

January 31, 2020

By Electronic Portal

Hon. Michelle L. Phillips
Secretary to the Commission
New York State Public Service Commission
Agency Building 3
Albany, NY 12223-1350

Subject: Case No. 19-E-0530 – Proceeding on Motion of the Commission to Consider Resource Adequacy Matters

Dear Secretary Phillips:

In response to the New York State Public Service Commission’s December 20, 2019 *Notice Extending Reply Comment Deadline* in the above captioned proceeding, the New York Independent System Operator, Inc. hereby submits the attached reply comments.

Respectfully submitted,

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**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**CASE 19-E-0530 - Proceeding on Motion of the Commission to Consider Resource
Adequacy Matters**

**REPLY COMMENTS OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
ON RESOURCE ADEQUACY MATTERS**

The New York Independent System Operator, Inc. (“NYISO”) respectfully submits these reply comments in response to the New York State Public Service Commission’s (“PSC” or “Commission”) *Notice Extending Reply Comment Deadline* issued on December 20, 2019.

The central theme of the NYISO’s initial comments¹ was that the best way for New York State to achieve its environmental goals in a timely manner is through the collaborative development of wholesale energy market design enhancements that secure broad stakeholder support and that can be filed with the Federal Energy Regulatory Commission (“FERC”) under Section 205 of the Federal Power Act (“FPA”). The NYISO warned that, “unilateral attempts to change the NYISO’s resource adequacy structures . . . , are likely to result in extended delays and litigation with stakeholders that would impede New York’s ability to achieve its objectives.”²

Nearly all of the initial comments submitted to the Commission in this proceeding expressed support for the NYISO’s recommended approach and many did so strongly.³ A few

¹ *Initial Comments of the New York Independent System Operator, Inc. on Resource Adequacy Matters*, Case 19-E-530, Nov. 8, 2019 (“NYISO Initial Comments”).

² NYISO Initial Comments at 21.

³ As discussed below, in Section I, the NYISO has also observed that multiple comments were very critical of the “California Resource Adequacy Model,” *i.e.*, meeting resource adequacy needs principally through state-administered procurements of bilateral contracts.

commenters raised concerns about existing resource adequacy arrangements, but also expressed an openness to working towards market improvements. The breadth and depth of stakeholder support clearly demonstrates that the PSC should prioritize improvements to existing capacity market structures over pursuing alternative procurement models. As the NYISO stated in its initial comments, “the PSC should work with the NYISO, and the NYISO’s stakeholders, to develop market-based improvements to existing NYISO resource adequacy structures that are needed to better accommodate New York State’s energy policies and mandates.”⁴

Sections I and II of these Reply Comments address other parties’ initial comments in more detail. Section III describes the significant steps that the NYISO has taken in the short time since it filed its initial comments to begin to improve its buyer-side capacity market power mitigation measures (the “BSM Rules”) and to lay the foundation for further enhancements. Section IV agrees with commenters and reiterates the NYISO’s view that the Commission should not take hasty action in this proceeding. It also addresses FERC’s recent order requiring the PJM Interconnection, L.L.C. (“PJM”) to expand the scope of its Minimum Offer Price Rule (“MOPR”) to apply to both existing and new resources and rejecting various MOPR exemptions (the “PJM MOPR Order”).⁵ The NYISO understands that the PJM MOPR Order has caused concern about whether FERC might prevent the NYISO from enhancing its markets to better harmonize them with the realities of a transition to a cleaner grid that is being driven by New York’s environmental policies. Section IV explains that collaboratively developed market enhancements are the most viable way to ensure that FERC’s policies will not impede State

⁴ NYISO Initial Comments at 82.

⁵ *Calpine Corp., et. al.*, 169 FERC ¶ 61,329 (2019).

environmental goals and can be achieved in a timely manner.⁶ The PSC should not conclude that the PJM MOPR Order necessarily renders capacity market structures incompatible with State policy.

