

protests and ensure the accuracy of the record in this proceeding.³ The Commission should therefore exercise its discretion and accept this answer.

II. ANSWER

The NYISO is pleased that there is so little opposition to the RTS Filing, despite the number and complexity of the issues involved. It is striking that all but one of the substantive pleadings express strong support for the Real-Time Scheduling (“RTS”) proposal, even though they go on to raise specific objections to a relatively small number of RTS components. This is not surprising because, as the RTS Filing explains, RTS was unanimously endorsed by the NYISO’s stakeholders and will bring many compelling benefits. There is clearly nothing in the protests that would justify delaying the issuance of an order accepting the RTS Filing as a whole.

Although the protests in this proceeding are narrow in scope, they are nonetheless not well taken. As is described in the following sections, many protests raise collateral attacks on matters addressed and decided in other dockets. Other protests seek to advance particular stakeholder’s agenda with results that would undermine the efficiency of the ISO-Administered Markets, prevent the NYISO from exercising reasonable discretion, squander its resources, needlessly interfere with the use of proven market power mitigation measures, or prematurely decide questions that should be resolved through additional stakeholder discussions. Other protests are based on distortions of the NYISO’s proposals or mischaracterizations of Commission precedent. All should be rejected.

³ If the Commission determines that 18 C.F.R. § 213(d) (2003) applies to this filing the NYISO respectfully requests that its answer be accepted out-of-time. The protests were filed immediately before Christmas and most of the usual response period fell during the holiday season.

A. The NYISO Should Not Be Required to Restore “Price-Chasing” Mechanisms that Never Functioned As Intended and Will Not Be Needed Under RTS

Some of the protests ask that the NYISO be compelled to restore tariff provisions that currently allow off-dispatch generators to be compensated for generating above their scheduled output levels, an activity widely referred to as “price-chasing.”⁴ The NYISO’s desire to move away from the existing price-chasing model in RTS was discussed extensively during the stakeholder process, with only a few stakeholders objecting. Essentially, the NYISO believed that it was appropriate to move beyond price-chasing because its benefits were smaller than anticipated⁵ and had created unanticipated operational difficulties. The NYISO addressed the limited stakeholder objections by committing to investigate the schedule and priority of a future market enhancement that would allow generators to request NYISO-established fifteen minute schedules, through the Real-Time Commitment (“RTC”) process, if they are unable to take advantage of the five-minute schedules that will be calculated by the Real-Time Dispatch software.⁶ This enhancement will allow generators that desire to respond to price but are incapable of following five-minute dispatch signals to follow a fifteen minute dispatch, thereby ensuring that they will be moving in response to price. Market participants will be better able to achieve optimal scheduling capability through fifteen minute schedules than is currently possible through price-chasing.

⁴ See, e.g., *Motion to Intervene and Comments of the Independent Power Producers of New York, Inc.* (“IPPNY”), Docket No. ER04-230-00 (December 22, 2003) at 9-10.

⁵ See *Filing of Tariff Revisions to Modify Rules Governing Regulation and Frequency Response Service, Uninstructed Overgeneration and Persistent Undergeneration*, Docket No. ER01-2251-000 (June 6, 2001) at 8-12 (describing the perceived benefits of price-chasing).

⁶ See RTS Filing at 5.

When RTS is first implemented, off-dispatch generators will have the ability to self-schedule in fifteen minute increments. This is a significant improvement since self-scheduling is only possible in hourly increments under the NYISO's existing software.

Given this immediate improvement, and the expected introduction of a fifteen minute RTC scheduling option that would make price-chasing obsolete, the NYISO and a majority of its stakeholders concluded that there was insufficient justification to include price-chasing functionality in RTS. In addition, price chasing by off-dispatch generators adds complexity to scheduling and settlements and, in some cases, can create reliability problems that require manual intervention by system operators. Moreover, the NYISO's experience to date shows that price chasing is a surprisingly little used function, which calls into question the priority placed on its implementation by some market participants. The NYISO simply does not believe that it would be appropriate to devote time and resources to what would be, at most, an interim market tool. Because the NYISO believed that there was widespread stakeholders support for this approach it did not address the price-chasing issue in the RTS Filing.

