject to an offer floor generally equal to the minimum monthly payment for providing Installed Capacity payable by its Responsible Interface Party, plus the monthly value of any payments or other benefits from third parties for the capacity. SCRs are

(continued...)

provisions. NYISO proposes revisions to section 23.4.5.7.5 of the Services Tariff to grandfather from the SCR mitigation measures in any new capacity zone any SCR enrolled as a SCR with the ISO for any month within the Capability Year of a Demand Curve reset filing year.⁵⁶ NYISO asserts that this type of grandfathering rather than use of the Commenced Construction criteria is appropriate because of the differences between SCRs and other capacity providers. NYISO explains that SCRs are existing facilities that offer capacity in the form of their ability to curtail their system load during specific periods when called upon, and their primary business is not the provision of capacity. Further exempting enrolled SCRs from mitigation accounts for the fact that an SCR's willingness or ability to curtail can vary from month-to-month and can vary significantly from one capability period to the next.

ii. Protests and Comments

70. The NYTOs argue that demand response, small suppliers, and renewable generation should be exempt from buyer-side mitigation. With respect to demand response (i.e., SCRs), the NYTOs argue that buyer-side mitigation measures should not apply.⁵⁷ The NYTOs are concerned that applying NYC SCR mitigation to demand response in new capacity zones would be discriminatory and conceptually flawed and will hinder entry by demand response in such new capacity zones. The NYTOs assert

exempt from offer floor mitigation if NYISO projects that the capacity market spot auction price will exceed the applicable offer floor for the first 12 months that the SCR is reasonably anticipated to offer to supply unforced capacity. Otherwise, the SCR is required to bid, until it has cleared in at least 12, not necessarily consecutive, monthly auctions, at a price at or above its offer floor. The offer floor equal to the minimum monthly compensation it will receive from its Responsible Interface Party plus the monthly value of any payments or other benefits the SCR receives from a third party for providing ICAP. *See* Market Services Tariff, Attachment H, § 23.4.5.7.5.

⁵⁶ The proposed revision to section 23.4.5.7.5 adds a new subsection (a) to state: "A Special Case Resource shall be exempt from the Offer Floor if (a) it is located in a Mitigated Capacity Zone except New York City and is enrolled as a Special Case Resource with the ISO for any month within the Capability Year that includes March 31 in an ICAP Demand Curve Reset Filing Year in which the ISO proposes a New Capacity Zone that includes the location of the Special Case Resource or...."

⁵⁷ NYTOs July 20, 2012 Comments at 20 (citing NYISO Filing, Market Services Tariff, Attachment H, Section 23.4.5.7.5).

that the application of buyer-side mitigation measures to SCRs could result in fewer exemptions and/or higher offer floors than the procedures applicable to other suppliers.

71. The NYTOs argue that any application of buyer-side mitigation procedures can create financial costs and risks, and may deter entry. Further, according to the NYTOs, these risks and costs will be particularly significant for SCRs, which are generally much smaller than other suppliers and may lack the financial resources or incentive to contend with all of the potential costs and risks inherent in the mitigation procedure. The NYTOs state that the inequitable application of buyer-side mitigation procedures for SCRs will only increase the likelihood that entry by demand response will be deterred, because prospective demand response providers may be unable to compete against other suppliers subject to less stringent procedures or may simply perceive that the market is stacked against them. The NYTOs assert that the Commission has recognized that demand response can play an important role in helping to balance supply and demand in competitive markets, in reducing the need to run high-cost generators, and in enhancing competition.⁵⁸ The NYTOs argue that these functions will be all the more important in capacity zones with highly-concentrated supplies. For these reasons, the NYTOs believe that PJM's approach to never apply buyer-side mitigation to demand response, rather than New York City's approach, should be applied in new capacity zones.

72. With respect to small suppliers, the NYTOs urge the Commission to order NYISO to develop an exemption from buyer-side mitigation for suppliers that are small enough to be exempt from supplier-side mitigation. The NYTOs argue that this would eliminate the inconsistent treatment of smaller suppliers under the supplier-side and buyer-side mitigation procedures. The NYTOs contend that such suppliers often lack incentive and ability to depress market prices, and play an important role in supplying capacity in New York outside of NYC. The NYTOs state that the Commission has recognized in at least two instances that small new entrants pose little threat to the market and has allowed for special treatment under buyer-side mitigation procedures. First, in PJM the Commission recognized that renewable resources, because their capacity is heavily de-rated relative to their nameplate capacity, have minimal price suppression effects.⁵⁹ Second, in New York, the Commission authorized responsible interface parties (demand response aggregators) to exceed applicable offer floors without penalty if doing so will decrease capacity market prices by no more than the higher of five percent or 50 cents per

⁵⁸ *Id.* at 22 (citing Order No. 745, 134 FERC ¶ 61,187 at P 10).

⁵⁹ *Id.* at 16 (citing *PJM Interconnection, LLC*, 135 FERC ¶ 61,022, at P 153 (2011) (“[W]ind and solar resources would need to offer as much as eight times the nameplate capacity of a CT or CC resource in order to achieve the same price suppression effect”).

kW-month.⁶⁰ The NYTOs argue that each of these orders recognizes that the magnitude of a price suppression effect, not just the fact that it could occur, is a relevant consideration.

