

Administration and Control Area Services Tariff (“Services Tariff”) implementing new installed capacity (“ICAP”) Demand Curves applicable for the 2017/2018 Capability Year and parameters for conducting the annual updates to determine the ICAP Demand Curves for the 2018/2019, 2019/2020, and 2020/2021.⁵ In its limited protest and comments filed on December 9, 2016, IPPNY demonstrated that it is critical that the Commission order the NYISO to set the net cost of new entry (“Net CONE”) for the proxy peaking unit in the New York Control Area (“NYCA”) based on dual fuel technology rather than gas-only technology, and accept all other aspects of the NYISO Filing, including the NYISO’s proposals that TETCO M3 and Iroquois Zone 2 be designated as the natural gas hubs to determine the net energy and ancillary services (“EAS”) revenues for the proxy peaking units in Zone C and Zone G, respectively.⁶

As discussed below, the Commission should reject the MMU’s arguments that a blend of the Iroquois Zone 2 and the Millennium East Pool indices should be used for the Zone G proxy peaking unit and that the Commission should order the NYISO to break the NYCA capacity area into separate Zones A-E and Zone F capacity zones. The Commission should reject the NYTOs’ argument that the Dominion North gas price index and the Millennium Pipeline gas price index should be used to calculate the net EAS revenues for the proxy peaking unit in Zone C and Zone G, respectively. The Commission should reject Con Edison’s request that the Commission approve the NYISO’s proposal to equip proxy units for the New York City (“NYC”) and the

⁵ Docket No. ER17-386-000, *supra*, Proposed ICAP Demand Curves for the 2017/2018 Capability Year and Parameters for Annual Updates for Capability Years 2018/2019, 2019/2020 and 2020/2021 (Nov. 18, 2016) (“NYISO Filing”).

⁶ IPPNY addressed many of the arguments in its comments that it anticipated would be made in protests to the NYISO Filing. Docket No. ER17-386-000, *supra*, Limited Protest and Comments of IPPNY (Dec. 9, 2016) (“IPPNY Comments”). IPPNY’s silence with respect to other comments and protests that were filed in this docket should not be construed as IPPNY acquiescence to such comments and protests.

Zones G-J Localities with dual fuel capability but also direct the NYISO to require new generators in these Localities to have dual fuel capability. Finally, the Commission should reject the UIU's argument that the Commission should require the NYISO to depart from its base case inclusion rules and instead determine a level of excess adjustment factor ("LOE-AF") based on the CARIS 2 database modified to reflect the continued operation of two nuclear generating facilities.

I. MOTION FOR LEAVE TO ANSWER

Although Rule 213(a)(2) generally prohibits certain types of answers, including answers to protests, the Commission has discretion to waive that prohibition for good cause shown. The basis for such waiver has included whether the answer leads to a more accurate and complete record, helps the Commission understand the issues, clarifies matters in dispute or errors, responds to new issues raised, or provides information that will assist the Commission in its decision-making process.⁷ IPPNY's answer responds to new issues raised in comments and protests and will help to ensure a complete and accurate record and will assist the Commission in reaching its decision. Accordingly, the Commission should accept IPPNY's answer.

II. THE COMMISSION SHOULD ACCEPT THE NATURAL GAS PRICING HUBS PROPOSED BY THE NYISO WITHOUT MODIFICATION.

The NYTOs asserted that "geographic location is the most fundamentally important criterion to be used in determining the natural gas supply source a peaking unit in a particular

⁷ See, e.g., *Mirant Energy Trading, et al. v. PJM Interconnection, LLC*, 122 FERC ¶ 61,007 at P 33 (2008); *BP West Coast Products LLC, et al. v. SFPP, L.P., et al.*, 121 FERC ¶ 61,239 at P 34 (2007); *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,254 at P 13 (2005); *Pinnacle West Energy Corp. v. Nevada Power Co., et al.*, 105 FERC ¶ 61,053 at P 34 (2003); *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,309 at P 18 (2003).