Sithe and Indeck, Dynegy, and IPPNY express support for a fifteen-minute scheduling option in their protest but ask that the NYISO be required to implement it more expeditiously than may be possible (Sithe-Indeck would require that it be in place by Fall 2004).⁷ The Commission should reject these suggestions because they would pre-judge the question of when a fifteen-minute scheduling option will become feasible. They would also prevent the NYISO and its stakeholders from working together to determine the implementation priority that fifteen-

⁷ *Motion to Intervene and Comments of Sithe Energy Marketing, L.P. and Indeck Energy Services, Inc.* at 7; *Motion to Intervene, Comments and Protest of Dynegy Power Marketing, Inc. and Dynegy Northeast Generation, Inc.* ("Dynegy"), Docket No. ER04-230-000 at 9; IPPNY at 9-10.

minute scheduling through RTC should have relative to other market improvements. The Commission has traditionally resisted attempts by small groups of stakeholders to impose their preferences on others⁸ and should follow that policy here.

The Commission should also reject the other “solutions” proposed by the protesters. Because price-chasing’s potential benefits are outweighed by the uplift costs and security issues that are created when price-chasing generators move in ways unforeseen by RTC, the NYISO strongly objects to requests that it be restored. The other suggested alternative, allowing generators to self-schedule up to thirty minutes before an RTC cycle, poses greater technical challenges than the fifteen-minute scheduling option. Furthermore, the implications of incorporating the thirty-minute proposal into the RTS system, in the form set forth in the RTS Filing, have not been thoroughly vetted by the NYISO’s staff and stakeholders. It would be premature for the Commission to consider it now.

Similarly, the protesters have not demonstrated that it is necessary for the NYISO to improve its modeling of combined-cycle units. Current software capability may well offer operators of combined cycle units an opportunity to achieve the ends they desire without further modeling changes. The NYISO is already exploring this possibility and is discussing it with its

⁸ See, e.g., *New York Independent System Operator, Inc.*, 90 FERC ¶ 61,319 (2000) (rejecting alternative ICAP recall bid proposal advanced by a single party in opposition to a system that had been endorsed by the NYISO stakeholders). See also *New England Power Pool*, 90 FERC ¶ 61,168 (2000) (expressing preference for consensus CMS/MSS proposal in New England); *Sithe New England Holdings, LLC and Sithe New Boston, LLC v New England Power Pool, and ISO New England, Inc.*, 86 FERC ¶ 61,283 (1999), *reh’g denied*, 88 FERC ¶ 61,080 (1999) (rejecting a market participant’s attempted unilateral revision of a complex arrangement developed by an ISO); *PJM Interconnection, L.L.C.*, 84 FERC ¶ 61,212 at 62,035 (1998) (“[W]e emphasize that in accepting PJM’s proposed revisions . . . we deferred to the judgment of the PJM ISO and its Board concerning a regional solution to an identified regional problem based on what we understand is a broad, if not unanimous, consensus.”).

stakeholders. Should additional modeling changes remain necessary, the NYISO would certainly pursue them. There is no reason for the Commission to pre-judge this issue.

B. The Commission Should Accept the Market Power Mitigation Enhancements Included in the RTS Proposal Without Any Modifications

A number of protesters object to specific elements of the market power mitigation improvements that were proposed in the RTS package. The protesters' claims consist of collateral attacks on, and distortions of, previous Commission orders, groundless complaints about problems that are already being addressed, and misleading portrayals of minimally intrusive market power measures as criminal sanctions. In considering the protests, the Commission should also keep in mind that they are attacking proposals that are part of a package approved with no negative votes by the NYISO's stakeholders⁹ and which are therefore entitled to a reasonable degree of deference.

1. There Is No Reason to Revise the NYISO's Established Formula for Determining Conduct and Impact Thresholds for New York City

No party opposes the NYISO's proposal to replace the currently effective legacy threshold for market power mitigation in the New York City Day-Ahead Market ("DAM"), which is based on benchmarking prices to the Indian Point 2 bus.¹⁰ This legacy measure would be replaced by the automated conduct-and-impact mitigation used in the DAM for the rest of New York. The NYISO proposes to use the same methodology that it has used to set the conduct and impact thresholds in the New York City real-time market ("RTM") since early last year. Although some protests express concern that the proposed In-City day-ahead thresholds,

⁹ Dynegy abstained from these votes.

¹⁰ See, e.g., IPPNY at 5 (praising this aspect of the RTS proposal).

and by extension the existing real-time thresholds, are overly restrictive,¹¹ they are merely rehashing old (and previously rejected arguments) that should be rejected again here.

Replacement of the legacy measures for New York City DAM mitigation, which the NYISO inherited from the Consolidated Edison Co. of New York, Inc., was accepted by the Commission last year in connection with the NYISO's "Comprehensive Mitigation Measures" filing.¹² The formula for setting lower conduct and impact thresholds for mitigation of market power because of the concentration of the In-City market was approved at the same time.¹³ Thus protests attacking the use of automated conduct-and-impact mitigation in the New York-City DAM should be rejected as collateral attacks on matters previously decided.