I. The Initial Comments Strongly Support the NYISO’s Position that Market Design Enhancements Are the Most Viable Approach to Harmonize the FERC-Jurisdictional Market Design with the Impacts of New York’s Environmental Policies

The NYISO’s initial comments stated that it hoped to “work collaboratively with the PSC, and with other stakeholders, to address the PSC Order’s concerns and to meet the reliability challenges that the transition to a cleaner grid will present.”⁷ They emphasized that “solutions should be market-based to the greatest extent practicable”⁸ and that “market-based approaches will enable New York State to meet its goals expeditiously while maintaining both reliability and the consumer benefits of competitive price signals.”⁹ The NYISO continues to believe that enhancing the current market structure is the best option for managing the transition required by the New York Climate Leadership and Community Protection Act (the “CLCPA”) and for the years after that transition is complete.¹⁰

⁶ The parties that sought an extension of the reply comment deadline did so in part because it was expected that the PJM MOPR Order would be issued and could impact New York. *See* Independent Power Producers of New York, Inc., *Request for Extension*, Case 19-E-0530 at 1 (noting that the PJM MOPR Order was on the agenda for FERC’s December 19, 2019 open meeting and that it could include “guidance on some of the issues that have been raised in the initial comments filed in the Commission’s resource adequacy case.”). The NYISO therefore understands that it is appropriate for parties to address the PJM MOPR Order in reply comments.

⁷ NYISO Initial Comments at 60.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 82 (“In the long run, those market mechanisms will also be the best approach after the transition is complete. Even in a 100 percent clean energy future, harnessing market forces will be the best way to send efficient price signals, protect consumers from investment risks, and support reliability. Market-based resource adequacy mechanisms should evolve, not be discarded, as New York pursues its environmental objectives.”).

The comments by other parties represent broad and strong stakeholder agreement with the NYISO's position. As Potomac Economics, Ltd. ("Potomac Economics") the independent market monitoring unit for the NYISO (the "MMU"), explained:

Robust markets have tremendous potential to harness the ingenuity of individuals to create novel solutions to environmental policy issues. State-directed long-term contracting mechanisms can never hope to be as effective as an efficiently designed market. New York State's ambitious policy objectives will be difficult to achieve if market participants have economic incentives that are at odds with the policy objectives. Thus, New York State policy makers can achieve their objectives more quickly and cost-effectively if they can rely on electricity markets that provide resource owners with the right incentives. A well-functioning market is important even to subsidized resources whose long-term profitability will be determined in part by future revenue streams from selling capacity, energy, and ancillary services in the NYISO market.¹¹

Similarly, the City of New York states that a "competitive market structure is preferable to other constructs," while emphasizing that "the markets must be designed to either support – or at the very least, not hinder – achievement of the State's policy goals."¹² The Joint Utilities note that "New York State has long been a strong proponent of competition and markets because of their potential to result in lower overall costs for customers" and emphasize "that NYISO's current resource adequacy approach can and should be improved."¹³ The Joint Utilities also assert that the "existing NYISO process has allowed markets to adapt as conditions have changed" and that the "best way to foster market evolution is to build from the existing competitive markets already in place."¹⁴ Multiple Intervenors, representing the interests of industrial and commercial customers in New York, urge the Commission to retain markets,

¹¹ *Initial Comments of Potomac Economics, Ltd.*, Case 19-E-0530, Nov. 12, 2019 ("MMU Initial Comments") at 3-4.

¹² *Comments of the City of New York*, Case 19-E-0530, Nov. 8, 2019 ("Initial NYC Comments") at 2.

¹³ *Initial Comments of the Joint Utilities on the Order Instituting Proceeding and Soliciting Comments*, Case 19-E-0530, Nov. 8, 2019 ("Initial Comments of Joint Utilities") at 4.

¹⁴ *Id.*

asserting that “[b]ulk power system reliability has been maintained, if not improved, under the watch of the NYISO and New York State Reliability Council, LLC” and that “competitive wholesale electricity markets have provided financial benefits to consumers by producing economically-efficient outcomes that are superior to what likely would have occurred under regulation.”¹⁵ Other parties take the same view.¹⁶

The NYISO’s initial comments stressed that it is interested in learning what potential market improvements might be proposed by other parties (or the PSC) and will not pre-judge any option. The NYISO is carefully considering the suggestions that various commenters have made¹⁷ as it works towards expeditiously developing potential improvements. At this time, however, the NYISO is still analyzing these market design proposals and has not yet formed a

¹⁵ *Initial Comments of Multiple Intervenors*, Case 19-E-0530, Nov. 8, 2019 (“Initial Comments of Multiple Intervenors”) at 2.