region would use” and that the Dominion North gas price index should be used for Zone C because it runs directly through that Zone.⁸ Similarly, the NYTOs argued that the Millennium Pipeline gas price index should be used for Zone G because it runs directly through Rockland County in Zone G and has lower prices than the Iroquois Zone 2 gas hub.⁹ The MMU argued that a 50/50 blend of the Iroquois Zone 2 and the Millennium East Pool indices should be used for the Zone G proxy peaking unit because the Iroquois Zone 2 index would result in capacity prices that are higher than necessary to enable efficient entry and exit in Zone G but the Millennium East Pool index “would result in excessively low demand curves over the long term.”¹⁰

As IPPNY discussed in its comments, the NYISO’s Demand Curve consultant, the Analysis Group (“AG”), reasonably relied on a balanced assessment of four criteria for selecting the gas hubs for each zone: (1) market dynamics – *i.e.*, how well the gas hub correlates to locational based market prices (“LBMPs”) and whether the hub price reflects a long term equilibrium rather than simply short term arbitrage opportunities; (2) liquidity – *i.e.*, whether there is consistent depth of historical data at that gas hub, reflective of sufficient trading volumes over time; (3) precedent/continuity – *i.e.*, whether the gas hub has been used for similar purposes in previous NYISO planning and market studies; and (4) geography – *i.e.*, whether there is a geographic relationship to potential peaking plant locations going forward and whether there is a *logical nexus at relevant delivery points*.¹¹ Based on these factors, AG recommended that

⁸ NYTO Protest at 4–5.

⁹ *Id.* at 6.

¹⁰ MMU Comments at 3–5.

¹¹ IPPNY Comments at 22.

TETCO M3 and Iroquois Zone 2 be designated as the natural gas hubs for the proxy peaking units in Zone C and Zone G, respectively. “The Commission, acting under section 205, is not required to consider whether proposed revisions other than those that the utility submitted may also be just and reasonable; the relevant inquiry is whether the utility’s proposed tariff changes have been shown to be just and reasonable.”¹² Here, the NYISO has proposed just and reasonable natural gas pricing hubs, supported by the analysis of AG. While there may be a range of outcomes that may be reasonable under certain circumstances, the NYTOs and MMU have not demonstrated that the NYISO’s proposed gas hubs are not just and reasonable.

The NYTOs’ argument that “geographic location is the most fundamentally important criterion”¹³ conveniently focuses on only one component of the geography criterion—the locational aspect of geography. It wholly ignores the second, equally important component, to wit, the need to ensure that there is a “logical nexus at relevant delivery points,” which was a key aspect of AG’s ultimate selection of the appropriate gas hub for each Zone.¹⁴ It is true that the net EAS revenues calculated for the proxy peaking plant should accurately reflect the cost that the unit incurs to purchase gas at that location. But gas-fired generators are unable to access natural gas at the prices reflected by the Dominion North and Millennium East indices because those hubs represent the price of gas injected into the pipelines, not the price of gas withdrawals at the likely location of the proxy plants.¹⁵ Given the nature of its expected operations, AG’s

¹² *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,157 at P 37 (2016) (citing *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984).

¹³ See NYTO Protest at 4.

¹⁴ NYISO Filing, Attachment III, Exhibit D (“Consultants’ Final Report”) at 74.

¹⁵ IPPNY Comments at 24–25.

modeling properly did not assume that the proxy peaking unit in any zone would hold a firm transportation contract on any pipeline. Thus, the proxy peaking unit is not assumed to be able to access gas at a liquid sourcing point—like Millennium East or Dominion North—and have that gas delivered directly to its plant every day. Instead, the peaking unit is assumed to rely on gas purchased and shipped via the secondary capacity release markets.