Moreover, Chairman Wood recently endorsed the use of thresholds tailored to New York City's market conditions, observing that "the highly constrained and concentrated New York City area is addressed quite satisfactorily through narrow bidding thresholds."¹⁴ Even if the protests were not procedurally defective, they offer no evidence that should cause the Commission to second guess this assessment or believe that the same thresholds formula should not be used in both the RTM and DAM.¹⁵ The protests neglect to point out that the RTS Filing clearly states that the formula, under which threshold levels vary in proportion to the number of

¹¹ See IPPNY at 5-7; *Intervention and Comments of the PSEG Companies* ("PSEG") (December 22, 2003) at 4.

¹² See *New York Independent System Operator, Inc.*, 97 FERC ¶ 61,242 (2001); *order on compliance filings*, 99 FERC ¶ 61,246 (2002); *order on reh'g*, 103 FERC ¶ 61,291 (2003).

¹³ *Id.*

¹⁴ See *California Independent System Operator Corp.*, 105 FERC ¶ 61,140 (2002) (Chairman Wood, Concurring).

¹⁵ IPPNY has submitted an affidavit purporting to show that Reliant has been mitigated to price levels below its production costs because of changes in fuel costs that were not reflected in the mitigation process. This issue is address in Section B.3 below.

transmission-constrained hours, uses inputs from the DAM to determine DAM thresholds, and applies in the same geographic area as it does for the RTM. The protests have not met the evidentiary burden required to overturn thresholds that the NYISO's internal Market Monitoring and Performance Unit, its independent outside Market Advisor, and the Commission have determined strike the right balance between consumer protection and market efficiency. The protests should therefore be rejected because they are collateral attacks on prior Commission orders and because they are not adequately supported.

2. The NYISO's Proposal to Automate Real-Time Mitigation Outside of New York City on a Narrowly-Tailored, Generator-Specific Basis Is Entirely Appropriate

IPPNY, and the various suppliers that support its pleading,¹⁶ request that the NYISO be required to abide by its own proposed "unit-by-unit" method for activating real-time automated mitigation procedures outside of New York City.¹⁷ The NYISO is puzzled by this request. The NYISO's practice is to follow its tariff, and the proposed language at issue here clearly establishes that real-time automated mitigation outside of New York City will be applied to specific generators that fail certain tests. The "unit-by-unit" approach was put forward by the NYISO, with the concurrence of its Market Advisor, in response to concerns raised by IPPNY's representative and other stakeholders. The NYISO thus included it in the RTS Filing. It is disingenuous at best to suggest that the NYISO would violate its proposed mitigation tariff

¹⁶ See, e.g., IPPNY at 7-9.

¹⁷ The "unit-by-unit" approach to real-time automated mitigation is set forth in proposed Section 3.2.2(d) of Attachment H to the Services Tariff and described at pp. 29-30 of the RTS Filing.

provisions once they are in effect. There has been no showing of any need for the Commission to take action in response to IPPNY.¹⁸

The Dynegy and Edison Mission companies take the radical position that even a unit-by-unit automated mitigation should be rejected,¹⁹ despite the fact that their trade association and the rest of the supplier sector accepts it. Their argument is largely based on the false premise that automated mitigation represents a “new” form of mitigation.

For example, Edison Mission misleadingly claims that the “introduction of bid-based mitigation” in normally competitive markets outside of New York City will have various deleterious effects. The truth, however, is that the NYISO is not proposing new mitigation standards for markets outside New York City. Bid-based conduct-and-impact mitigation has been applicable through manual implementation to the RTM, and through both manual and automated mitigation to the DAM, outside of New York City for almost four years.²⁰ The Commission has repeatedly endorsed the NYISO’s mitigation standards, and held that bid-based conduct and impact mitigation does not harm markets, while providing effective limits on the misuse of market power.²¹ In the process, the Commission has rejected many claims similar to

¹⁸ For the same reasons, the Commission should dismiss Edison Mission’s professed concern that the NYISO might some day implement more “global” real-time automated mitigation procedures. *See* Edison Mission at 17-19.

¹⁹ *See* Dynegy at 5-7; Edison Mission at 10-23.

²⁰ *See, e.g., New York Independent System Operator, Inc.*, 90 FERC ¶ 61,317 (2000).