73. In the alternative, the NYTOs argue that the Commission should consider excepting supplier entrants small enough to be unable to depress prices by more than the higher of five percent or 50 cents per MWh, the level that the Commission and NYISO have already recognized as insignificant for demand response.⁶¹

With respect to renewable generation, the NYTOs argue that NYISO's proposed measures would potentially preclude such units from participating in NYISO's capacity market, given the higher cost of renewable generation. The NYTOs maintain that when a significant market surplus exists, as it does today, renewable generators will not be eligible for a prong (a) (Default) exemption, and a prong (b) (Unit) exemption may also be difficult to obtain,⁶² because the cost of renewable generation tends to appear higher than the cost of conventional generation and greater than 75 percent of the expected

⁶⁰ *Id.* at 16-17 (citing NYISO Services Tariff § 23.4.5.7.5).

⁶¹ *Id.* at 17 (citing NYISO Filing, Services Tariff, Attachment H, Section 23.4.5.7.5).

⁶² The NYTOs refer to the prong (a) and (b) buyer-side mitigation exemption tests in Services Tariff, Attachment H, Section 23.4.5.7.2, which states: "An Installed Capacity Supplier shall be exempt from an Offer Floor if: (a) the price that is equal to the (x) average of the ICAP Spot Market Auction price for each month in the two Capability Periods, beginning with the Summer Capability Period commencing three years from the start of the year of the Class Year (the "Starting Capability Period") is projected by the ISO to be higher, with the inclusion of the Installed Capacity Supplier, than (y) the highest Offer Floor based on the Mitigation Net CONE that would be applicable to such supplier in the same two (2) Capability Periods (utilized to compute (x)), or (b) the price that is equal to the average of the ICAP Spot Market Auction prices in the six Capability Periods beginning with the Starting Capability Period is projected by the ISO to be higher, with the inclusion of the Installed Capacity Supplier, than the reasonably anticipated Unit Net CONE of the Installed Capacity Supplier." Acceptance of the instant filing is subject to the outcome of Docket No. ER10-2371-000 where NYISO's originally-proposed Mitigation Net CONE definition is pending.

long-term price of capacity, because it potentially excludes the value of State Renewable Portfolio Standard revenues.⁶³

74. The NYTOs assert that while there are limited opportunities to develop renewable generation in NYC, there are thousands of megawatts of wind, hydropower, landfill gas, and wood waste generators operating in New York State outside of NYC. The NYTOs state that NYISO's interconnection queue shows that 43 renewable generation projects with a total nameplate rating of 2,630 MW have applied to interconnect to the transmission system outside of NYC and Long Island, and renewable generators could contribute to New York State's capacity needs at little additional cost. The NYTOs therefore contend that renewable generation in New York should be exempt from buyer-side mitigation, or in the alternative, urge the Commission to clarify that NYISO may recognize Renewable Portfolio Standard revenues and other similar environmental premiums in a renewable generator's Unit net CONE, because they directly impact the effective cost of a renewable generator's capacity.

iii. NYISO's Answer

75. In response to the NYTOs' assertion that NYISO should create new offer floor exemptions for small suppliers, renewables, and demand response in new capacity zones, NYISO argues that the Commission has not imposed, and has not articulated a desire to impose, a standard market design on all ISO/RTO capacity markets.⁶⁴ NYISO asserts that the only Commission rulings that are directly applicable to the NYTOs' request are the orders requiring that SCRs in NYC be reviewed and potentially subject to offer floor mitigation, and those orders are at odds with the NYTOs' request that demand response be exempted from such mitigation in new capacity zones. NYISO asserts that it is essential for the buyer-side mitigation rules, including exemption provisions, to be consistent between NYC and any future new capacity zone unless there is a valid reason

⁶³ NYTOs July 20, 2012 Comments at 18-19 referring to section 23.2.1 of NYISO's Services Tariff which defines "Unit Net CONE" for purposes of the NYC mitigation provisions as: "localized levelized embedded costs of a specified Installed Capacity Supplier, including interconnection costs, ... net of likely projected annual Energy and Ancillary Services revenues. . . ."

⁶⁴ NYISO August 6, 2012 Answer at 9 (citing *e.g.*, *N. Y. Independent System Operator, Inc.*, 135 FERC ¶ 61,170, at P 89 (2011) (agreeing that the "Commission has never required that [PJM, ISO-NE, and NYISO] adopt identical capacity market structures. Each uses different demand curves that are based on different sets of complex and interrelated assumptions").

to make a distinction, and the NYTOs have not offered any such rationale. NYISO argues that, given the Commission's clear precedent for the application of buyer-side mitigation rules to demand response in NYC, it does not believe that creating, or exploring the possible creation of, a new exemption for demand response in new capacity zones would be appropriate at this time.⁶⁵

76. NYISO contends that it is not questioning the Commission's recent determination⁶⁶ that renewable resources are not likely to be an effective tool for exercising buyer-side market power in PJM. NYISO states that it has not formulated a view on, and the Commission has not yet addressed, the question of whether the same would be true in potential new capacity zones established in the NYCA. Therefore, according to NYISO, it would be premature to establish small supplier or renewable exemptions at this time. NYISO adds that depending on how small suppliers are defined (e.g., the MW limit), there might be substantial overlap with renewables. Accordingly, any consideration of possible exemptions for small suppliers and renewable resources should be undertaken concurrently. NYISO states that it is important, both as a matter of market design principle and for reasonable administration, to have parallel exemption rules in New York City and new capacity zones and any proposed exemptions should be consistent for all Mitigated Capacity Zones unless there are valid reasons for differences.

iv. Commission Determination

77. We will conditionally accept NYISO's proposal to treat all resources in new capacity zones according to the same buyer-side mitigation rules that it currently applies in NYC, subject to a further compliance filing. We have previously found NYISO's buyer-side mitigation provisions for NYC to be a just and reasonable way to mitigate the potential for uneconomic entry and deter the exercise of market power. However, we note that NYISO's primary rationale for adopting the same buyer-side mitigation rules for new capacity zones is to ensure consistency of rules among zones. These existing rules were developed over many years in the context of the NYC zone, which will likely be different in several respects from a new zone in the rest of the state.⁶⁷ We find that

⁶⁵ NYISO August 6, 2012 Answer at 9.