Given that the proxy peaking unit is not assumed to hold a firm transportation contract from a liquid receipt point to its delivery point, the amount of congestion on a pipeline directly affects both the price a generator will pay for gas and the availability of shipping capacity on a pipeline. The NYISO recently published a study that focuses on pipeline congestion that confirms this point. According to the assessment completed by Levitan & Associates for the NYISO, Millennium is a pipeline that experiences significant congestion.¹⁶ More importantly, that study demonstrated that the Ramapo interconnect with Algonquin, which is located in Zone G, is a significantly congested part of the Millennium pipeline system.¹⁷ This is important because a peaking unit in Rockland County in Zone G would most likely obtain delivered gas from the Millennium pipeline at this point. The Millennium East gas hub price advocated by the NYTOs, which is a receipt pool where gas enters the Millennium pipeline system, is not reflective of the price paid by a generator relying on gas shipped in the secondary capacity release markets downstream of a significant congestion point.¹⁸

¹⁶ *NYCA Pipeline Congestion and Infrastructure Adequacy Assessment*, Levitan & Assocs. (Sept. 2013), at 67–72, http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_egcwg/meeting_materials/2013-10-23/Levitan%20Pipeline%20Congestion%20and%20Adequacy%20Report%20Sep13%20-%20Final%20CEII%20Redacted.pdf.

¹⁷ *Id.*

¹⁸ IPPNY Comments at 24–25.

Moreover, since this is a point of interconnection with the Algonquin system, the price of delivered gas is more likely to reflect the price of delivered gas on the Algonquin system, not the price of gas entering the Millennium system at a receipt pool.¹⁹ Even with planned upgrades, like the Eastern System Upgrade project, this part of the Millennium pipeline is likely to remain constrained, especially since this upgrade is designed specifically to increase deliveries from Millennium into the Algonquin interconnect at Ramapo. As a result, not only will the price paid by a generator in Zone G fail to track the Millennium East price, the generator will pay a higher—perhaps significantly higher—price for delivered gas than the Millennium East gas hub price. Faced with a much higher gas price, the result will be that the generator will secure far less net EAS revenues.

The NYTOs argued that “it is unreasonable to conclude that the gas costs incurred by a peaking unit located in Zone G would be built in Dutchess County and purchase gas from the Iroquois pipeline, when a peaking unit in Rockland County would have access to the Millennium pipeline with much lower gas costs.”²⁰ If this argument was correct, given the claimed reduced costs of getting gas from Millennium, all gas-fired plants under development today would be interconnecting with the Millennium pipeline. While the proposed CPV Valley Energy Center 650 MW will be interconnected with the Millennium pipeline, there is no evidence that there are other suitable sites that can be interconnected with the Millennium pipeline and developed at costs lower than sites interconnecting with the Iroquois pipeline.²¹ In fact, the one other gas-

¹⁹ *Id.*

²⁰ NYTO Protest at 6.

²¹ It should be noted that the CPV Valley proposes to interconnect to the Millennium Pipeline via an eight-mile lateral, for which it has not yet obtained its required permits. AG assumed the costs of a four-mile lateral to

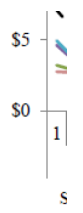
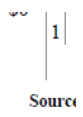
fired plant proposed in Zone G, the even larger 1,000 MW Cricket Valley Energy Center, proposes to interconnect with the Iroquois Pipeline.²² In addition, as Dr. Kelli Joseph explained in her affidavit accompanying IPPNY's comments, the interconnection of the CPV Valley Energy Center will likely increase congestion on the Millennium system, which is expected to lead to equilibration with the Iroquois 2 price over time.²³

The inability of proxy peaking units to access gas at prices reflected by the Dominion North and Millennium gas price indices is aptly demonstrated in Figures 11 and 13 from AG's final report, copied below, which compare gas prices for various hubs against LBMPs for Zones C and G over a three-and-a-half-year period.

interconnect to a pipeline, so its modeling underestimates the costs that an actual facility is incurring to interconnect in Zone G.

²² NYPSC Case 11-E-0593, *Petition of Cricket Valley Energy Center, LLC for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation*, Order Granting Certificate of Public Convenience and Necessity (Feb. 14, 2013), at 6.

²³ IPPNY Comments, Exhibit II ("Joseph Affidavit").



