UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.) Docket No. ER16-1404-002

MOTION FOR LEAVE TO ANSWER AND ANSWER OF INDEPENDENT POWER PRODUCERS OF NEW YORK, INC.

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission's (the "Commission") Rules of Practice and Procedure,[1] Independent Power Producers of New York, Inc. ("IPPNY") hereby moves for leave to file this answer[2] to correct errors in, and provide the Commission with a complete record on, certain arguments raised in the comments and protests of the Governmental Entities,[3] Clean Energy Advocates,[4] and New York transmission owners[5] (collectively, the "Protesting Parties") filed on April 28, 2020 in response to the New York Independent System Operator, Inc.'s ("NYISO") proposed revisions to its buyer-side market

[1] 18 C.F.R. §§ 385.212 and 213 (2020).

[2] Although the Commission's procedural rules do not allow for answers to protests as a matter of right, the Commission regularly accepts otherwise impermissible answers where, as here, such answers will assist the Commission's understanding of the record and its decision making. *See, e.g., Southwest Power Pool, Inc*., 154 FERC ¶ 61,279 at P 13 (2016); *Midcontinent Indep. Sys. Operator, Inc*., 154 FERC ¶ 61,278 at P 6 (2016); *New York Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,268 at P 17 (2016).

[3] The Governmental Entities are the New York Public Service Commission, New York State Energy and Research and Development Authority, and the City of New York. Docket No. ER16-1404-002, *New York Indep. Sys. Operator, Inc.*, Notice of Intervention and Limited Protest of the New York State Public Service Commission, New York State Energy and Research and Development Authority, and the City of New York (Apr. 28, 2020) ("Governmental Entities Filing").

[4] The Clean Energy Advocates are the American Wind Energy Association, the Alliance for Clean Energy New York, the Natural Resources Defense Council, Sustainable FERC Project, and the Solar Council. Docket No. ER16-1404-002, *supra*, Comments of the American Wind Energy Association, the Alliance for Clean Energy New York, the Natural Resources Defense Council, Sustainable FERC Project, and the Solar Council (Apr. 28, 2020) ("Clean Energy Advocates Filing").

[5] The New York transmission owners are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York Power Authority, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., Power Supply Long Island, and Rochester Gas and Electric Corporation (collectively, the "Indicated TOs"). Docket No. ER16-1404-002, *supra*, Indicated New York Transmission Owners' Protest (Apr. 28, 2020) ("Indicated TO Filing").

power mitigation measures ("BSM Measures") to calculate the limit on the amount of Unforced Capacity[6] ("UCAP") that can be available for a Renewable Exemption (the "Renewable Exemption Limit") for each Mitigated Capacity Zone filed on April 7, 2020 in the above-captioned docket.[7] The NYISO proposed the Renewable Exemption Limit in response to the directive in the Commission's February 20, 2020 order to revise its initial proposal to establish a renewable exemption cap to "limit[] the risk that the renewable resources exemption will significantly impact market prices."[8]

Specifically, the Protesting Parties argued that:

- the calculation of the Renewable Exemption Limit should include *all* retirements, not Incremental Regulatory Retirements as the NYISO proposed in its April 2020 Filing;
- the retirement of Indian Point Unit 2 and the anticipated retirement of Indian Point Unit 3 next year must be included in the Incremental Regulatory Retirements, or total retirements, for Class Year 2019 despite the fact that the NYISO previously revised the ISO Procedures to be able to account for these retirements in its comprehensive planning process studies beginning in 2017;
- resources that are unavailable in summer months should be treated as retired for purposes of calculating the Renewable Exemption Limit; and

[6] Capitalized terms that are not otherwise defined herein shall have the meaning specified in the Market Administration and Control Area Services Tariff.

[7] Docket No. ER16-1404-002, *supra*, Compliance Filing and Request for Commission Action No Later Than June 8, 2020 (Apr. 7, 2020) ("April 2020 Filing"). IPPNY's silence with respect to arguments not addressed herein should not be construed as IPPNY's assent to such arguments.

[8] *New York Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,121, at P 48 (2020) ("February 2020 Order").

- the NYISO's proposed $0.50/kW-month default price impact threshold to set the Minimum Renewable Exemption Limit must be increased.

As demonstrated below and in the affidavit of Mark D. Younger, President of Hudson Energy Economics, LLC, attached hereto as Exhibit 1, the overall structure of the NYISO's proposed Incremental Regulatory Retirements component of its four-part formula, as modified by the proposals presented in IPPNY's comments and protest filed in this docket, is just and reasonable because it is designed to ensure that economic retirements appropriately move the market closer to the long run equilibrium status that is necessary to support the entry of new, and maintenance of existing, resources needed to meet reliability requirements.[9]

The Protesting Parties' proposal to calculate the Renewable Exemption Limit based on all retirements is specious. If implemented, their proposal would artificially keep the market "long" by allowing excessive quantities of subsidized renewable resources to enter the capacity market as price takers and hold market prices at their currently low levels indefinitely in direct contravention of the Commission's February 2020 Order.

Further, the NYISO has already accounted for the retirement of Indian Point Units 2 and 3 with resources that are Incremental Regulatory Retirements because the market has responded to the retirement of these units, and thus, there is no basis to include these units in the calculation of the Incremental Regulatory Retirements component. As the NYISO has correctly established in its proposal, rules cannot be put into place that permit renewable exemptions to be double-counted.[10] Moreover, deeming suppliers that choose to cease operating during summer months

[9] Docket No. ER16-1404-002, *supra*, Comments and Protest of Independent Power Producers of New York, Inc. (Apr. 28, 2020) ("IPPNY Protest").

[10] As established *infra*, were these resources to be counted, their effects would be long-lasting given the bank mechanism included in the NYISO's four-part formula. As part of the development of its Part A exemption changes developed contemporaneously with its proposed cap filed in this proceeding, the NYISO made significant efforts to

to be Incremental Regulatory Retirements impermissibly would reduce capacity prices during months in which the supplier operates. Given its price suppressive effects, this proposed modification also lacks merit. Finally, the proposals to increase the default price impact threshold to set the Minimum Renewable Exemption Limit are flawed and produce a cap that fails to meet its purpose of limiting the risk that Renewable Exemptions would significantly impact market prices.

Thus, the Commission should reject the Protesting Parties' arguments, determine the NYISO's Renewable Exemption Limit proposal as clarified by the IPPNY Protest is just and reasonable and conditionally accept the NYISO's proposal effective on June 8, 2020.