⁶⁶ *PJM Interconnection, LLC*, 135 FERC ¶ 61,022, at P 153 (2011).

⁶⁷ For example a new capacity zone less concentrated than NYC may contain many small suppliers that are not net buyers or renewable generators with capacity values that are a fraction of nameplate values, and therefore, such resources may lack the incentive and ability to depress market prices.

NYISO must consider whether the buyer-side market power rules for NYC, when applied to a new zone, will appropriately balance the need for mitigation of buyer-side market power against the risk of over-mitigation.⁶⁸ Accordingly, we direct NYISO to evaluate and consider with its stakeholders whether modifications to the buyer-side mitigation rules in a new capacity zone are warranted to balance the need for mitigation of buyer-side market power against the risk of over-mitigation. NYISO is directed to report the results of this evaluation to the Commission on compliance within 120 days of the date of this order.

78. We note that NYISO has proposed some exemptions from buyer-side mitigation rules for SCRs to account for existing SCRs when a new zone is created. For example, all SCRs are exempt from buyer-side mitigation evaluation that are enrolled in the location of a new capacity zone prior to the time of NYISO's proposed filing of a new capacity zone in the March 31 filing for a Demand Curve reset year. As explained in the Wyatt Affidavit, grandfathering of such SCRs is appropriate because SCRs are existing facilities that offer capacity in the form of their ability to curtail their system load during specific periods when called upon and whose primary business is not the provision of capacity.⁶⁹ Those SCRs that enroll after the March 31 filing will be evaluated for mitigation, which appears to be reasonable for distinguishing between existing and new resources.⁷⁰

c. Nested Capacity Zones

i. NYISO's Proposal

79. NYISO proposes a new section 23.4.5.7.2.7 that provides: "An NCZ Examined Project or Examined Facility located in more than one Mitigated Capacity Zone shall be

⁶⁸See, e.g., *Edison Mission Energy, Inc., et al. v. FERC*, 394 F.3d 964 (D.C. Cir. 2005). ("[Mitigation] may well do some good by protecting consumers and utilities against... the exercise of market power. But the Commission gave no reason to suppose that it does not also wreak substantial harm... that could be cured only by attracting new resources of supply.")

⁶⁹ NYISO June 29, 2012 Filing, Wyatt Aff. ¶ 5.

⁷⁰ As NYISO's witness Wyatt notes: "Unlike a Generator or UDR project, SCRs can more readily enter and exit the ICAP market. Therefore, it is appropriate to limit the grandfathering exemption rule to only those SCRs that were enrolled in the same Capability Year that [sic] the March 31 Filing that includes the location of the SCR in the proposed [new capacity zone]." NYISO June 29, 2012 Filing, Wyatt Aff. ¶ 5.

evaluated pursuant to the tests in section 23.4.5.7.2 or 23.4.5.7.3 (as applicable), calculating Mitigation Net CONE⁷¹ for the smallest Mitigated Capacity Zone that contains the Load Zone in which such NCZ Examined Project or Examined Facility is electrically located.” A capacity zone which is geographically located within another capacity zone is commonly referred to as a “nested” zone.

80. NYISO also proposes to modify the existing definition of the term “Locality” to allow for nested zones. The proposed changes to the definition are underscored in the following quotation:

A single LBMP Load Zone or set of adjacent LBMP Load Zones within one Transmission District or a set of adjacent Transmission Districts (or a portion of a Transmission District(s)) within which a minimum level of Installed Capacity must be maintained, and as specifically identified in this subsection to mean (1) Load Zone J and (2) Load Zone K.

NYISO asserts that this modification is necessary to ensure that any future configuration of a new capacity zone, including where a new capacity zone encompasses more than one load zone, is correctly accounted for in load forecasts performed pursuant to Services Tariff Article 5.⁷² NYISO states that it inadvertently neglected to include this change in its November 2011 filing, but that its November 2011 filing makes clear in the definition of the proposed term “New Capacity Zone” that a Locality cannot be smaller than a load zone.⁷³

ii. Protests and Comments

81. The NYTOs assert that, under NYISO’s proposal, in cases where the Default Offer Floor is higher within the smaller zone than in the remainder of the larger zone in which the smaller zone is nested, entrants located in the smaller Mitigated Capacity Zone will be precluded from selling capacity in the larger Mitigated Capacity Zone, even when the larger Mitigated Capacity Zone can no longer meet its minimum UCAP requirement and prices should signal that entry is expected. They assert that this outcome conflicts with the rationale for establishing default offer floors in the first place, i.e., that entrants

⁷¹ For purposes of clarity in this order, we use the term “Default net CONE.”

⁷² NYISO apparently is referring to the load forecast used in the new capacity zone study of section 5.16.1 of its Services Tariff.

⁷³ NYISO June 29, 2012 Filing at 13-14.

located in a Mitigated Capacity Zone are permitted to sell capacity when prices in that zone rise above 75 percent of Mitigation [Default] Net CONE. The NYTOs assert that it is reasonable to allow such entrants to sell in the larger mitigated zone, subject to the default offer floor of the larger mitigated zone, as bidding in the larger zone will not depress market prices significantly below the net CONE of the larger capacity zone, and will recognize that capacity located within the smaller zone provides the same reliability benefit to the larger zone as capacity located elsewhere in the larger zone.