AG explained in its report that:

In Load Zone C, while the Dominion and Millennium pipelines cross portions of the zone, the implied pricing from these indices does not capture any of the spikes in electricity markets during winter months. Consequently, while gas delivery on these pipelines may reflect a short-run arbitrage opportunity between gas and electricity markets, it is not reasonable to expect such arbitrage to persist over the plant's economic life. In addition, because gas indices capture pricing over broad geographic areas, indices may not capture variation in pricing within these zones, particularly in more constrained areas.²⁴

As reflected in the Figures above, Dominion North and Millennium East have consistently shown the least correlation with LBMPs in Zone C and Zone G, respectively, particularly during the winter months. Based on these comparisons, AG recommended the TETCO M3 index for Zone C and the Iroquois Zone 2 index for Zone G because these indices are much more closely correlated with LBMPs in these Zones.²⁵ For the reasons discussed above, in IPPNY's comments, in AG's report, and NYISO Staff's Final Recommendations, the Commission should accept AG's and the NYISO's recommended gas hubs.

The Commission should reject the various recommendations that the Millennium Pipeline be assumed for the proxy unit in the G-J Locality because it conflicts with the other assumptions used in estimating the proxy unit's cost. The proxy unit's costs are designed to represent a unit that has significant flexibility to site relatively near to gas and electric infrastructure. No analysis was done to determine whether suitable siting locations were available near the Millennium Pipeline and how the gas and electric interconnection costs would have to be revised if the number of potential locations has been greatly restricted. Moreover, there has been no analysis to suggest that the assumed cost of the site is consistent with the now limited interconnection

²⁴ Consultants' Final Report at 77.

²⁵ *Id.* at 77-78.

options. This is not a consideration with the gas hub assumptions that AG and the NYISO recommended because the use of the four criteria for selecting the gas hubs ensures that the assumption is reasonable for the Locality even if the generator is unable to directly interconnect to the specified pipeline. This is not the case with Millennium where geography is the only real argument for its use.

The Commission should also reject the MMU's recommendation that a blend of the Iroquois Zone 2 and the Millennium East Pool indices be used for the Zone G proxy peaking unit. In its comments, the MMU provided an example to support its blending concept based on applying a 50/50 weighting.²⁶ First, it is noteworthy that, in its September 15, 2016 comments advocating a blended rate for Zone G, the MMU asserted "it would be appropriate to use a blend of the two indices in this reset *with a majority based on the Iroquois Zone 2 index.*"²⁷ Just three months later, the MMU referenced an example based upon a 50/50 split. In neither case, however, has the MMU provided any basis or underlying analysis to support either the figure or any explanation as to why it chose to offer an example based on a 50/50 split when it previously had specified that any blending must reflect a majority in favor of the Iroquois 2 gas hub. Ever-changing proposals without support behind any of them cannot be found to be just and reasonable.

Second, as IPPNY stated in its comments, blended prices are not published in any gas indices and are not otherwise publicly available.²⁸ Indeed, the NYISO itself established in its

²⁶ See MMU Comments at 3–4.

²⁷ See NYISO Filing, Attachment V, Exhibit A ("NYISO Staff Final Recommendations") at 76 (emphasis added).

²⁸ IPPNY Comments at 25.

Filing that it could not support blending because it had no principled rationale for developing an appropriate blend for any given location or ensuring that its blending methodology was either appropriate or sustainable for the four-year reset period.²⁹ There were no discussions during the stakeholder process focused on the many questions that using a blended rate implicates, including, but not limited to, defining the weights to be applied to a blended rate, determining whether blended rates should vary based on season or load levels or assessing whether the blended rates should be realigned after predefined intervals. No analysis was performed to show that the blended rate is a reasonable representation of where prices might converge between the two hubs. Moreover, given that, as described above, neither the Millennium Pipeline hub nor the Dominion North hub represent the cost faced by a generator withdrawing gas from the pipelines, it cannot reasonably be used as part of a blended rate even if one could identify an appropriate weighting. There is, thus, no basis to find use of a blended rate in either Zone C or Zone G is just and reasonable.