¹⁶ *See, e.g., Comments of New York Municipal Power Agency*, Case 19-E-0530, Nov. 8, 2019 (“NYMPA Initial Comments”) at 6 (“The present market structure has served the State well for over 20 years. It was carefully developed and refined throughout that time. Any changes or improvements that may arise out of this proceeding must be carefully vetted and studied so as to achieve the State’s goals of just and reasonable rates for ratepayers.”); *Comments of Institute for Policy Integrity*, Case 19-E-0530, filed Nov. 8, 2019 (“Initial Comments of Institute for Policy Integrity”), at 1 (“Wholesale markets work to ensure that decisions about the development and operation of power sector resources are efficient. Specifically, those markets provide efficient price signals to consumers and generators, and, as a result, allocate resources in ways that are beneficial for stakeholders in general and ratepayers in particular.”); *Comments of Independent Power Producers of New York, Inc.*, Case 19-E-0530, filed Nov. 8, 2019 (“Initial IPPNY Comments”) at 3 (explaining that IPPNY’s members’ interest in this proceeding is to ensure that any new PSC policies “do not increase market uncertainty and risk and are consistent with, and do not undermine in any respect, the functioning of non-discriminatory, competitive electricity markets in New York and its surrounding regions.”); *Comments of Calpine Corporation and Vistra Energy Corp.*, Case 19-E-0530, filed Nov. 8, 2019 (“Calpine Initial Comments”) at 3 (“Calpine and Vistra Energy respectfully request that the Commission remain committed to the NYISO’s markets and continue working with the NYISO and its market participants on market design changes that are necessary to achieve the goals of the CLCPA through competitive markets.”); *Comments of NRG Energy, Inc.*, Case 19-E-0530, filed Nov. 8, 2019, at 2 (“The concern that the capacity market works at logger heads with a low-carbon energy market is unwarranted. The current capacity market has successfully maintained reliability in the State and as recognized by Mr. Stoddard, has ‘allowed for a rapid evolution of the power grid.’”) (“Initial NRG Comments”).

¹⁷ *See, e.g., MMU Initial Comments* at 18-22, *Initial Comments of the Joint Utilities* at 20-26, *Initial Comments of New York Power Authority*, Case 19-E-0530, Nov. 8, 2019 (“Initial NYPA Comments”) at 20-26, *Initial NYC Comments* at 15-17, *Initial NRG Comments* at 10-13. *Comments of Long Island Power Authority*, Case 19-E-0530, filed Nov. 8, 2019, at 7-8 (“Initial LIPA Comments”); *Comments of the U.S. Energy Storage Association*, Case 19-E-0530, filed Nov. 8, 2019, at 3-5.

final opinion on any of them, except to the extent that it is has identified a few MMU proposals to consider for early implementation.¹⁸ The Commission should likewise not rush to endorse one of these new proposals without allowing due time for analysis and review.

The NYISO notes in particular that multiple commenters¹⁹ strongly endorsed the NYISO’s carbon pricing proposal. The NYISO’s initial comments explained that carbon pricing will address, at least in part, the principal policy concerns²⁰ identified by the PSC’s August 2019 *Order Instituting Proceeding and Soliciting Comments* (“PSC Order”).²¹ The carbon pricing proposal is fully developed and has already been thoroughly vetted by stakeholders. In addition, neighboring Regional Transmission Organizations have suggested that states in their regions consider developing carbon pricing rules to reconcile their own environmental goals with FERC policies.²² The NYISO continues to believe that carbon pricing should be adopted to both ensure

¹⁸ See Section III, below.

¹⁹ See, e.g., *Comments of Exelon Corporation*, Case 19-E-0530, Nov. 8, 2019 (“Exelon Initial Comments”) at 15-16, 20-24; *Comments of Advanced Energy Economy Institute*, Case 19-E-0530, Nov. 8, 2019, at 4; Initial Comments of Institute for Policy Integrity at 6; MMU Initial Comments at 9; *Initial Comments of the New York Association of Public Power*, Case 19-E-0530, Nov. 8, 2019, at 2; Calpine Initial Comments at 3-4; Initial IPPNY Comments at 4-5. See also *Reply Comments of Eastern Millwright Regional Council Local 1163*, Case 19-E-0530, January 31, 2020 (supporting carbon pricing).

²⁰ See PSC Order at 3-4 (identifying the PSC’s two principal stated concerns. First, that “ICAP, as currently designed, is an incomplete resource adequacy instrument because it fails to recognize and provide compensation for many important factors, such as environmental and local reliability benefits. Because of this, there is no guarantee that the resources that clear the ICAP auctions are the same ones needed to meet the State’s clean energy and other mandates.” Second, that “the NYISO may impose ‘mitigation’ on resources that are the subject of state policy support by intervening to raise their minimum bid levels into the NYISO-administered auctions and thereby potentially causing them to not clear the auction, and therefore to not be counted as eligible capacity resources. As a result, consumers may pay higher costs than necessary, and that increase could grow substantially over time as the State’s clean energy goals expand.”).