82. The NYTOs contend that in order for the Default Offer Floor to meet its objective, the Commission should direct NYISO to modify the procedures used to calculate the Default Offer Floor for an entrant when three conditions apply: (1) the resource is located in two (or more) Mitigated Capacity Zones; (2) the offer floor in the smallest Mitigated Capacity Zone in which a resource is located prevents it from selling capacity in that Mitigated Capacity Zone; and (3) the Default Offer Floor in one (or more) of the larger Mitigated Capacity Zones in which that resource is located is below the Default Offer Floor in the smallest Mitigated Capacity Zone in which that resource is located.⁷⁴ In such case, the NYTOs assert that the resource should be permitted to sell its capacity as though it were located in the portion of the larger Mitigated Capacity Zone that is outside of the smaller Mitigated Capacity Zone (meaning that, for the purpose of such sales, it should be subject to the Default Offer Floor for the larger Mitigated Capacity Zone).

83. The NYTOs also object to NYISO's proposed Locality definition arguing that NYISO should be directed to strike unnecessary and confusing references to Transmission Districts in the definition. They argue that permitting localities to consist of any combination of adjacent load zones could have been accomplished by striking the phrase "within one Transmission District," which would have eliminated a restriction that currently precludes many load zones or sets of adjacent load zones from being defined as localities. The NYTOs contend that if the end result is that a locality can consist of any individual load zone or identified combination of adjacent load zones, then there is no need to refer to Transmission Districts in the definition.⁷⁵ The NYTOs contend that in the alternative, the Commission should require NYISO to explain, in detail, which areas of the NYCA may be classified as Localities.

⁷⁴ NYTOs July 20, 2012 Comments at 24-25.

⁷⁵ *Id.* at 26-27.

iii. New York Suppliers' and NYISO's Answers

84. New York Suppliers respond that the NYTOs' proposal would be a major structural change to New York's capacity markets that will foster uneconomic entry. New York Suppliers state that from the inception of its capacity markets, the New York capacity markets have been solved simultaneously, whereas the NYTO's proposal would require auctions to be completed in multiple stages. New York Suppliers state that such change is not a simple revision to NYISO's auction software but rather, a major structural change requiring a comprehensive review of the other capacity market rules in all the New York capacity markets, and that such change should be addressed through the NYISO stakeholder process.⁷⁶ Moreover, according to New York Suppliers, the assumptions underlying the NYTOs' example are materially flawed rendering the conclusions inconclusive. According to the New York Suppliers' consultant, a new entrant that is not economic in the smaller zone also would not be economic in the larger zone; thus, the NYTO's proposal is nothing other than an attempt to let the mitigated supplier dump its uneconomic capacity at a lower price in the larger Mitigated Capacity Zone in the hope that it can secure at least some revenues--revenues which are, by definition, below its costs.⁷⁷

85. New York Suppliers further argue that the proposal substantially reduces the deterrence effect of the new capacity zone buyer-side market power rules and will induce more uneconomic entry. Moreover, they add, it is unclear why the new entrant would build in the more expensive smaller zone if system needs are manifesting themselves in the larger mitigated region.⁷⁸ They conclude that even if this major rule change could be addressed at this stage of this proceeding in response to the NYISO proposal, which it cannot, the NYTOs have failed to demonstrate that their proposal is just and reasonable.

86. NYISO responds that its filing did not propose to change the current manner in which the NYISO-administered capacity auctions clear, so the NYTOs' proposal is misplaced.⁷⁹ NYISO asserts that the NYTO's proposal would be a substantial departure from the current rule. NYISO adds that if it is determined that adjustments to existing rules and systems are warranted, the NYISO would propose to identify any necessary

⁷⁶ New York Suppliers July 31, 2012 Answer at 4-5.

⁷⁷ *Id.* at Younger Aff. ¶ 28.

⁷⁸ *Id.* at 10-11.

⁷⁹ NYISO August 6, 2012 Answer at 22.

modifications to its stakeholders and would need to identify tariff revisions on or before it proposes a new capacity zone.⁸⁰

87. NYISO states that the Commission should reject the NYTO's proposal to revise the definition of Locality by removing references to "Transmission Districts."⁸¹ NYISO states that the NYTOs' concerns are unfounded and the references do not restrict how a new capacity zone can be configured. It states that the only restriction with the proposed revisions is that a new capacity zone can be a load zone or multiple load zones, but not part of a load zone. NYISO adds that this modification is necessary to ensure that "nested zones" are properly accounted for in load forecasts performed pursuant to Services Tariff Article 5.

iv. Commission Determination

88. We accept NYISO's proposal to evaluate for mitigation exemption an NCZ Examined Project or Facility that is located in more than one Mitigated Capacity Zone based on the smallest Mitigated Capacity Zone that contains the load zone in which such NCZ Examined Project or Examined Facility is located, i.e., a nested zone.

89. We decline to direct NYISO to revise its tariff so that suppliers in nested zones are permitted to bid into the larger Mitigated Capacity Zone if they cannot clear in the smaller nested zone, as suggested by the NYTOs. The NYTOs' proposal to allow an Examined Project or Facility located in a new smaller nested Mitigated Capacity Zone to bid into the larger zone with a lower Default Offer Floor when it cannot pass the buyer-side exemption test in the smaller Mitigated Capacity Zone allows the supplier to circumvent the creation of the new zone by allowing it to ignore the pricing and capacity requirements, among others, of that zone, requirements that reflect the reasons for creating the new zone and requiring mitigation in that zone in the first place. We find that the NYTOs have not demonstrated that their proposal is just and reasonable.