I. The Commission Should Reject the Arguments that the Renewable Exemption Limit Be Calculated Based on All Retirements.

In its April 2020 Filing, the NYISO proposed to calculate the Renewable Exemption Limit for the mitigation exemption test conducted in each final Interconnection Study comparing two MW limits, the latter of which would be based on a four-part formula (the "Formula") that encompasses the UCAP MW associated with the change in forecasted peak load and the UCAP MW of generator retirements caused by direct regulatory action that has occurred since the prior Class Year study period ("Incremental Regulatory Retirements").[11] Specifically, the Protesting Parties argued that the Renewable Exemption Limit should be calculated based on *all* retirements, not just Incremental Regulatory Retirements. The Indicated TOs and the Government Entities argued that an "all incremental retirements' solution" is necessary because

address double-counting, including by adding proposed Section 23.4.5.7.15.5 establishing it will not double count previously granted exemptions. It is equally important for the same discipline to be applied here.

[11] In its February 2020 Order, the Commission noted that it was not directing the NYISO to base its proposed cap on load growth as IPPNY and the NYISO's Market Monitoring Unit, Potomac Economics ("MMU") had requested but further established the NYISO was not proscribed from doing so or from basing its cap on some combination of both projected load growth and retirements in some way. *See* February 2020 Order at P 51.

the NYISO's proposed definition of Incremental Regulatory Retirements is ambiguous and unworkable.[12] Similarly, the Clean Energy Advocates argued that a direct regulatory action is just one factor in any retirement and the NYISO may have difficulty in determining whether a retirement was caused by such action.[13] These arguments ignore the Commission's February 2020 Order.

The Commission directed the NYISO to develop a new renewable exemption cap that, among other things, will limit the risk that the Renewable Exemption will *significantly impact* market prices.[14] The Commission emphasized that the NYISO must "be mindful of the relationship between: (1) the size of the MW cap; and (2) the limit the MW cap imposes on the renewable resource exemption's impact to market prices."[15] The NYISO's proposal to calculate the Renewable Exemption Limit, which will primarily be affected by the level of Incremental Regulatory Retirements, appropriately balances the relationship between the size of the Renewable Exemption Limit and the limit the cap imposes on the exemption's impact to market prices. Contrary to the Protesting Parties' arguments, a Renewable Exemption cap that maintains current market prices and does not permit the ICAP Demand Curves to move toward long run equilibrium violates the Commission's directive that renewable exemptions must not significantly impact market prices.[16] Taken together with the clarifications IPPNY has proposed, the NYISO's proposal achieves a thoughtful balance in allowing a limited amount of subsidized public policy renewable resources to enter the market without undermining the market

[12] Governmental Entities Filing at 6; Indicated TO Filing at 8–9.

[13] Clean Energy Advocates Filing at 6.

[14] February 2020 Order at P 48.

[15] *Id.*

[16] *See* Younger Aff. ¶¶ 10–13.

mechanisms and market signals that assure adequate revenue to resources needed for reliability. On one hand, it ensures that market forces drive prices towards long run equilibrium as resources retire due to economics while recognizing that retirements driven by resources that are forced to retire by government action can be replaced by State-backed public policy resources. On the other hand, it ensures resources that leave the capacity market due to independent economic circumstances (e.g., costs associated with equipment damage or general age/obsolescence) should result in reduced supply followed by an economically based market signal and associated economic (as opposed to subsidized) response.

In a competitive market, market prices that are currently well below the net cost of new entry ("Net CONE") must be permitted to provide price discovery to signal increasing reliability needs and costs to induce new entry to meet reliability requirements.[17] Setting the amount of out-of-market renewable resources that may enter the market equal to the amount of resources that retire by definition interferes with this cardinal market principle. The Commission's directive that market prices not be significantly impacted is intended to ensure that the market, not government intervention, will drive efficient investment decisions to build new, and maintain existing, resources that are needed for reliability. The NYISO's proposal, as modified by the proposals presented in the IPPNY Protest, is appropriate because it balances regulatory actions that cause a reduction in capacity with regulatory actions that support new renewable entry, all the while allowing certain economic actions to also contribute to reliability as market signals adjust.

In stark contrast, the Protesting Parties' proposal to base the level of the Renewable Exemption Limit on *all* retirements would allow subsidized renewable entry to maintain prices

[17] *See* Younger Aff. ¶ 10.

far beyond equilibrium conditions indefinitely. However, as the MMU established in its comments, "[m]erchant generators risk capital without a guarantee of future revenue. To ensure just and reasonable capacity prices, the BSM measures should prevent out-of-market subsidies from upsetting the balance between supply and demand over an extended period."[18]

As the MMU further established, "large quantities of subsidized resources could overwhelm the supply-demand balance in the capacity market and could result in substantial artificial capacity surpluses that may not be absorbed for several years."[19] Indeed, the impacts of the Protesting Parties' proposal would be severe. As Mr. Younger demonstrates in his affidavit, prices in the G-J capacity market, which currently clear at the New York Control Area ("NYCA") Zone capacity market clearing price, would remain at this very low level.[20] Because the market had responded by bringing on line two large combined cycle facilities following the announced retirement of the Indian Point facility in January, 2017, the level of excess capacity in the G-J capacity market is so large that it cleared 14.57% down the G–J Demand Curve, which crosses zero at the 15% excess level, even after the retirement of Indian Point Unit 2 on April 30, 2020.[21]

Even more problematically, the Protesting Parties' proposal to add Indian Point Unit 2's capacity to the Formula to calculate the Renewable Exemption Limit would cause the G–J capacity market to move almost 1,000 MW beyond the zero crossing point of the G–J ICAP

[18] *See* Docket No. ER16-1404-002, *supra,* Motion to Intervene and Comments of the New York ISO's Market Monitoring Unit (Apr. 28, 2020) at 3–4 ("MMU Comments").

[19] *Id*. at 6.

[20] Younger Aff. ¶ 13.

[21] *Id*. As the MMU established in its Comments, regulatory action that drove out coal and nuclear units has been matched with substantial levels of new merchant generation. MMU Comments at 5.

Demand Curve.[22] New York City ("NYC") capacity prices could also fall to NYCA levels if the Protesting Parties' proposal to allow Renewable Exemptions to offset all retirements is adopted and the Commission accepts the NYISO's proposal that the Renewable Exemptions that had been allocated to the G–J market can be used by renewable resources in the NYC market once the NYC specific bank had been exhausted.[23] Such a result is unjust and unreasonable because it renders the NYISO's competitive market irrelevant. Rather, given these potential impacts, as the MMU concluded, "it is essential that the retirements be the result of State policies or regulatory actions," and thus, "Incremental Regulatory Retirements should not include retirements that are substantially caused by market outcomes."[24]

II. The Commission Should Reject the Indicated TOs' Argument that the Retirements of Indian Point Units 2 and 3 Must Be Included in the Incremental Regulatory Retirements, or Total Retirements, for Class Year 2019.