²¹ See NYISO Initial Comments at 62-63. (“Carbon pricing would not directly apply to the capacity market but it would allow the NYISO-administered markets as a whole to internalize the cost of emissions and reward resources with desired environmental attributes. By doing so, carbon pricing would ameliorate concerns that the NYISO’s existing ICAP product does not compensate resources for environmental and local reliability benefits. Similarly, by making resources less dependent on capacity revenue it would help to reduce the risk that consumers would be exposed to “double payments” for capacity.”)

²² See, e.g., *PJM: Carbon Pricing the Answer to Subsidy Dispute*, by Rich Heidorn Jr., *RTO Insider*, January 23, 2020; *ISO New England Letter to Senators Whitehouse, et. al.*, November 21, 2019 (“We agree – CASPR is a second best-solution and have long advocated that the region instead adopt a carbon price, which is a simple and easily-implemented mechanism for reducing (or eliminating) carbon and sparking a clean energy

efficient markets outcomes and provide New York State with a powerful tool to achieve its ambitious environmental goals in a timely manner.

The NYISO also acknowledges that energy and ancillary services market improvements will likely be needed to complement capacity market changes.²³ Indeed, the NYISO is actively pursuing energy and ancillary services market changes that are necessary to meet reliability needs as New York transitions to a cleaner grid.

The NYISO observes that many comments expressed significant concerns about the possibility that the California Resource Adequacy Model might be implemented in New York.²⁴ The California Public Utilities Commission (“CPUC”) has found that the “model leads to ‘costly out-of-market [resource adequacy] procurement due to local procurement deficiencies’ and does not provide ‘cost effective and efficient coordinated procurement.’”²⁵ For this reason, the CPUC itself has been exploring alternative procurement mechanisms, and a group of community choice associations, transmission owning utilities, and generators have developed a settlement agreement that adopts a “residual central procurement” mechanism that has the essential characteristics of the capacity markets that are used in NYISO, PJM, and ISO-NE.”²⁶

Other commenters also highlighted various problems that the California Resource Adequacy Model has presented. For example, the MMU described how the California Resource Adequacy Model fails to provide adequate price signals for efficient market entry by renewable

transition.”) available at https://www.iso-ne.com/static-assets/documents/2019/11/combined_iso_us_senate_nov_18_and_22_letters.pdf.

²³ See Initial Comments of the Joint Utilities at 20-26; Initial LIPA Comments at 6-8; *Comments of Key Capture Energy*, Case 19-E-0530, filed Nov. 8, 2019, at 2-9.

²⁴ For its part, the NYISO also identified several preliminary concerns with the adoption of the California Model in New York. See NYISO Initial Comments at 66-71.

²⁵ MMU Initial Comments at 14, citing *Decision Refining the Resource Adequacy Program*, Decision 19-02-022 of the Public Utilities Commission of the State of California, February 21, 2019 at 18.

²⁶ *Id.*

resources, or to secure such market entry at the lowest cost to load. Helix Ravenswood notes that although California “has achieved slightly more than 30% renewable energy penetration as of 2019” – an amount that is less than half of the mandated level under the CLCPA – “there has been supply volatility due to intermittency of resources resulting in the need to: (i) curtail renewable resources, (ii) dispatch more balancing resources, and (iii) execute long-term, out-of-market, resource adequacy contracts with additional fossil-based resources.”²⁷ Similarly, the Joint Utilities note that “[w]ithout a centralized auction mechanism with relatively robust participation, California LSEs have routinely been deficient on capacity.”²⁸

Commenters also emphasized that long-term Power Purchase Agreements (“PPAs”) under a bilateral resource adequacy model present acute risks of misallocating resources given that they set prices and quantities for multiple years, and cannot be adjusted to take advantage of evolving cost reductions in clean technology or shifts in load. The Joint Utilities suggest that these impacts are already occurring in California, where there has been a “flight of load for commodity service through ‘Community Choice Aggregators’ or ‘CCAs,’” which “are attempting to avoid the utility supply portfolio on the premise that they can take advantage of lower market prices as the price of technology comes down so that new supplies are necessarily lower cost than the MW weighted average cost of a portfolio which started more than 10 years ago.”²⁹ As a result of these long-term shifts in load, in combination with long-term, fixed-price contracts, Pacific Gas and Electric Company currently “is over-contracted” and the CPUC has had to address related stranded cost issues.³⁰ The inflexibility and high costs of long-term PPAs

²⁷ *Initial Comments of Helix Ravenswood, LLC*, Case 19-E-0530, Nov. 8, 2019, at 8.