Third, if a blended gas hub price were to be used, every other related cost must also be blended to accurately reflect the costs faced by the proxy unit in each zone. There are multiple pipelines, multiple gas hubs, and multiple electric interconnection points that could serve as the proxy for the peaking unit across all Zones. AG determined the net EAS revenues assuming only the cost of a lateral to connect to one pipeline and only one relevant electric interconnection point.³⁰ If the peaking unit is assumed to have access to multiple gas hubs, it should also be assumed to have access to multiple pipelines and multiple interconnection points. Thus, in

²⁹ See NYISO Filing at 30.

³⁰ See Consultants' Final Report at 41–42.

addition to defining a weighting for a blended gas hub price, the NYISO would be required to devise a weighting for these other factors as well, an exercise for which the NYISO has no framework whatsoever, and no party has proposed or offered sufficient support for one. Thus, only one gas hub should be assumed.

III. THE COMMISSION SHOULD REJECT THE MMU’S REQUEST THAT IT ORDER THE NYISO TO CREATE A NEW ZONE F CAPACITY ZONE.

The MMU argued that the Dominion North gas hub index “would be more accurate” for the Zone C proxy peaking unit, but “[u]ltimately, neither the Zone C nor the Zone F proxy unit is ideal for the entire A-F region.”³¹ The MMU requested that the Commission order the NYISO to create a new, separate capacity zone in Zone F, which the MMU acknowledged is not required by the established process for adopting new capacity zones (“NCZs”) in the NYISO’s tariff.³² In fact, applying these procedures this past January, the NYISO determined that no new NCZ is required.³³ The NYISO filed its NCZ Study with the Commission this past March. In its filing letter, the NYISO stated that the tariff requires the NYISO to give the MMU an opportunity to review the study report, and the MMU “raised no objections.”³⁴

The Commission should reject the MMU’s request to create a NCZ because it is clearly outside the scope of the NYISO’s proposed Demand Curve reset process and constitutes an improper attempt to circumvent the NYISO’s NCZ study process. The NCZ study process took

³¹ MMU Comments at 6.

³² *Id.* at 6–7. The NYISO’s Services Tariff requires the NYISO to perform a study each Demand Curve reset period to determine whether a NCZ is required. NYISO Services Tariff § 5.16.

³³ Docket No. ER16-1280-000, *N.Y. Indep. Sys. Operator, Inc.*, Report of the Results of Triennial NCZ Study (Mar. 28, 2016) (“NCZ Study”).

³⁴ *Id.* at 3.

seven years to develop. It should not be replaced on a one-off basis when the costs measured for proxy units at zones within the region are not “ideal.” The scope of this DCR proceeding is limited to setting the Demand Curves for the existing Zone K, Zone J, Zones G-J, and NYCA auctions and establishing the rules governing the adoption of Demand Curves for the NYCA and the Localities, not adopting NCZs. Thus, as the NYISO Filing is not the proper forum to address whether a NCZ is needed, the Commission should reject the MMU’s request.

IV. THE COMMISSION SHOULD REJECT CON EDISON’S REQUEST TO TIE APPROVAL OF THE NYISO’S PROPOSAL TO EQUIP THE NYC AND ZONES G-J PROXY UNITS WITH DUAL FUEL CAPABILITY TO A NEW TARIFF THAT ALL NEW GAS-FIRED GENERATING FACILITIES IN THESE LOCALITIES MUST BE CONSTRUCTED WITH DUAL FUEL CAPABILITY.

Con Edison supported AG’s and NYISO Staff’s proposal to equip the NYC and Zones G-J proxy peaking units with dual fuel capability because dual fuel capability enhances electric system reliability, helps local distribution companies (“LDCs”) contribute to electric system reliability, is consistent with New York policy, and can mitigate price spikes in times of high natural gas prices.³⁵ However, while Con Edison acknowledges that its gas tariff requires new generators to have dual fuel capability in NYC, it asserts that generators can avoid this requirement by taking service directly from an interstate natural gas pipeline without a dual fuel requirement. Arguing that “[a] mandatory dual fuel requirement in the NYISO Tariff is the only way to guarantee that customers receive the benefits of the dual fuel capability they are paying for in the demand curves,” Con Edison requested that the Commission direct the NYISO to