The Indicated TOs argued that the NYISO should include the UCAP of Indian Point Units 2 and 3 in the calculation of the Renewable Exemption Limit to increase the level of the limit available in the 2019 Class Year for renewable resources even though these resources announced their retirement in 2017 and the NYISO has modeled these resources as out of service since that time.[25] They argued "[i]t would run contrary to the purpose of incorporating the impact of retirements on the supply of UCAP in the Renewable Exemption Limit equation if the retirements are disregarded on the basis that the antecedent regulation is not 'new' enough or not

[22] *Id.*

[23] Younger Aff. ¶ 14.

[24] MMU Comments at 9.

[25] Indicated TO Filing at 11–12.

'amended.'"[26] They asserted that the NYISO's proposed tariff language is unclear as to whether these retirements will be deemed Incremental Regulatory Requirements.[27]

Contrary to the Indicated TOs' assertion, the NYISO's proposed tariff clearly excludes the Indian Point Units 2 and 3 retirements from being Incremental Regulatory Requirements because it provides that the Renewable Exemption Bank will initially be set at zero at the beginning of Class Year 2019 and the Incremental Regulatory Retirements will not include retirements that were addressed in prior Class Years.[28] While the retirements of Indian Point Units 2 and 3 will be incorporated into data that the NYISO uses for the BSM determinations for Class Year 2019, the retirements are not an incremental change in assumptions because they were included in the 2017 Class Year BSM analysis and the market has already responded.[29] As Class Year 2017 projects received the benefit of this regulatory retirement, including it in the Formula for determining the Renewable Exemption Limit for Class Year 2019 would double-count the retirements.[30]

Shortly after the announcement of the retirements of Indian Point Units 2 and 3, the NYISO changed its rules for representing retirements in its reliability and economic planning studies to assume resources would retire if there is credible public information that they will do so.[31] Thus, the NYISO modeled the Indian Point Units 2 and 3 retirements in the 2017 and 2019

[26] *Id.* at 11.

[27] *Id.* at 7.

[28] Younger Aff. ¶ 17 (citing April 2020 Filing at 18).

[29] *Id.* ¶ 18.

[30] *Id.*

[31] *See* Manual 26 Reliability Planning Process Manual, NYISO (Dec. 12, 2019) at Section 3.2.2 https://www.nyiso.com/documents/20142/2924447/rpp_mnl.pdf/67e1c2ea-46bc-f094-0bc7-7a29f82771de?t=1579616757323 (providing, in pertinent part, "Generator Owner filed or submitted to a government entity or otherwise made public, including but not limited to, an executed agreement, compliance plan, operating license, permit, or permit amendment, or other official notice evidencing their intention to deactivate upon an anticipated deactivation date.")

Economic Planning Studies, the 2018 Reliability Needs Assessment and the 2017 Class Year study.

The NYISO also performed a reliability analysis of the retirement of Indian Point Units 2 and 3 which determined that the resource adequacy deficit resulting from their retirement would be met if at least 600 MW of capacity was added in Zone G or 400 MW of capacity was added to in Zones H–J.[32] The reliability study determined that the expected new entry of the Bayonne Energy Center II Uprate (120 MW – Zone J), CPV Valley Energy Center (678 MW – Zone G), and Cricket Valley Energy Center (1020 MW – Zone G) would more than meet the reliability need.[33] Armed with this market information, all three of these resources have entered the market since the reliability study.[34] Cricket Valley closed on its financing two weeks after the Indian Point retirement announcement and commenced operations shortly before Indian Point Unit 2 shut down, essentially fully offsetting the removal of Indian Point Unit 2's capacity from the market.[35] If the Indian Point Units 2 and 3 retirements are included as Incremental Regulatory Requirements, the market would be flooded with approximately 2,000 MW of additional subsidized UCAP from renewable resources, keeping capacity prices depressed indefinitely.[36]

Thus, the Indian Point Units 2 and 3 retirements should not be included as an Incremental Regulatory Retirement in Class Year 2019 because the NYISO revised its procedures, its

[32] Younger Aff. ¶ 22 (citing Generator Deactivation Assessment Indian Point Energy Center, NYISO (Dec. 13, 2017), https://www.nyiso.com/documents/20142/1396324/Indian_Point_Generator_Deactivation_Assessment_2017-12-13.pdf/f673a0f8-5620-1d7b-4be2-99aaf781ac5c).

[33] *Id*.

[34] *Id*.

[35] *Id*. (citing Cricket Valley Energy Center, LLC Closes Financing of $1.584 Billion Energy Center, in Dover, New York, (Jan 24, 2017) https://www.cricketvalley.com/news/cricket-valley-energy-center-llc-closes-financing-of-1-584-billion-energy-center-in-dover-new-york/).

[36] *Id*. at 23.

reliability and economic analyses conducted under its comprehensive planning process have reflected these retirements and these retirements were also already assumed in the 2017 Class Year. Moreover, investors have already responded to the market signal with unsubsidized entry.

III. The Commission Should Reject the Protesting Parties' Argument that Resources that Are Unavailable in Summer Months Should Be Treated as Retired for Purposes of Calculating the Renewable Exemption Limit.

The Protesting Parties argued that suppliers that comply with the New York State Department of Environmental Conservation's "Peaker Rule"[37] by shutting down their operations during summer months should be treated as retired for purposes of calculating the Renewable Exemption Limit.[38] As Mr. Younger demonstrates in his affidavit, the NYISO operates a monthly capacity market and suppliers are not obligated to be available for all months of the year in such a market.[39] The Protesting Parties' proposal would only be viable if the NYISO adopted an annual capacity market that based a supplier's eligibility to participate in the capacity market only on its capability during peak summer months.[40]

Moreover, as the Commission assesses this claim, it must take into account the fact that the NYISO filed a proposal with the Commission to prioritize Public Policy Resources in the Part A Mitigation Exemption Test in Docket No. ER20-1718-000.[41] With respect to potential improvements, the Protesting Parties fail to recognize that the NYISO is expected to reflect in its Part A and Part B BSM mitigation exemption tests the reduced summer average UCAP ratings of

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[37] *See* 6 NYCRR Subpart 227-3; *see also* Adopted Subpart 227-3, Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines, Dep't of Envtl. Conserv., https://www.dec.ny.gov/regulations/116131.html.

[38] Indicated TO Filing at 15–16. Governmental Entities Filing at 4; Clean Energy Advocates at 6–7.

[39] Younger Aff. ¶ 27.

[40] *Id.* at ¶ 28.