²⁸ *Initial Comments of the Joint Utilities* at 32.

²⁹ *Id.* at 33.

³⁰ *Id.*

thus “can create a drag on utility balance sheets, increase perceptions of market risk and result in higher utility cost of debt and rate of return requirements, which in turn increase the costs of project development and the costs to consumers.”³¹

In short, the record in this proceeding demonstrates that the PSC should prioritize working with the NYISO and its stakeholders to pursue market design improvements that will better harmonize the NYISO-administered markets with the impacts of state environmental policies.

II. The Initial Comments Strongly Support the NYISO’s Position that its Stakeholder Process is the Best Forum for Quickly Developing Market Design Enhancements that Can Be Implemented in Time to Meet the CLCPA’s Deadlines

Other parties in this proceeding largely support the NYISO’s position that “[t]he task of reconciling wholesale electricity market design with evolving state environmental policies will have the highest likelihood of success through the NYISO’s shared governance process.”³² Any change to the resource adequacy arrangements currently established by the NYISO’s Market Administration and Control Area Services Tariff will require FERC approval. The NYISO stakeholder process is the most viable vehicle for building stakeholder consensus and submitting market design improvements under Section 205 of the Federal Power Act (which imposes a less stringent burden of proof than Section 206).

For example, the Independent Power Producers of New York, Inc. (“IPPNY”) “urges the Commission to reaffirm its commitment to the ongoing development of the NYISO’s energy, ancillary service, and ICAP markets by directing Department of Public Service Staff . . . to work

³¹ *Id.*

³² NYISO Initial Comments at 20.

through the NYISO's stakeholder process to develop and implement market design changes that harmonize the State's public policy initiatives with competitive markets."³³ Exelon argues that:

a robust stakeholder process with input from the State, NYISO and market participants will lead to better solutions. While it is hard to imagine any comprehensive market redesign avoiding litigation entirely, a fulsome stakeholder process may lessen the number of issues in dispute and the number of market participants opposed to a redesign.³⁴

Multiple Intervenors echo this theme, asserting that:

the NYISO administers an open and well-functioning stakeholder process in which New York State Department of Public Service Staff ("DPS Staff") participates regularly. While that process does not guarantee that any party will achieve its desired outcome every time, it has a long track record of producing favorable outcomes which often are superior to proposals advanced initially by the NYISO or individual parties. To the extent the Commission and/or DPS Staff desires modifications to the NYISO's existing ICAP markets, they ideally should be advanced in that forum, where all stakeholders – and the NYISO itself – would have an opportunity to question, comment upon, discuss, advance modifications to, and ultimately vote upon various proposals.³⁵

A number of other commenters also request "that the Commission remain committed to the NYISO's markets and continue working with the NYISO and its market participants on market design changes that are necessary to achieve the goals of the CLCPA through competitive markets."³⁶ Long Island Power Authority asks the Commission, in the near term, to "work with NYISO and stakeholders to find a solution to storage and renewable exemptions within NYISO's current buyer-side mitigation rules and to support the development of new market product(s) for flexible resources" and, in the longer-term, to work with the NYISO and stakeholders to improve ICAP market rules.³⁷ The Natural Resources Defense Council and other environmental groups,

³³ Initial IPPNY Comments at 6.

³⁴ Initial Exelon Comments at 24.

³⁵ Initial Comments of Multiple Intervenors at 7.

³⁶ Calpine Initial Comments at 3.

³⁷ *Comments of Long Island Power Authority*, Nov. 8, 2019 ("Initial LIPA Comments") at 16.

which have been critical of capacity markets, concede that “productive collaboration with NYISO regarding emerging needs for grid services as the resource mix evolves and strategically planned and sited will help New York phase out dirty fossil fuel units and replace them with efficiency, strategically sited storage and renewables, achieve the CLCPA emissions reductions and clean energy mandates on-time while maintaining affordability.”³⁸ Those comments also emphasize that a “successful outcome of cooperative engagement with NYISO is the most straightforward path for the state to achieve its goals.”³⁹

A few commenters suggested processes outside of the normal stakeholder process be used to explore the path forward, such as PSC-initiated technical conferences or studies.⁴⁰ The NYISO respectfully submits that there is an enormous amount of work that must be done through the NYISO’s established shared governance system process. While the NYISO has no objection to technical conferences before the PSC, they should be carefully structured to inform, but not duplicate, the stakeholder process that is already underway.