³⁵ Con Edison Comments at 3–4 (pointing to the compressor outage on the Texas Eastern system in January 2014 that affected service to New York City and establishing “[d]ual fuel capability is a critical safety net against a contingency on the natural gas system that could threaten electric reliability”).

include a mandatory dual fuel requirement in its tariff for new generation in the NYC and Zone G-J Localities.³⁶

The Commission should reject Con Edison's arguments. First, while Con Edison correctly notes that the Commission must determine anew if the dual fuel capability provision is just and reasonable in the context of this DCR process,³⁷ Con Edison fails to acknowledge that there have been no material changes since the Commission last approved this provision that would merit a finding that the dual fuel capability provision is no longer just and reasonable. Indeed, as IPPNY demonstrated in its comments, the need for this capability has grown since the last DCR process.³⁸

Second, Con Edison's proposal to link these two considerations misconstrues the purpose of the Demand Curves. The Services Tariff requires the NYISO to base the Net CONE estimate on a proxy peaking unit with "the lowest fixed cost and highest variable cost among all other units' technology that are economically viable."³⁹ The Demand Curves are designed to provide developers a reasonable opportunity to recover the costs of new generation that may be needed to meet reliability needs. If the Demand Curves do not reflect the costs that a developer will likely incur to build a needed unit, the unit may either not get built at all or it will likely not include the components omitted from the proxy peaking unit's cost structure, and reliability may not be assured.

³⁶ *Id.* at 4, 5 (asserting that the failure to impose such a condition would be unjust and unreasonable).

³⁷ *Id.* at 5.

³⁸ IPPNY Comments at 9–14.

³⁹ *See* NYISO Services Tariff § 5.14.1.2.2.

Third, Con Edison's assertion that developers in NYC can avoid the dual fuel requirement embedded in its gas tariff ignores the significant costs that a developer would incur to connect to an interstate pipeline. These costs were not evaluated in the Demand Curve study and, had they been evaluated, it is very likely that such costs would exceed the costs of equipping the proxy unit with dual fuel capability. The fact that no generating unit has been built in the past 20 years in NYC without connecting into the LDC should alone be proof that this is not an economic option. Thus, there is no reasonable basis for the Commission to conclude that developers could avoid the dual fuel requirement in NYC.

While the Commission should treat the NYISO's proposal to equip the NYC and Zones G-J proxy units with dual fuel capability as a stand-alone proposition and approve it on its own merits because it is just and reasonable, IPPNY does not object to a tariff requirement that new generators developed in New York in the future assure access to fuel, such as a dual fuel requirement, so long as the tariff provides generators with the opportunity to recover the costs of such requirement. Reflecting the costs of a dual fuel requirement in the Demand Curves as AG and the NYISO have done in this reset process provides a reasonable basis for such opportunity.

V. THE COMMISSION SHOULD ACCEPT THE NYISO'S PROPOSAL THAT THE LEVEL OF EXCESS ADJUSTMENT SHOULD BE BASED UPON THE MOST RECENT CARIS 2 DATABASE WITHOUT ANY ADJUSTMENTS TO THE RESOURCE MIX.

Pursuant to the Services Tariff, the NYISO estimates net EAS revenues for the proxy peaking units under conditions in which the available capacity in each capacity region is equal to the applicable minimum Installed Capacity requirement, plus the capacity of the applicable peaking plant. AG advised Market Participants that it had performed the initial LOE-AF estimates based on the CARIS Phase 1 database as a placeholder pending the completion of

CARIS Phase 2. AG's final report generated LOE-AF utilizing using the 2016 CARIS Phase 2 database, the NYISO planning study that contains the most recent resource addition and retirement assumptions, and updated load and gas price forecasts.⁴⁰

At the ICAP working group meeting on July 20, 2016, the NYISO discussed the selection of the planning database to determine the LOE-AF. Some Market Participants asserted that the CARIS Phase 2 database should be further revised by assuming that the Ginna and Fitzpatrick nuclear units are retained in the database because the New York Public Service Commission ("NYPSC") issued an order on August 1, 2016 establishing the Clean Energy Standard in New York ("CES Order") that included a requirement for Load Serving Entities to purchase zero-emission credits ("ZECs") from qualifying nuclear plants in New York.