90. NYISO asserts that its proposed revisions to the definition of Locality are necessary to ensure that any future configuration of a new capacity zone is correctly accounted for in load forecasts and to allow for the accommodation of "nested zones." While we agree that the definition of new capacity zone⁸² makes it clear that a Locality

⁸⁰ *Id.*

⁸¹ *Id.* at 25.

⁸² NYISO Services Tariff § 2.14 (defining new capacity zone as "[a] single Load Zone or group of Load Zones that is proposed as a new Locality, and for which the ISO shall establish a Demand Curve").

cannot be smaller than a load zone, NYISO has not explained how adding its proposed Transmission District language to the definition of Locality comports with the rule that a Locality cannot be smaller than a load zone. We also find that NYISO has not fully explained how the proposed definition of Locality allows for the accommodation of nested zones. Moreover, NYISO has not explained how its proposed new references to Transmission Districts relate to load forecasts. Therefore, we will require NYISO to describe in detail how the proposed revised definition of Locality is “necessary to ensure that any future configuration of a new capacity zone is correctly accounted for in load forecasts and to allow for the accommodation of nested zones,” and provide an example in a compliance filing to be made within 30 days of this order.

d. Offer Floor and Mitigation Exemption Determinations

i. NYISO’s Proposal

91. NYISO proposes to use the existing tests in section 23.4.5.7.2 to make the offer floor and exemption determinations for projects located in a Mitigated Capacity Zone that are not eligible to be grandfathered. NYISO proposes the tariff modifications to this section to establish the procedures and rules necessary to issue those determinations for new capacity zones. Specifically, NYISO proposes revisions that identify the projects that will be subject to an offer floor or exemption determination, by adding a new defined term “NCZ Examined Project” to section 23.2.1.⁸³ NYISO also proposes to revise the previously submitted definition of “Mitigation Net Cone” so that it will provide special rules to permit “indicative,” i.e., informational, new capacity zone offer floor and exemption determinations.⁸⁴

⁸³ “NCZ Examined Project” is defined in section 23.2.1 as any Generator or UDR project that is not exempt pursuant to 23.4.5.7.7 and either (i) is in a Class Year on the date the Commission accepts the first ICAP Demand Curve to apply to a Mitigated Capacity Zone, (ii) meets the criteria specified in 23.4.5.7.3(II), or (iii) meets the criteria specified in 23.4.5.7.3(III), but the time period therein has passed on the date the Commission accepts the first ICAP Demand Curve. A NCZ Examined Project may be at any phase of development or in operation or an Installed Capacity Supplier. Section 23.4.5.7.7 sets forth categories of such facilities that are exempt, i.e., grandfathered, from buyer-side mitigation.

⁸⁴ In addition, NYISO states that it made minor corrections to the previously submitted definition of “Mitigation Net CONE” to insert “ICAP” before the term “Demand Curve” and to remove extraneous internal numbering in section 23.4.5.7.3 of the Services Tariff. As noted earlier, NYISO’s proposed new term “Mitigation Net

(continued...)

92. In addition, NYISO proposes new section 23.4.5.7.2.1 that provides that promptly after Commission acceptance of the first ICAP Demand Curve to apply to a Mitigated Capacity Zone, NYISO shall make an exemption/ offer floor determination for any NCZ Examined Project that is in a completed class year and has received CRIS.

93. Further, NYISO proposes revisions to section 23.4.5.7.2.3 that specify how it will determine certain parameters used in its mitigation determinations, including the reasonably anticipated ICAP Spot Market Auction forecast price, expected retirements, and the load forecast. The expected retirements will be those projects that provided written notice of their intention to retire to either the NYPSC (if over 2 MW) or to NYISO (if under 2 MW).

94. NYISO also proposes to add a requirement in new section 23.4.5.7.2.4 that it post on its website prior to making offer floor or exemption determinations the inputs and ICAP Spot Market Auction forecast prices in accordance with any confidentiality requirements, as well as expected retirements and NCZ Examined Projects.

95. Finally, NYISO proposes to add a requirement in new section 23.4.5.7.2.5 that it seek comment from the MMU on its price projections and cost calculations. This section also requires NYISO to promptly inform NCZ Examined Projects of the relevant exemption or offer floor determinations.

ii. Protests and Comments

96. New York Suppliers object to the timing of disclosure of information relating to new capacity zone mitigation and offer floor determinations, asserting that it reduces both certainty and transparency. They assert that the existing posting requirements for New York City mitigation require information to be provided “before the commencement of the Initial Decision Period for the Class Year”⁸⁵ while the proposed disclosure requirements for new capacity zones require NYISO to only post such data before the exemption or Offer Floor determination under this section, which is later. They also state that current NYC mitigation rules specify that such determinations must be issued “as soon as practicable after completion of cost allocation,”⁸⁶ while the proposed tariff revisions for new capacity zones state that NYISO will issue those determinations “promptly.” New York Suppliers further state that the load forecast will be taken from

CONE” is pending before the Commission in Docket No. ER10-2371-000.

⁸⁵ NYISO Services Tariff § 23.4.5.7.3.2.