III. The NYISO Has Taken Additional Actions Since the Initial Comments Were Filed that Demonstrate its Commitment to Take Effective Near-Term Action

The NYISO continues to be mindful that the PSC and certain commenters expressed misgivings regarding the ability of the NYISO stakeholder process to make timely changes to the BSM Rules.⁴¹ The NYISO’s initial comments emphasized that it has committed to completing a

³⁸ *Comments of the Natural Resources Defense Council, Sustainable FERC Project, Sierra Club, New Yorkers for Clean Power, Environmental Advocates of New York, and Vote Solar*, Case 19-E-0530, Nov. 8, 2019 (“Initial NRDC Comments”) at 11. *See also* Initial NRDC Comments at 2 (allowing that a “NYISO-driven approach” might help New York achieve its environmental goals.).

³⁹ *Id.* at 19.

⁴⁰ *See*, Initial NYC Comments at 22-23.

⁴¹ *See, e.g., Motion for Leave to Answer and Answer of the New York State Public Service Commission and the New York State Energy Research and Development Authority*, Docket No. EL19-86-000 at 6-7 (October 1, 2019). *See also* Initial LIPA Comments at 3.

comprehensive review of the BSM Rules in 2020 and encourages the PSC to engage in the effort.⁴²

Since the NYISO's initial comments were filed, the NYISO has made two tariff filings at FERC proposing to modify aspects of the BSM Rules, both after a successful NYISO stakeholder process and vote. On December 19, it made a Section 205 filing to improve its Class Year interconnection processes which included, among other things, modifications to improve the schedule for many resources receiving determinations under the BSM Rules.⁴³ The PSC supported the Class Year improvements.⁴⁴ Similarly, on December 20, the NYISO filed multiple proposed enhancements to its existing Competitive Entry exemption under the BSM Rules.⁴⁵ These changes reflect the robust secondary over-the-counter hedging market that complements the short-term NYISO-administered capacity market. They are expected to facilitate the repowering and replacement of existing generation facilities, which would be consistent with meeting CLCPA mandates. Both filings received unanimous support at the stakeholder Management Committee and neither was protested at FERC. This demonstrates that it is possible for the NYISO and its stakeholders to work collaboratively to change the BSM Rules.

In addition, as the NYISO stated that it would do in its initial comments,⁴⁶ it has initiated its Comprehensive Mitigation Review ("CMR") in the stakeholder process which is examining various modifications to its current BSM Rules. On December 13, the NYISO made an initial

⁴² See NYISO Initial Comments at 76.

⁴³ New York Independent System Operator, Inc., *Proposed Tariff Revisions Regarding Interconnection Process Improvements*, Docket No. ER20-638-000 (Dec. 19, 2019).

⁴⁴ The PSC filed comments supporting the improvements to the Class Year process. *Notice of Intervention and Comments of the New York State Public Service Commission*, Docket No. ER20-638-000 (January 9, 2020).

⁴⁵ New York Independent System Operator, Inc., *Proposed Enhancements to the Competitive Entry Exemption Under its "Buyer-Side" Capacity Market Power Mitigation Measures*, Docket No. ER20-663-000 (Dec. 20, 2019).

⁴⁶ See NYISO Initial Comments at 59-63.

presentation to a joint meeting of its Installed Capacity Working Group and Market Issues Working Group.⁴⁷ At that meeting, the NYISO explained that it was expanding the objective of the CMR so that it would seek to “[m]odify NYISO market structures in a balanced manner that preserves competitive price signals and economically efficient market outcomes required to maintain system reliability and supports the [CLCPA’s] goals.” The NYISO also emphasized that it was expediting the review so that it could be completed in 2020. The NYISO’s President and CEO reaffirmed that the CMR was a top priority item in his recent “State of the Grid” address.⁴⁸

Further, the NYISO is already exploring with stakeholders certain proposals related to the CMR that might be implemented in the near term. The NYISO has already held multiple discussions with its stakeholders on several proposals to date.⁴⁹ While the NYISO is still examining the effectiveness of proposals aimed at improving the administration of the capacity markets and the BSM Rules, this effort exemplifies the NYISO’s willingness and ability to work with its stakeholders to act quickly to harmonize competitive market structures with the consequences of State environmental policies. The NYISO remains committed to working through the CMR process to determine the preferred path forward.

⁴⁷ See

<https://www.nyiso.com/documents/20142/9766969/Comprehensive%20Mitigation%20Review.pdf/dda25f2b-8fdf-e50b-7547-94709cf4b02f>.