In the NYISO Filing, the NYISO concludes that the LOE-AF values reflected by the CARIS Phase 2 database without making any adjustments to the resource mix should be used to establish the Demand Curve values because it satisfies the NYISO's inclusion rules by including the most recent information regarding unit status.⁴¹ Indeed, the NYISO is in the process of devising the Comprehensive Reliability Plan base case at this time and has advised Market Participants that Ginna and FitzPatrick will not be included in the base case.⁴² Thus, even if the CARIS 2 database were developed today, it would not include the FitzPatrick and Ginna nuclear units because they do not meet the inclusion rules. Since the NYPSC's CES Order, the owners of the Ginna and Fitzpatrick nuclear units have not provided an indication to the NYISO that

⁴⁰ See Consultants' Final Report at 150.

⁴¹ NYISO Filing at 34.

⁴² See Laura Popa, *2016 Comprehensive Reliability Plan (CRP) Process*, NYISO (Dec. 7, 2016), at 5, http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_espwg/meeting_materials/2016-12-07/2016CRP_Overview_Dec7.pdf.

would meet the requirements of the CARIS base case inclusion rules that they will return their units to service.⁴³ The UIU's request that the Commission order the NYISO to add these units back to the database would violate the NYISO inclusion rules and cannot be sanctioned.⁴⁴

The Commission should not require the NYISO to deviate from the result of its inclusion rules. The LOE-AF is quite controversial when combined with the new rules that calculate net EAS revenues based upon rolling historic prices. Substantial focus has been placed on enhancing accuracy and transparency in this reset process. Making the *ad hoc* adjustment to the LOE-AF estimate process that some Market Participants have proposed only makes the LOE-AF more controversial and looks like an effort to influence the results rather than holding to the NYISO's defined rules, and, thus, marks a substantial step backward in producing more transparent Demand Curve reset process results.

⁴³ On September 30, 2016, Ginna submitted a conditional notice of its intent to continue commercial operations after the March 31, 2017 expiration of its Reliability Support Services Agreement with the NYPSC. Specifically, it reserved the right to withdraw its notice and terminate operations consistent with the Joint Proposal if: (i) the ZEC requirement established in the NYPSC's CES Order is modified in a manner adverse to Ginna, terminated, suspended, or stayed prior to the date that one or more ZEC agreements with the New York State Energy Research and Development Authority become effective; or (ii) "for any reason any one or more of Ginna, Nine Mile Point Nuclear Station, LLC, or Entergy Nuclear Fitzpatrick LLC fails to execute and deliver agreements with NYSERDA for the sale of ZECs in form and substance satisfactory to Ginna." NYPSC Case 14-E-0270, *Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant, LLC*, Notice of Continued Operation (Sept. 30, 2016). Per the NYPSC's CES Order, the ZEC agreements will become effective on the later of April 1, 2017, or the date on which all contracts have been executed. The owner of FitzPatrick reported to the NYPSC that the continued operation of the unit is contingent on the sale of the unit, *inter alia*, being approved by the NYPSC, FERC, and the Nuclear Regulatory Commission ("NRC"). The NRC has not issued an approval at this time. Thus, until the ZEC contracts have become effective and all of the approvals necessary to transfer FitzPatrick are obtained, Ginna's and FitzPatrick's continued operations are too speculative under the NYISO's base case inclusion rules to revise the CARIS 2 base case and include either of them.

⁴⁴ UIU Comments at 12.

VI. CONCLUSION

For the foregoing reasons, IPPNY respectfully requests that the Commission reject the protests and comments discussed above.

Dated: December 23, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Leave to Answer and Answer of Independent Power Producers of New York, Inc. has been served upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Albany, New York, this 23rd day of December, 2016.

David B. Johnson
David B. Johnson