[41] *Id.* at ¶ 30 (citing Docket No. ER20-1718-000, *New York Indep. Sys. Op. Inc.*, Proposed Enhancements to the "Part A Exemption Test" Under the "Buyer-Side" Capacity Market Power Mitigation Measures (Apr. 30, 2020) at 21).

suppliers engaging in seasonal shutdowns.[42] Assuming the Commission accepts this aspect of the proposal, the Part A analysis would appropriately reflect the proportional representation of the summer shutdowns in determining whether a Part A exemption should be granted.[43] The Part A mitigation exemption test is the best method to reflect the impact of seasonal shutdowns in the NYISO's BSM analysis because it compares expected prices with and without the proposed resource.[44] Thus, the Commission should reject the Protesting Parties' request to require the NYISO to treat seasonal shutdowns as retirements for calculating the Renewable Exemption Limit.

IV. The Commission Should Reject the Claims that the NYISO is Incapable of Determining Incremental Regulatory Retirements.

The Governmental Entities argued that the direct regulatory action component of the Incremental Regulatory Retirements "is unworkable and invites manipulation and gaming" because "[o]nly a generating unit owner knows the true economics, business decisions, and considerations that lead to retirement."[45] They asserted that it is unrealistic to expect the NYISO to have access to this information.[46] Likewise, the Indicated TOs argued it is unworkable for the NYISO to determine whether a retirement occurred due to a direct regulatory action.[47] As Mr. Younger demonstrates in his affidavit, these arguments are without merit because it should not be difficult for the NYISO to identify or track regulatory actions that force retirement or cause

[42] Younger Aff. ¶ 29–30.

[43] *Id*. at 30.

[44] *Id*.

[45] Governmental Entities Filing at 6.

[46] *Id*.

[47] Indicated TO Filing at 7.

significantly increased costs that then results in retirement because existing rules require the disclosure of such information to the NYISO.[48]

A good example of a direct regulatory action is the Peaker Rule which, absent investments in improved emissions control technology, is expected to force several New York City and Long Island peaking units to retire and is also forecast to cause reliability needs that must be met.[49] New regulations that would tighten the emission limits for other types of fossil units would also be an example of a direct regulatory action if it caused such resources to retire that would not retire in the absence of such action.[50] As IPPNY demonstrated in the IPPNY Protest, the NYISO can easily perform an economic test to determine that the Incremental Regulatory Retirement results from a direct regulatory action and not other factors.[51] The NYISO already performs such an analysis when it evaluates the costs and expected revenues of resources in its physical withholding analysis of deactivating resources in Mitigated Capacity Zones, and thus, the tariff requirements would simply be an extension of the analyses the NYISO and the MMU have been performing for over a decade.

V. The Commission Should Reject the Arguments that the NYISO's Proposed $0.50/kW-month Threshold for Price Impact to Set the Minimum Renewable Exemption Limit Must be Increased.

The NYISO proposed as a default mechanism a Minimum Renewable Exemption Limit that would reflect the amount of UCAP MW that would be forecasted to cause a $0.50/kW-month impact on ICAP prices for the Mitigated Capacity Zone.[52] The NYISO proposed that the

[48] Younger Aff. ¶¶ 31–33.

[49] *Id.* ¶ 31.

[50] *Id.*

[51] *Id.* (citing IPPNY Protest at 7–8).

[52] April 2020 Filing at 6–7.

Renewable Exemption Limit be the greater of the Formula as calculated or the Minimum Renewable Exemption Limit.[53] The NYISO asserted a $0.50/kW-month Minimum Renewable Exemption Limit was reasonable because it is the same value used in physical withholding thresholds under the NYISO's supplier-side capacity market power mitigation measures and it would have a limited impact on ICAP market prices.[54]

The Clean Energy Advocates claimed that the NYISO's proposed $0.50/kW-month value is "paltry" and requested that the NYISO should replace this level with the $2/kW-month threshold that is applied to uneconomic capacity sales from a Mitigated Capacity Zone.[55] The Indicated TOs argued that the NYISO should be required to use a $1.25/kW-month threshold as that level is the average of the physical withholding threshold and the uneconomic sale threshold.[56] Any proposal to increase the Minimum Renewable Exemption Limit beyond $0.50/kW-month or to combine it with the level produced under the Formula and apply an additive approach (i.e., set the cap by including both limits) would result in unreasonable market price suppression and should be rejected by the Commission.

Furthermore, as Mr. Younger demonstrates in his affidavit, the NYISO's proposal to base the Minimum Renewable Exemption Limit on the $0.50/kW per month threshold that the NYISO applies in its physical withholding analysis is appropriate because, in both contexts, the threshold would apply to a specific action that occurs only once but impacts the market for a long period in the future.[57] The purpose of the NYISO's physical withholding analysis is to

[53] *Id.*

[54] *See* Services Tariff Section 23.4.5.6.3, *see also* April 2020 Filing at 7.

[55] Clean Energy Advocates Filing at 10.

[56] Indicated TO Filing at 29.

[57] Younger Aff. ¶ 35.

protect the market from an uneconomic generator deactivation that will increase capacity prices well into the future. Similarly, the purpose of the NYISO's BSM rules is to protect the market from uneconomic entry of subsidized resources that would suppress capacity prices well into the future. In contrast, the NYISO's tariff imposes the higher $2/kW-month threshold for uneconomic sales from a mitigated capacity zone due to the short-term impact on the market. A supplier that crosses the $2/kW-month threshold would be deemed to be making an uneconomic sale only for a month. The NYISO would reevaluate the supplier's sales every month based on then current market conditions and would expect the resource to buy out of the transaction rather than continue to violate the threshold. The $2/kW-month threshold for uneconomic sales is also higher because it reflects that changes can occur in both the NYISO's and the neighboring markets after the supplier has already committed to the sale. The NYISO will impose a penalty if the threshold is triggered even if the sale was economic at the time it was made but intervening changes in the market conditions rendered it uneconomic.

The larger thresholds are also inappropriate because they will cause significant cumulative impacts. As Mr. Younger demonstrates in his affidavit, the proposed $2/kW-month proposed threshold could cause prices to crash to zero in the G–J Zone and Zone J in slightly more than nine years and 12 years, respectively.[58] The potential yearly and cumulative price impacts are very significant and therefore violate the Commission's directive that the Renewable Exemption Cap must limit the risk that renewable exemptions significantly impact market prices.[59]

[58] Younger Aff. ¶ 38.

[59] *Id.*

VI. CONCLUSION

For the foregoing reasons, the Commission should reject the Protesting Parties' arguments and conditionally accept the NYISO's Renewable Exemption Limit proposal subject to the clarifications presented in the IPPNY Protest and establish an effective date of June 8, 2020.

Respectfully submitted,

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Dated: May 13, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this day, I served the foregoing document by electronic mail or first-class mail upon each person designated on the official service list compiled by the Secretary to the Commission in this proceeding.

David B. Johnson
David B. Johnson

Dated: May 13, 2020

EXHIBIT 1

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.) Docket No. ER16-1404-002

AFFIDAVIT OF MARK D. YOUNGER

1. My name is Mark D. Younger. I am employed as President of Hudson Energy Economics, LLC. My business address is 480 Pondview Road, Petersburgh, New York 12138.