⁴⁸ See <https://www.nyiso.com/-/press-release-nyiso-president-and-ceo-rich-dewey-delivers-state-of-the-grid-address>.

⁴⁹ Specifically, the NYISO made stakeholder presentations concerning potential changes to the “Part A Test” under the BSM Rules on December 19 and January 13. See, e.g., <https://www.nyiso.com/documents/20142/10252714/CMR%20Part%20A%20Rev%2001132020.pdf/4f901c4f-58a4-35e4-ef3c-c97b03bd71b0>. The NYISO presented on “Mitigation Study Period” issues on January 8 and 21. See, e.g., <https://www.nyiso.com/documents/20142/10375030/Jan21%20Enhanced%20BSM%20Mitigation%20Study%20Period%20Simplified%20Proposal.pdf/ba66897d-46d0-4994-11b1-764cdf805530>.

IV. The PSC Should Not Act Hastily in Response to the PJM MOPR Order or Concerns Regarding Possible FERC Action to Expand the BSM Rules

Many commenters agreed with the NYISO that the Commission should take a deliberate approach and avoid hasty decisions in this proceeding.⁵⁰ There is broad support for moving quickly to begin evaluating options, but only a handful of comments suggested that the PSC should make major substantive decisions quickly.⁵¹

The NYISO understands that the PJM MOPR Order has caused concern that FERC may require the NYISO to expand its use of the BSM Rules and that there is a perception that this could only be avoided by abandoning capacity markets. The NYISO respectfully urges the PSC not to take that view. Rejecting market-based resource adequacy mechanisms would needlessly deprive New York consumers of the many benefits that capacity markets have brought⁵² and promise to bring in the future.⁵³ Among other considerations, more than forty requests for rehearing of the PJM MOPR Order have been filed. Most argue that the order impermissibly intrudes into state-jurisdictional territory and that FERC should moderate its approach.⁵⁴ To the

⁵⁰ See NYISO Initial Comments at 2, 20, 90; see also Initial NYC Comments at 22 (cautioning the PSC against “making any hasty decisions”), *Comments on Resource Adequacy Matters*, Utility Intervention Unit, Division of Consumer Protection NYS Department of State, Case 19-E-0530, Nov. 8, 2019, at 1 (“there is no immediate need to significantly alter the NYISO’s markets.”), Initial NYMPA Comments at 1 (“Before taking any action in this proceeding, the Commission should carefully evaluate and study all possible alternatives, with input from stakeholders, so as to arrive at the least costly solution that will promote the State’s goals while minimizing market disturbance and unintended consequences.”), *Comments of Integrated Storage Technologies*, Case 19-E-0530, Nov. 9, 2018 at 2 (“We do, however, caution that the state cannot act hastily in this proceeding.”).

⁵¹ See Initial NRDC Comments at 3 (“However, if the FERC imposes a sweeping BSM mechanism in its decisions in the coming months, the State should move up its consideration of voluntary capacity markets to a date much sooner than 2025.”).

⁵² See, e.g., NYISO Initial Comments at II.B through II.F.

⁵³ See Initial NRG Comments at 9 (“If New York were to eliminate its capacity markets as a reaction to the PJM docket out of fear that subsidized resources in New York may be subject to a rule that applies a higher price floor and decreases their chances of clearing and receiving any capacity revenue, such action would be akin to throwing out the baby with the bath water.”).

⁵⁴ See, e.g., *Request for Rehearing and Request for Clarification of PJM Interconnection, L.L.C.*, Docket No. EL16-49-002, EL18-178-002, and ER18-1314-002 (Jan. 21, 2020) (stating that FERC’s “pursuit of greater market efficiency as communicated in the order may have paradoxically unintended consequences over time and may result in less economic efficiency.” *Id.* “[t]he new approach also needlessly interferes with state resource

extent that these arguments are accepted they could make FERC’s policies more compatible with New York’s environmental goals.

The NYISO’s initial comments described FERC’s “standard solution” policy to capacity market power mitigation.⁵⁵ FERC has held that “[a]bsent a showing that a different method would appropriately address particular state policies,” FERC intended to use “mitigation to address the impacts of state policies on the wholesale capacity markets.”⁵⁶ FERC has held that “there can be more than one valid method of managing” the impacts of state policies, “and that methods may be tailored to the specific challenges posed by the state policies in a given region.”⁵⁷ In the ISO New England, Inc. region, FERC found that the “Competitive Auctions with Sponsored Resources” (“CASPR”) mechanism was an appropriate accommodation of state policies.