⁸⁶ NYISO Services Tariff § 23.4.5.7.3.3.

the most recently published NYISO Load and Capacity Data Book (Gold Book) while the proposed section for new capacity zones specifies that the load forecast will be based on “data used to develop the indicative [locational minimum ICAP requirement],” not the most recent Gold Book data. New York Suppliers add that the load forecast used to conduct the mitigation exemption and offer floor determinations can affect their outcomes and thus, to avoid confusion and future disputes, NYISO must be directed to specifically identify the actual load forecast that it will use to conduct its mitigation exemption testing for new capacity zones. Lastly, New York Suppliers contend that it is not clear whether most of the new sections apply only to determinations made for projects in a new capacity zone, or whether NYISO intends these new sections to apply to all mitigation exemption testing.⁸⁷ They also state that there are potential conflicts between NYISO’s proposed new language and the New York City existing capacity rules describing the mitigation exemption tests set forth in § 23.4.5.7.3.3. However, they provide no example of the potential conflicts.

iii. NYISO’s Answer

97. NYISO responds that there are valid reasons for its proposed variations from the New York City buyer-side mitigation rules. Specifically, it states that the rules in proposed sections 23.4.5.7.2.1 and 23.4.5.7.2.2 are intended to apply only to NCZ Examined Projects. NYISO states that those provisions address specific issues that arise with respect to making mitigation exemption and offer floor determinations for new capacity zone entrants and are thus properly applied only to such entrants the first time that a new capacity zone is established for the location of the project. NYISO states that the timing of the posting of inputs into NYISO’s ICAP Spot Market Auction price forecasts is different in the buyer-side mitigation rules and the proposed new capacity zone buyer-side mitigation rules that apply only to the time the new capacity zone is being established. NYISO contends that the difference is necessary because it is not possible to post new capacity zone forecast inputs concurrently with the NYC forecast inputs. It also explains that the proposed timing is necessary because some of the forecast inputs, including the ICAP Demand Curve and load forecast for the new capacity zone, will not be known at the time that NYISO establishes the New York City inputs when the initial decision period for a class year occurs prior to the establishment of the new capacity zone.

98. According to NYISO, the load forecasts that would be used under the new capacity zone buyer-side mitigation rules must necessarily be different than those that would be used for NYC because the load would use inputs such as the indicative

⁸⁷ New York Suppliers July 20, 2012 Protest, Younger Aff. ¶ 57.

locational minimum ICAP requirement and until those are developed, there will be no data that can be used for purposes of developing a new capacity zone load forecast. NYISO states that the load forecast needed for purposes of the new capacity zone mitigation exemption determination cannot simply be taken from the zonal load forecasts that are found in the Gold Book.⁸⁸

iv. Commission Determination

99. We accept, in part, NYISO's proposal to use its existing provisions relating to buyer-side mitigation exemption and offer floor determinations for projects in a new capacity zone, that are not eligible to be grandfathered. We also find that NYISO has sufficiently explained the necessity for variations from the New York City provisions with respect to information disclosures, timing, and information sources for new capacity zones, and therefore will not adopt the New York Suppliers' suggestions to modify such proposals.

100. However, we find that NYISO's proposed revisions to its pending definition of Mitigation Net CONE do not clearly provide for only indicative, i.e., informational, mitigation exemption determinations for new projects in new capacity zones prior to the effectiveness of Demand Curves for the new capacity zone. NYISO should file a revised definition to provide a new term "Indicative Mitigation Net CONE" containing its proposed revisions to make clear that the new revisions are only to provide for an indicative, i.e., informational only, Mitigation Net CONE calculation for purposes of indicative, informational only, buyer-side mitigation exemption determinations made prior to the effectiveness of a new capacity zone's Demand Curves.⁸⁹ Further, proposed section 23.4.5.7.2.2, which provides for an "Indicative BSM Determination," which is purely for informational purposes, should be revised to accommodate the two effective date scenarios reflected in the foregoing proposed revisions to the definition of Mitigation Net CONE. We also find that NYISO's proposed section 23.4.5.7.1 is too broad as it requires NYISO to perform buyer-side mitigation exemption and offer floor determinations in all cases for any NCZ Examined Project that is in a completed Class Year and has received CRIS without regard to whether the project is exempt from mitigation. We direct NYISO to add to the end of that provision the phrase "unless exempt pursuant to sections 23.4.5.7.6 or 23.4.5.7.7." In addition, section 23.4.5.7.2.2

⁸⁸ NYISO August 6, 2012 Answer at 21.

⁸⁹ Acceptance of such required revisions will be subject to the outcome of Docket No. ER10-2371-000 where NYISO's originally-proposed Mitigation Net CONE definition is pending.

proposes the new term “Indicative BSM Determination” but the term “BSM” is not defined and adds an unnecessary acronym. Accordingly, we direct NYISO to change that provision to refer to “Indicative Buyer-Side Mitigation Exemption Determination.” NYISO shall file the revisions as required above within 30 days of this order.

e. Treatment of Expected Retirements

i. NYISO’s Proposal

101. NYISO has proposed to compute the reasonably anticipated ICAP Spot Market Auction forecast price based on “Expected Retirements” (as defined in proposed section 23.4.5.7.2.3.1), plus each new Examined Project.⁹⁰ NYISO proposes in proposed section 23.4.5.7.2.3.1 to determine Expected Retirements “based on any Generator that provided written notice to the New York Public Service Commission that it intends to retire, plus any UDR facilities, or any Generator 2 MW or less that provided written notice to the ISO that it intends to retire.”⁹¹

ii. Protests

102. The NYTOs ask the Commission to interpret the proposed “Expected Retirements” tariff language “to mean that NYISO must assume, when conducting the part (a) exemption test [i.e., the Default buyer-side mitigation exemption test], that all mothballed generators will not return to service during the two capability periods that will be evaluated.”⁹² The NYTOs assert that including mothballed units in NYISO’s price forecast could significantly lower the projected prices giving any new entrant greater difficulty in qualifying for an exemption determination. The NYTOs assert that the potential price impact is significant because over the last year generation owners in New York State have announced their intention to mothball nearly 1,000 MW of generation in New York City, and 600 MW of additional capacity in western New York State.⁹³

⁹⁰ See proposed section 23.4.5.7.2.3.