2. I previously provided an affidavit on April 28, 2020 in support of Helix Ravenswood, LLC's Comments and Limited Protest of the New York Independent System Operator, Inc.'s ("NYISO") proposed revisions to its buyer-side market power mitigation measures ("BSM Measures") in Attachment H to the Market Administration and Control Area Services Tariff ("Services Tariff") filed on April 7, 2020 in the above-captioned docket.[1] My qualifications are attached to that affidavit.

3. I write this affidavit in support of the answer of Independent Power Producers of New York ("IPPNY") to certain protests that were filed on April 28, 2020. IPPNY requested that I address: (i) proposals to modify the NYISO's proposed methodology for calculating the limit on the amount of Unforced Capacity ("UCAP") available for a Renewable Exemption (the "Renewable Exemption Limit") for each Mitigated Capacity Zone[2] within each Class Year Study, Additional SDU Study and Expedited Deliverability Study that would significantly increase the Renewable Exemption Limit; (ii) claims that

[1] Docket No. ER16-1404-002, *New York Indep. Sys. Operator, Inc.*, Compliance Filing and Request for Commission Action No Later Than June 8, 2020 (Apr. 7, 2020) ("April 2020 Filing").

[2] Capitalized terms that are not otherwise defined herein shall have the meaning specified in the Services Tariff.

the NYISO is not able to determine whether exiting resources are economic or uneconomic for purposes of calculating the Renewable Exemption Limit; and, (iii) proposals to increase the Minimum Renewable Exemption Limit.

The NYISO's Proposal to Calculate the Renewable Exemption Limit Based on Incremental Regulatory Retirements Is Appropriate

4. In its initial 2015 Order directing the NYISO to propose a Renewable Exemption cap, the Federal Energy Regulatory Commission ("Commission") made clear that it was concerned about artificial suppression of installed capacity ("ICAP") market prices.[3] The Commission reemphasized its concern in its February 2020 Order, rejecting the NYISO's proposed 1,000 MW ICAP cap on the amount of Renewable Exemptions that could be granted in any interconnection Class Year.[4] In its February 2020 Order the Commission noted that "a MW cap limits the risk that the renewable resources exemption will significantly impact market prices and it is such limitation that makes this tariff revision just and reasonable."[5]

5. The NYISO responded to the February 2020 Order by proposing a Renewable Exemption Limit that is set for the mitigation exemption test conducted in each final Interconnection Study comparing two MW limits, the latter of which would be based on the following four-part formula (the "Formula"):

> the sum of (i) the UCAP MW associated with the "Change in Forecasted Peak Load" calculated by the NYISO in accordance with proposed new Section 23.4.5.7.13.5.2, (ii) the UCAP MW value

[3] *N.Y. Pub. Serv. Comm'n v. N.Y. Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,022, at P 51 (2015) ("2015 Order").

[4] *N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,121, at P 48 (2020) ("February 2020 Order").

[5] *Id*.

> identified by the NYISO associated with the "Incremental Regulatory Retirements" in accordance with new Section 23.4.5.7.13.5.3, (iii) the "Unforced Capacity Reserve Margin" ("URM") Impact of the Qualified Renewable Exemption Applicants in the Class Year Study, Additional SDU Study, or Expedited Deliverability Study calculated by the NYISO in accordance with Section 23.4.5.7.13.5.4, and (iv) the UCAP MW in the "Renewable Exemption Bank" for each Mitigated Capacity Zone.[6]

To set the first limit, the NYISO proposed as a default mechanism a Minimum Renewable Exemption Limit that would reflect the amount of UCAP MW that would be forecasted to cause a $0.50/kW-month impact on ICAP prices for the Mitigated Capacity Zone.[7] The NYISO proposed that the Renewable Exemption Limit be the greater of the Formula as calculated or the Minimum Renewable Exemption Limit.[8]

6. The main component of the NYISO's proposal is to limit the amount of Renewable Exemptions that can be granted predominantly to the level of load growth and Incremental Regulatory Retirements. The Incremental Regulatory Retirements component is likely to be the most significant contributing factor in determining the level of the Renewable Exemption Limit. The NYISO's proposal to calculate the Renewable Exemption Limit based on Incremental Regulatory Retirements, as modified per the IPPNY and Helix Ravenswood comments and limited protests, is reasonable and appropriate because such retirements are forced by governmental action and would not be expected to occur in the absence of the regulatory action. It is appropriate to allow the State to offset the contraction in capacity caused by Incremental Regulatory Retirements

[6] April 2020 Filing at 6–7. For reasons addressed in my initial affidavit in this proceeding, the URM adjustment should be eliminated from the NYISO's proposed formula. *See* Docket No. ER16-1404-002, *supra*, Comments and Limited Protest of Helix Ravenswood, LLC (Apr. 28, 2020) at Attachment 1 ("Ravenswood Filing").

[7] *Id*. at 6–7.

[8] *Id*.

with the granting of Renewable Exemptions.

7. The protests filed by New York governmental entities, Clean Energy Advocates, and Indicated New York Transmission Owners ("Indicated TOs," collectively the "Protesting Parties")[9] oppose the NYISO's proposal to calculate the Renewable Exemption Limit based on Incremental Regulatory Retirements. Instead, these parties propose that all retirements in the NYISO's Localities should be included as part of calculating the level of the Renewable Exemption Limit.[10]

8. The Protesting Parties transform the Commission's directive that the Renewable Exemption not significantly impact market prices to a much different and far less restrictive requirement that the Renewable Exemption not significantly lower prices from their current levels.[11] The Indicated TOs go so far as to name their proposal the "Price Maintaining Quantity."[12]

9. The Commission directed the NYISO to develop a Renewable Exemption cap that does not significantly artificially suppress ICAP market prices to maintain the proper functioning of competitive markets largely free from the effects of out of market

[9] Docket No. ER16-1404-002, *supra*, Notice of Intervention and Limited Protest of the New York State Public Service Commission, New York State Energy and Research and Development Authority, and the City of New York (Apr. 28,2020) ("Governmental Entities Filing"); Docket No. ER16-1404-002, *supra*, Comments of the American Wind Energy Association, the Alliance for Clean Energy New York, the Natural Resources Defense Council, Sustainable FERC Project, and the Solar Council (Apr. 28, 2020) ("Clean Energy Advocates Filing"); Docket No. ER16-1404-002, *supra*, Indicated New York Transmission Owners' Protest (Apr. 28, 2020) ("Indicated TO Filing").

[10] Governmental Entities Filing at 3–4; Clean Energy Advocates Filing at 5–6; Indicated TO Filing at 5.