The PJM MOPR Order did not overrule the “standard solution” policy or the CASPR precedent. FERC’s finding that PJM had not proposed sufficient market-based accommodations and therefore must expand its use of the MOPR does not mean that market design enhancements in New York would necessarily be rejected.⁵⁸ Thus, the PJM MOPR Order underscores the importance of the NYISO, the PSC, and stakeholders working together to develop *market enhancements* that could be filed under Section 205 and forestall the potential need for expanded

policies well beyond what is needed to protect the market against inefficient price formation and achieve rates within a zone of reasonableness.”

⁵⁵ NYISO Initial Comments at 55-56.

⁵⁶ CASPR Order at P 22.

⁵⁷ *Id.*

⁵⁸ In particular, the PJM MOPR Order summarily rejected proposals by certain commenters to adopt carbon pricing as an alternative to mitigation. But there was not a fully developed record on carbon pricing in that proceeding. FERC’s rejection of third party suggestions that carbon pricing be adopted in a PJM mitigation docket has no bearing on how FERC would respond to a broadly supported New York carbon pricing proposal submitted under Section 205.

mitigation. FERC precedent is clear that different regions, including the NYISO and PJM, may have different market designs, and market power mitigation regimes, that reflect differing regional circumstances.⁵⁹ The fact that the NYISO is a single state entity may increase the likelihood that a New York specific alternative to the “standard solution” would be accepted. For example, the PJM MOPR Order was based in part on a concern that subsidies by some PJM states would harm consumers in other PJM states – a risk that does not exist in a single state ISO.⁶⁰

At a minimum, to the extent that the PSC determines that it must seriously consider non-market-based resource adequacy alternatives, it should not act precipitously. The NYISO respectfully urges the PSC to first fully examine possible enhancements to competitive capacity markets that would enable the state to more readily achieve its environmental goals in an economically efficient manner. Further, if the PSC examines non-market-based alternatives, it should carefully assess the costs, potential delays, and viability of such options, including the potential impact of uncertainty on decisions to invest in new or existing resources. Continuing to support competitive wholesale electricity markets and pursuing the environmental goals under the CLCPA both represent New York State public policy decisions. They should not be seen as “either/or” propositions. They do not need to be in conflict. To the contrary, New York is most

⁵⁹ See, e.g., *N.Y. Pub. Serv. Comm’n v. N.Y. Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,022 at P 78 (2015) (emphasizing that the Commission, “has recognized that market design and rules need not be identical among the regions and may instead reflect the unique characteristics of the markets as necessary. PJM’s markets are fundamentally different from NYISO’s, such that what may be appropriate for PJM is not necessarily appropriate for NYISO.”) (Citations omitted).

⁶⁰ See, e.g., PJM MOPR Order at n. 23, citing *PJM Interconnection, L.L.C., et al.*, 137 FERC ¶ 61,145 at P 3 (“Our intent is not to pass judgment on state and local policies and objectives with regard to the development of new capacity resources, or unreasonably interfere with those objectives. We are forced to act, however, when subsidized entry supported by one state’s or locality’s policies has the effect of disrupting the competitive price signals that PJM’s [capacity auction] is designed to produce, and that PJM as a whole, including other states, rely on to attract sufficient capacity.”), quoted with approval in *NJBPU*, 744 F.3d at 101, quoted with approval in *Hughes*, 136 S. Ct. at 1296). See also *PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 at P 67 (2018) (“PJM’s Capacity Repricing proposal also represents an unjust and unreasonable cost shift to loads who should not be required to underwrite, through capacity payments, the generation preferences that other regulatory jurisdictions have elected to impose on their own constituents.”).

likely to achieve its environmental goals quickly through competitive market structures, including capacity markets.

V. Conclusion

The NYISO respectfully renews its request that the PSC embrace the recommendations offered in its initial comments. Commenters in this proceeding broadly support the NYISO's recommendation that the PSC work with the NYISO, and with stakeholders, to develop market-based improvements to existing NYISO resource adequacy structures. Such improvements would better harmonize the FERC-jurisdictional markets with New York State's environmental policies. They represent the best way for New York to achieve its environmental goals as fully and quickly as possible. FERC's issuance of the PJM MOPR Order only reinforces the need for a collaborative effort to build upon and improve existing capacity market structures.

Respectfully submitted,

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January 31, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Rensselaer, NY this 31st day of January 2020.

/s/ Joy A. Zimmerlin

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