⁹¹ See proposed section 23.4.5.7.2.3.1.

⁹² NYTOs July 20, 2012 Comments at 8-9 (citing Services Tariff, Attachment H, proposed § 23.4.5.7.2.3.1).

⁹³ *Id.* (citing Notice of Intent to Mothball Astoria Unit 20, Gowanus Barges 1 & 4 (December 14, 2011), Notice of Intent to Mothball Astoria 40 (February 14, 2012), Notice of Intent to Mothball Dunkirk Units 1, 2, 3 and 4 (March 14, 2012), Notice of

(continued...)

103. The NYTOs state that, under NYPSC rules, any generator larger than 80 MW must provide at least six months' notice of its intent to retire and all generators greater than 2 MW and less than 80 MW must provide 90 days notice of their intent to retire.⁹⁴ The NYTOs argue that the NYPSC requirements do not distinguish between units retiring permanently and those that may wish to return to service at some unspecified date in the future. Although the NYTOs acknowledge that some mothballed units could return to service during the price forecast period, they assert it is unreasonable for NYISO to assume for purposes of its price forecast that all of the mothballed units will return to service during the one-year period examined in the exemption test.⁹⁵

iii. Answers

104. In its August 10, 2012 answer, the MMU agrees with the NYTOs that the Services Tariff should be interpreted to require that mothballed units be excluded from the buyer-side mitigation exemption test. The MMU explains that in implementing the buyer-side mitigation exemption test, the Services Tariff requires NYISO to forecast capacity prices based on expected supply and demand. The MMU contends that in order to produce an accurate forecast, it is important that the expected capacity supply only include supply that is likely to remain in the market. The MMU believes that the Services Tariff can and should be interpreted to include mothballed units in its definition of Expected Retirements, since the Services Tariff makes no distinction between temporary retirements (i.e., mothballed units) and permanent retirements.⁹⁶ The MMU argues that it is reasonable to exclude mothballed units from the price forecasts of the capacity market because mothballed units are not eligible to sell capacity in the NYISO capacity market.⁹⁷ However, the MMU contends that if the Commission interprets NYISO's proposed tariff language to require NYISO to include mothballed units, it should direct NYISO to modify its Services Tariff so that it is clear that mothballed units are not included in the price forecasts.

Intent to Mothball Astoria Gas Turbine Units 10 & 11 (January 30, 2012), Notice of Intent to Mothball TC Ravenswood Unit 3-4 (August 31, 2011)).

⁹⁴ *Id.* at 9 (citing New York State Public Service Commission Case No. 05-E-0889, Proceeding on Motion of the Commission to Establish Policies and Procedures Regarding Generation Unit Retirements, December 20, 2005).

⁹⁵ *Id.* at 10.

⁹⁶ MMU August 10, 2012 Answer at 2.

⁹⁷ *Id.*

105. The MMU asserts that assuming a mothballed unit will be in the capacity market will deter efficient entry and raise capacity prices. Hence when a unit owned by an existing supplier reaches the end of its economic life and is due for retirement, the supplier will have an incentive to categorize it as mothballed to deter entry from new suppliers that would reduce capacity prices. Furthermore, according to the MMU, the unit may remain in mothball status for years and continue to deter entry and distort the application of the buyer-side mitigation measures.⁹⁸

106. NYISO responds that while it agrees with the MMU's logic regarding treatment of mothballed units, it does not believe that a literal reading of the Services Tariff will support including mothballed units under the definition of Expected Retirements.⁹⁹ NYISO states that its proposed definition of "Expected Retirements" is expressly limited to units that have given written notice that they "intend to retire." NYISO explains that it has proposed the same exemption tests, the same definition of Expected Retirements, and the same way of accounting for Expected Retirements in its ICAP price forecast for existing and any new capacity zones.

107. However, NYISO states in its answer that it would not oppose a Commission order directing it to modify both its proposed tariff language for new capacity zones, and its existing tariff language for New York City, to expressly state that mothballed units should be excluded from the ICAP Spot Market Auction forecast in all Mitigated Capacity Zones. NYISO also states that because Expected Retirements is a term utilized in both the part (a) and part (b) exemption tests, if mothballed units are to be treated the same as Expected Retirements for purposes of the part (a) test, they should be treated the same way for purposes of the part (b) test, as well as for purposes of the ICAP forecast in both new capacity zones and New York City. NYISO concludes that there is no reason to utilize different types of data in the forecast for different regions.¹⁰⁰

108. In its August 24, 2012 comments, Ravenswood objects to the revised treatment of mothballed units proposed by the NYTOs and endorsed in the answers of the MMU and NYISO. Ravenswood asserts that the proposal of NYISO and the MMU to treat mothballed units as retired units in answers fails to provide Ravenswood with adequate notice, is outside the scope of this proceeding, constitutes an improper attempt to circumvent the NYISO stakeholder process, is prohibited by sections 205 and 206 of the Federal Power Act (FPA) and Commission precedent, and is fundamentally flawed as a

⁹⁸ *Id.* at 4.