[11] As will be addressed below, the Clean Energy Advocates and Indicated TOs also propose to significantly increase the level set for the Minimum Renewable Exemption Limit and further propose to make it additive to the Formula. By doing so, the level of uneconomic renewable entry they argue should qualify for exemptions, if adopted, will cause the market prices to decline significantly from current levels—not in response to competitive signals but in response to out-of-market subsidies.

[12] Indicated TO Filing at 25.

subsidies.[13] In a competitive market, new entry occurs only if market revenues are expected to be sufficient to allow the entrant to recover its entry and operating costs over the long run.[14] In the NYISO and other independent system operators this is commonly referred to as the potential entrant's Net Cost of New Entry ("Net CONE").

10. Significant parts of the NYISO's markets are *currently* at prices that are well below potential entrants' Net CONE. Economic theory provides that new entry will not occur in a market that is operating well below the Net CONE. The market will correct itself over time as uneconomic units exit. Units that could not meet their short run operating costs would exit relatively quickly to stem their operating losses. Other units would exit as they encountered significant maintenance, retrofit or forced outage related costs that forced the cost of their continuing operation to rise above expected market revenues. As units exit the market, prices would rise to the point that they eventually support new economic entry. In a purely competitive market, new entry would not occur in these markets until prices rose to levels that supported the Net CONE of the new entrants.[15]

11. The recovery of prices in a market that is currently well below Net CONE levels is how a competitive market should operate to induce new entry and retain needed existing facilities. The Commission's directives that the Renewable Exemption not significantly impact ICAP prices and that the cap be structured to limit this risk are intended to ensure

[13] February 2020 Order at P 66.

[14] In general economics this is referred to as the Long Run Marginal Cost of supply.

[15] The NYISO sets the Installed Demand Curve based on the Net CONE of the Proxy GT for each capacity region to assure that the Demand Curve will provide prices that support maintaining minimum capacity requirements. Specific market entrants may have Net CONE levels that are less than the Proxy GT and therefore might enter the market while there is still some excess capacity in the market.

that Renewable Exemptions will not unduly restrict this market correcting process.

12. The NYISO's proposal to predominantly base the Renewable Exemption Level on Incremental Regulatory Retirements will place some limit on the impacts on the competitive market process. The NYISO's proposal will let State actions that would cause the amount of capacity in the market to shrink to be offset by State actions that support new renewable capacity entry.[16] It is also appropriate because the proposed structure will permit actions that reflect efficient competitive behavior of the market—such as the retirement of uneconomic units—to proceed unaffected which will result in market prices appropriately increasing towards Net CONE.

13. The Protesting Parties' proposals to base the level of the Renewable Exemption Limit on *all* retirements would effectively eliminate competitive economic behavior in the NYISO market and instead allow subsidized renewable entry to keep prices at the current levels which are well beyond equilibrium conditions. The G–J Locality capacity market is currently clearing at the New York Control Area ("NYCA") Wide Capacity Price.[17] Even with the loss of capacity resulting from the retirement of Indian Point Unit 2 on April 30, 2020, the NYISO's May Spot Market Auction showed that there was enough excess capacity in the G–J capacity market to clear 14.57% down the G–J Demand Curve which crosses zero at the 15% excess level. With Indian Point Unit 2's capacity added

[16] As addressed in IPPNY's and Helix Ravenswood's initial filings in this proceeding, the NYISO standard needs to be tightened to assure that units that are otherwise uneconomic are not included in Incremental Regulatory Retirements. *See, e.g.* Docket No. ER16-1404-002, *supra*, Comments and Protest of Independent Power Producers of New York, Inc. (Apr. 28, 2020) at 2 ("IPPNY Filing").

[17] ICAP Market Report – May 2020, NYISO (May 1, 2020) https://www.nyiso.com/documents/20142/10106066/ICAP-Market-Report-May-2020.xlsx/14398f22-ea0c-cefc-d797-44cc2a2c1ac2.

back to the market, as is the proper way to look at the Protesting Parties' proposal that all retirements should create room for Renewable Exemptions, the G–J capacity market would have had almost 1,000 MW beyond the zero crossing point of the G–J ICAP Demand Curve.

14. The formula also includes load growth. Consequently, the Protesting Parties' proposal effectively means that there is *no mechanism* other than the failure of the State to subsidize renewable entry that would bring the market clearing prices to the long-term equilibrium point.

15. If the Protesting Parties' proposal to base the Renewable Exemption Limit on all retirements was adopted, the Renewable Exemptions granted would enable entry of sufficient exempt Intermittent Renewable Resources to keep the G–J market at these remarkably long levels where it is virtually guaranteed to clear at NYCA wide prices. If the Protesting Parties' proposal to allow Renewable Exemptions to offset all retirements also included the NYISO's proposal that the Renewable Exemptions that had been allocated to the G–J market can be used by eligible renewable resources in the New York City ("NYC") market once the NYC specific bank had been exhausted, NYC capacity prices could be driven to NYCA levels as well. This would essentially supplant all competitive economic activity in that no resource would be able to enter the market without an out-of-market subsidy, and over time existing resources needed to assure reliability would also likely require out-of-market contracts.

16. The Protesting Parties' proposal to allow sufficient subsidized market entry by Intermittent Renewable Resources to maintain current low capacity prices would be disastrous. The capacity market in the Localities would cease providing appropriate price

signals to support reliability on the system, requiring out-of-market contracts to maintain needed resources that would otherwise be forced to retire. Competitive economic behavior in the NYISO markets would be eliminated and all the benefits that come from competitive markets would cease as well.

The NYISO Appropriately Proposed that the Retirement of the Two Indian Point Units Which Previously Has Been Incorporated in the NYISO's Studies Should Not Now Also Be Treated as Incremental Regulatory Retirements

17. The Indicated TOs argued that the retirement of Indian Point Unit 2 and the anticipated retirement of Indian Point Unit 3 next year[18] must be included in the Incremental Regulatory Retirements, or total retirements, for Class Year 2019, which would increase the level of the Renewable Exemption Limit available for renewable resources in that Class Year and in the future.[19] The NYISO effectively and appropriately excluded the Indian Point retirements as well as other retirements by proposing that the Renewable Exemption Bank be initially set at zero for the first study to which it will be applied, Class Year 2019, and that the Incremental Regulatory Retirements component must encompass only those retirements not addressed in previous Class Years.[20]

18. The Class Year 2019 analysis will assume that both Indian Point units are retired on schedule, as it will assume that the Cayuga units, Somerset unit and other units that have retired or plan to retire. All of these retirements will impact both the Part A and Part B exemption tests that the NYISO performs for the Class Year. However, the structure of

[18] Indian Point #2 ceased operating on April 30, 2020. Indian Point #3 is scheduled to cease operating by the end of April 2021.

[19] Indicated TO Filing at 12.