⁹⁹ NYISO August 6, 2012 Answer at 23.

¹⁰⁰ *Id.* at 23-24.

matter of law and fact. Ravenswood adds that the scope of this proceeding is limited to rules governing new capacity zones and nowhere does the September 8, 2011 Order address market power mitigation measures applicable to the New York City capacity markets. Further, according to Ravenswood, NYISO's subsequent compliance filings state the purpose of the filings is new capacity zones, and NYISO's decision to base the new capacity zone market power rules on the same conceptual framework as the New York City market rules in no way indicates that the New York City market rules are at issue here.

109. Ravenswood asserts that NYISO may propose modifications to its tariff under FPA section 205 and the Commission is authorized to accept those modifications that it finds just and reasonable, but the Commission's review is limited to those modifications originally proposed.¹⁰¹

110. In their September 10, 2012 answer to Ravenswood, the NYTOs assert that Ravenswood's due process rights have not been violated because all in-City generators have long been aware that rules affecting a new capacity zone could also affect the NYC capacity zone. The NYTOs state that it would be unreasonable for NYISO to treat mothballed units in one way when determining whether entrants into the NYC ICAP market should be exempted from mitigation, and in another way when determining whether entrants into the ICAP market in new capacity zones should be exempted from mitigation. The NYTOs assert that this different treatment could lead to inconsistent results that would distort developers' incentives to build in one location as compared to another, for reasons that have nothing to do with whether it is actually more economical to build in one location rather than another.

iv. Commission Determination

111. NYISO has proposed to add a new section to its Services Tariff (section 23.4.5.7.2.3.1) that uses the same wording and treatment of Expected Retirements in forecasting ICAP Spot Market Auction prices for Examined Facilities in new capacity zones that it already uses for the existing capacity zones (section 23.4.5.7.3.2).¹⁰² NYISO explains that it does not believe a literal reading of its

¹⁰¹ Ravenswood August 24, 2012 Comments (citing *Tennessee Gas Pipeline Co. v. FERC*, 860 F.2d 446, 455-56 (D.C. Cir. 1988); *Public Serv. Comm'n of NY v. FERC*, 642 F.2d 1335, 1343-46 (D.C. Cir. 1980)).

¹⁰² Proposed section 23.4.5.7.2.3 provides "The ISO shall compute the reasonably anticipated ICAP Spot Market Auction forecast price based on Expected Retirements (as defined in subsection 23.4.5.7.2.3.1), plus each NCZ Examined Project." Proposed

(continued...)

existing tariff provision would permit it to include mothballed units in the definition of Expected Retirements such that capacity of the units would be excluded from its price forecasts. We agree. We note that the existing provision (section 23.4.5.7.3.2) does not refer to mothballed units; it only refers to Expected Retirements. We find that NYISO's proposal is reasonable but provides no certainty or accurate market forecasts if it is uncertain that the mothballed units are likely to remain in the market. We see merit in the MMU's argument for inclusion, but also note that there may be situations in which mothballed capacity may return to service and be offered in the capacity market, and therefore should be included in the available supply (and not included as a retirement). In light of NYISO's clarifying comments we encourage NYISO, in consultation with its stakeholders, to consider modifying the Services Tariff to include criteria, applicable to all load zones, that can be used to determine if mothballed units should be included in Expected Retirements.

112. However, in light of the opposed definition of Expected Retirements in new section 23.4.5.7.2.3.1, it is not clear if section 23.4.5.7.3.2, which also contains a definition of Expected Retirements applies only to New York City. We direct NYISO to file revised tariff language to clarify that provision.¹⁰³

4. Other Revisions

113. The NYTOs have identified several drafting issues that they contend should be corrected. In section 23.4.5.7.7 (I)(b)(ii) of the Services Tariff, which specifies a category of projects in new capacity zones eligible for an exemption from buyer-side mitigation, the NYTOs assert that NYISO intended to refer to an "Interconnection Request," rather than a "request for an Interconnection Agreement," as one of the criteria for an exemption and suggest revising this section accordingly.

114. In section 23.4.5.7.7 (II) of the Services Tariff, the NYTOs suggest broadening the reference to "an effective Small Generator Interconnection Agreement pursuant to Attachment Z" to "an effective interconnection agreement" because large generators

section 23.4.5.7.2.3.1 states: "Expected Retirements shall be determined based on any Generator that provided written notice to the New York State Public Service Commission that it intends to retire, plus any UDR facilities, or any Generator 2 MW or less that provided written notice to the ISO that it intends to retire."

¹⁰³ We note that the reference to "Expected Retirements" and "load forecasts" in that provision are missing the words "shall be" after the reference terms, which should be added.

connecting to distribution may also be exempt from capacity deliverability requirements, but do not execute interconnection agreements under Attachment Z.¹⁰⁴

115. In its answer, NYISO states that it has no objection to changing request for an Interconnection Agreement to Interconnection Request or to revising section 23.4.5.7.7 to broaden its scope to include an effective Interconnection Agreement. Accordingly, we direct NYISO to submit the revisions proposed in its answer in a compliance filing within 30 days of the issuance of this order.

The Commission orders:

(A) NYISO's proposed revisions to its Services Tariff are hereby accepted, effective September 12, 2012, subject to conditions, as discussed in the body of this order.

(B) NYISO is hereby directed to submit a compliance filing within 30 days of the date of this order, as directed in the body of the order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁰⁴ NYTOs July 20, 2012 Comments at 28-29.