[20] April 2020 Filing at 18.

the NYISO's Renewable Exemption cap Formula serves a different purpose. It is designed to capture incremental regulatory forced retirements on an interconnection by interconnection study basis. The retirement of both Indian Point units is not an incremental change in assumptions because it was included in the 2017 Class Year BSM analysis.[21] Class Year 2017 projects already received the benefit of this regulatory retirement. Including it again in the Formula for determining the Renewable Exemption cap for Class Year 2019 would effectively be double-counting.

19. Given that the Indian Point units' retirement impacts have already been incorporated into the BSM analysis, it is appropriate that the NYISO is not proposing to include them with resources that are Incremental Regulatory Retirements.[22]

20. The market has had significant forenotice that the Indian Point units would be retiring and has already responded with new merchant entry to replace them.

21. Specifically, on January 9, 2017, New York State and Entergy announced that they had reached an agreement for Indian Point Units 2 and 3 to retire by the end of April 2020 and April 2021, respectively.[23] Shortly after that time the NYISO revised its rules for

[21] *See* Buyer Side Mitigation: ICAP Forecast – Class Year 2017 - 1 Assumptions & References, NYISO (June 8, 2018), https://www.nyiso.com/documents/20142/3025517/ICAP%20Buyer-side%20Mitigation%20Test%20Data%20Class%20Year%202017-1%20June%208%202018.pdf/ ("CY 2017 ICAP Forecast")

[22] CY 2017 ICAP Forecast at 8; Buyer Side Mitigation ICAP Forecast – Class Year 2017 - 2 Assumptions and References at 8, https://www.nyiso.com/documents/20142/3025517/ICAP%20Buyer%20Side%20Mitigation%20Test%20Data%20for%20Class%20Year%202017-2%20Initial%20Decision%20Round%20May%2014%202019.pdf/843862c4-5031-7949-7400-2fac17e9b76f. Class Year 2017 also recognized the shutdown of a number of peaking units in NYC that, had they continued operating, would have been subject to the New York State Department of Environmental Conservation's tightened NOx emission regulations for peaking units (the "Peaker Rule").

[23] Press Release, New York State Governor's Office, Governor Cuomo Announces 10th Proposal of the 2017 State of the State: Closure of the Indian Point Nuclear Power Plant by 2021 (Jan. 9, 2017), http://www.governor.ny.gov/news/governor-cuomo-announces-10th-proposal-2017-state-state-closure-indian-point-

representing retirements in its reliability and economic studies. Prior to the change, retirements in these studies included only resources that had already retired or filed a deactivation notice. The NYISO revised its rules to also include as retirements resources for which there was credible public information that they would be exiting the market. As a result of this change, all NYISO studies under its comprehensive planning process since the Indian Point retirement notice was issued represented that the units would be retiring consistent with the settlement agreement. This has included the 2017 and 2019 Economic Planning Studies ("CARIS" or Congestion Assessment and Resource Integration Study) and the 2018 Reliability Needs Assessment ("RNA"). As noted above, the 2017 Class Year study also assumed that the two Indian Point units would be retiring and therefore considered that fact in determining whether any Class Year 2017 projects should be eligible to receive a BSM exemption.

22. The competitive market responded to the Indian Point retirement announcement. When the NYISO performed its reliability analysis for the Indian Point units in 2017, it found that, so long as at least 600 MW of capacity was added in Zone G or 400 MW of capacity added to the system in Zones H–J, the resource adequacy deficit resulting from the retirement of the Indian Point Units would be met.[24] The study identified Bayonne Energy Center II Uprate (120 MW – Zone J), CPV Valley Energy Center (678 MW – Zone G), and Cricket Valley Energy Center (1020 MW – Zone G) as expected additions

nuclear-power; Press Release, Entergy, Entergy, NY Officials Agree on Indian Point Closure in 2020–2021 (Jan. 9, 2017), http://www.safesecurevital.com/entergy-ny-officials-agree-on-indian-point-closure-in-2020-2021/.

[24] Generator Deactivation Assessment Indian Point Energy Center, NYISO (Dec. 13, 2017), https://www.nyiso.com/documents/20142/1396324/Indian_Point_Generator_Deactivation_Assessment_2017-12-13.pdf/f673a0f8-5620-1d7b-4be2-99aaf781ac5c.

that would more than meet the reliability need.[25] Since that time all three units have entered the market. Cricket Valley closed on its financing two weeks after the Indian Point retirement was announced.[26] Cricket Valley started operating shortly before Indian Point Unit 2 shut down thereby resulting in its capacity essentially fully offsetting the Indian Point Unit 2 exit.

23. As the market has fully responded to the retirement the Indian Point Units, the market would be flooded with approximately 2,000 MW of additional UCAP if the Protesting Parties' argument that such retirements should retroactively be treated as a basis for Renewable Exemptions was granted. Such a result would also render the prior economic activity in response to competitive market signals uneconomic, thereby threatening future investments unless supported by out-of-market subsidies.

24. In their Comments and Protest, IPPNY and Helix Ravenswood addressed the reasons that resources that are impacted by a regulatory action but that would be uneconomic in the absence of the Regulatory Action should not be included in the Incremental Regulatory Retirements.[27] I agree with these positions that a resource should only be considered an Incremental Regulatory Retirement if the direct regulatory action is the deciding factor that causes the resource to retire.

25. Accordingly, Indian Point's retirement should not be included as an Incremental Regulatory Retirement because it was already assumed in the 2017 Class Year, it has

[25] *Id.*

[26] Cricket Valley Energy Center, LLC Closes Financing of $1.584 Billion Energy Center, in Dover, New York, (Jan 24, 2017) https://www.cricketvalley.com/news/cricket-valley-energy-center-llc-closes-financing-of-1-584-billion-energy-center-in-dover-new-york/.

[27] *See* IPPNY Filing at 6–8; Ravenswood Filing at 18–19.

been modeled in the NYISO's planning studies as retired since the settlement agreement was announced, and the market has responded to the market signals produced by those retirements.

Suppliers That Comply with the Peaker Rule by Implementing Seasonal Operation Should Not Be Treated As If They Have Retired In Calculating the Renewable Exemption Limit.

26. The Protesting Parties argued that suppliers that comply with the Peaker Rule by choosing not to run during the summer ozone season should be treated as if they retired, and therefore provide a larger Renewable Exemption Limit.[28] The Commission should reject this argument because it would be inappropriate to treat such suppliers as retired in the NYISO's monthly capacity market. The Protesting Parties propose that the seasonal operating units be deemed retired because they will not be operating during the peak summer months.[29]

27. Suppliers have no obligation to be available for all months of the year in a monthly market. Individual monthly market prices are calculated based on the capacity that is available and offered for that month, not based only on what capacity exists in any specific months.

28. If the NYISO was required to treat seasonal shutdowns as Incremental Regulatory Retirements, it would cause a more significant reduction in prices than the NYISO proposes as the basis for its Renewable Exemption Limit because it would fail to take into account that these suppliers would be part of the supply for most of the months of the

[28] Indicated TO Filing at 15–16. Governmental Entities Filing at 4; Clean Energy Advocates at 6–7.

[29] *Id.*

year. If the Renewable Exemption Limit is increased to account for these suppliers being shut down only during the peak summer months, it would effectively reduce capacity prices in the months in which these suppliers operate by the inflated Renewable Exemption level plus the suppliers' capacity. It would only be appropriate to treat seasonal shutdowns as Incremental Regulatory Retirements if the NYISO adopted an annual capacity market based on summer ratings like some of its neighboring markets use. This would result in all suppliers' participation in the markets being based on their capability during the peak summer months.

29. The Protesting Parties' request is also inappropriate because I expect that the NYISO will reflect the reduced summer average UCAP ratings of suppliers engaging in seasonal shutdowns in its Part A and Part B BSM mitigation exemption tests.

30. Both the Part A and Part B BSM mitigation exemption tests are effectively economic evaluations of future market prices and are thus better suited to account for suppliers that would be unavailable for part of the year. The Part A mitigation exemption test compares expected prices with and without the proposed resource and is, therefore the best way to account for the seasonal shutdowns. If the Commission accepts the NYISO's proposal to prioritize Public Policy Resources for the Part A mitigation exemption test that is currently pending in Docket No. ER20-1718-000, the Part A analysis would appropriately reflect the proportional representation of the summer shutdowns in determining whether a Part A Exemption should be granted.

The NYISO is Perfectly Capable of Evaluating Whether a Retirement is Due to Economics in the Absence of a Regulatory Action

31. Both the Governmental Entities and Indicated TOs claimed that the NYISO is incapable

of determining Incremental Regulatory Retirements. This claim is without merit because Incremental Regulatory Retirements must be caused by a "direct" regulatory action. The Peaker Rule is a perfect example of a direct regulatory action. It tightened the emissions limits for peaking units and defined how the units could meet those limits by either retiring, retrofitting the units or altering their operation to no longer emit during the peak NOx season. It is expected to result in numerous retirements and the NYISO has proposed to include those in Class Year 2019's determination of Incremental Regulatory Retirements. Future State actions might include new regulations that would tighten the emission limits for other fossil units. Direct regulatory actions are not particularly difficult to identify or track.

32. The State or regulatory body takes an action that forces closure or results in significant increased costs that then result in closure.

33. Moreover, the economic analysis that the NYISO would have to perform to determine that the Incremental Regulatory Retirement was a result of the direct regulatory action and not other factors is the type of analysis that the NYISO does all the time.[30] For example, it is essentially the same evaluation of costs and expected revenues that the NYISO performs in its physical withholding analysis of every exiting unit in a Mitigated Capacity Zone pursuant to section 23.4.5.6.1 of the NYISO tariff. The only incremental step here is that the NYISO would be evaluating whether the additional costs associated with

[30] IPPNY addressed the need for the NYISO tariff to be revised to include an economic analysis specific to determining whether a generator subject to a direct regulatory action was retiring because of such action. IPPNY Filing at 7–8. Specifically, IPPNY advocated: "The Commission should also direct the NYISO to propose tariff language that requires it to perform an economic analysis of retiring generators to provide an adequate basis for this determination, which shall be provided to the market monitoring unit ("MMU") as part of its consultation process with the MMU." *Id*.

complying with the direct regulatory action are forcing the unit to retire or making it uneconomic when in the absence of the direct regulatory action the unit would continue to be economic.

The NYISO's Proposed $0.50/kW-Month Default Price Impact Threshold to Set the Minimum Renewable Exemption Limit is Appropriate

34. The NYISO proposed as a default mechanism a Minimum Renewable Exemption Limit that would reflect the amount of UCAP MW that would be forecasted to cause a $0.50/kW-month impact on ICAP prices for the Mitigated Capacity Zone. The NYISO chose the $0.50/kW-month threshold because it is the same threshold that the NYISO uses for its physical withholding analysis.[31] The Clean Energy Advocates argue that the NYISO should be required instead to use the $2/kW-month threshold that is applied to uneconomic capacity sales from a mitigated zone.[32] The Indicated TOs seek to marry together these two concepts that serve different purposes and argue that the NYISO should be required to use a $1.25/kW-month threshold, the average of the physical withholding threshold and the uneconomic sale threshold.[33]

35. The NYISO has correctly chosen the threshold applied to physical withholding because it applies to a onetime action that would impact the market for an extended period of time. Much as a retirement that was determined to be physical withholding would raise capacity prices in the market well into the future, the uneconomic entry of subsidized resources would suppress capacity prices well into the future. Thus, it most closely

[31] April 2020 Filing at 7.

[32] Clean Energy Advocates Filing at 10.

[33] Indicated TO Filing at 29.

matches the impacts that the renewable exemption cap at issue here is being proposed to address in this proceeding.

36. The threshold for uneconomic sales from a mitigated zone is a short-term impact on the market and therefore has a higher threshold. If a supplier in a Mitigated Capacity Zone made an uneconomic sale the NYISO would reevaluate whether that sale triggered the threshold every month based on then current market conditions and would expect the resource to buy out of the transaction rather than continue to violate the threshold and incur penalties. Moreover, the threshold was set higher because it involves moving targets in both the NYISO and the neighboring market, i.e. it recognizes the value in both markets can change after the market participant has already committed to the sale. If the threshold is triggered later by market clearing price results following the sale, the NYISO will impose a penalty even if the sale was economic at the time it was made.

37. The default MW threshold that is being proposed here is appropriate because, like the physical withholding threshold, there is a one-time test for a factor that will impact prices for a long time just as the entry of a renewable resource getting an exemption would be expected to impact prices for a long time.

38. The Protesting Parties' larger thresholds are also inappropriate because of the level of cumulative impacts that they could cause. The current reference price is $18.44/kW-month in the G-J market. The proposed $2/kW-month threshold could result in a cumulative impact of moving down the entire length of the G–J Installed Capacity Demand Curve to a zero price in slightly more than nine years.[34] For the NYC market it

[34] This is assuming that the Incremental Regulatory Retirements are not based on all retirements thereby blocking the potential that market prices could ever rise from their current levels.

would take only slightly more than 12 years to move from a price consistent with needing new entry to a zero price. This potential yearly and cumulative impact on the capacity markets is very significant and therefore violates the Commission's directive that the Renewable Exemption cap must limit the risk that the Renewable Exemptions significantly impact market prices.

39. This concludes my affidavit.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.) Docket No. ER16-1404-002

I declare under penalty of perjury that the forgoing is true and correct.
Executed on May 13, 2020.

Mark D. Younger
Mark D. Younger