²¹ *See, e.g., New York Independent System Operator, Inc.*, 99 FERC ¶ 61,246 at 62,043 - 52 (finding that the NYISO’s proposed New York City threshold “reasonably balances the need for flexibility for generators bidding in constrained areas to reflect legitimate changes in, marginal costs and the need to prevent undue exposure of the market to locational market power . . . and that the thresholds gave the NYISO “sufficient flexibility in setting reference levels for new generation such that new entry is not unduly burdened.”); 90 FERC ¶ 61,317 at 62,055 n. 10 (holding that the NYISO’s “thresholds that would trigger possible mitigation are sufficiently

(continued...)

those advanced by Dynegy and Edison Mission here, such as the inaccurate assertions that bid-based mitigation is intrusive. The Commission has also accepted proposals to implement similar mitigation mechanisms in California, the Midwest, and New England.²²

The sole change under RTS would be that software would be put in place so that the real-time bid-based measures that are currently implemented “manually” outside of New York City could be applied on an automated basis to a generator that is found, through manual detection, to have engaged in a bidding episode that breached the conduct and impact tests. In other words, the NYISO will have the automated ability to detect and mitigate recidivist breaches of the conduct and impact tests in the real-time rest-of-state market. Automation will make real-time mitigation more efficient, for all of the reasons that previously led the Commission to endorse the use of automated mitigation in the DAM and in New York City in real-time. At the same time, applying these measures on a unit-by-unit basis will guard against inefficient over-mitigation and ensure that generators that appear to be engaging in market power abuses have ample opportunity to justify their conduct.

Bringing the rest-of-state real-time market into automated parity with the other temporal and geographic energy markets in New York does not constitute the “introduction” of a “new” mitigation regime. For this reason, the Midwest ISO cases cited by the protesters,²³ which concerned mitigation measures that were being instituted for the first time, and under different

high so that triggering them would likely raise market power concerns warranting further investigation and potentially mitigation.”).

²² See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,280 at P 79 (2003) (conditionally accepting conduct and impact mitigation measures); *New England Power Pool and ISO New England, Inc.*, 100 FERC ¶ 61,287 at PP 39-46 (2002); *California Independent System Operator Corp.*, 100 FERC ¶ 61,060 at P 67 (2002).

²³ See Edison Mission at 12-13.

market conditions are irrelevant. The RTS filing implements a continuation and logical extension of the tried-and-true NYISO market mitigation measures.

Dynegy and Edison Mission also insist that the NYISO has failed to demonstrate that real-time automated mitigation is necessary outside of New York City. They are correct to note the Commission's preference that mitigation measures be tied to "well-defined structural problems," but ignore the fact that conduct-and-impact mitigation has been in place throughout New York since April 2000.

In addition, these entities do not acknowledge that the NYISO's mitigation tests act as a screen that prevents mitigation from occurring unless a significant structural market power problem exists. Both the conduct and impact thresholds were designed so that they would not trigger absent the exercise of significant market power. The conduct tests are set at levels that would be met by bid increases that could be economically rational only in the presence of market power. The impact test, by limiting mitigation instances in which bids that meet the conduct test have a significant effect on prices, limits mitigation to situations in which market power has been shown to have a significant adverse effect on a market. At the same time, the mere fact that the thresholds are applicable to a market, whether on a manual or automated basis, does not mean that any transactions will be mitigated. As long as markets are functioning competitively, the conduct and impact thresholds will not be met, and the mitigation measures will have no effect. Indeed, this was the case for the automated measures used in the DAM outside New York City throughout all of 2003.

The Commission should also reject Edison Mission's assorted attempts to delay real-time automated mitigation outside of New York City by requiring detailed "explanations" of matters that have long been clear to market participants, including Edison Mission itself. In the interest

of laying to rest Edison Mission's points,²⁴ the NYISO is not proposing any changes to its existing approach to managing the interaction between "manual" and automated mitigation procedures, its practices when multiple generators are subject to automated mitigation, or its methodology for determining whether a bid that breaches the conduct and impact thresholds is inconsistent with competitive behavior.²⁵ In the same vein, the proposed real-time automated mitigation procedures would work the same way as the existing Commission-approved Day-Ahead automated mitigation procedures do when simultaneously applied to more than one generator. Edison Mission is only trying to rehash collateral issues that have been raised and resolved in prior dockets.

Finally, Edison Mission appears to mistakenly believe that language regarding "price sensitivity analyses" in Section 3.2.2(a) of Attachment H to the Services Tariff²⁶ is somehow related to the RTS Filing. A cursory examination of the redlined copy of Attachment H included in the RTS Filing would have revealed that the language cited by Edison Mission is not new, or changed in any way by the RTS Filing. If Edison Mission feels there is some problem with that long-standing language, it should be required to make a separate § 206 filing rather than trying to address it here.

3. The NYISO Already Properly Accounts for Fuel Price Variations When Setting Reference Prices and Will Continue to Do So

In connection with their complaints about the In-City mitigation thresholds and real-time automated mitigation outside of New York City, some protesters allege that the NYISO's

²⁴ See Edison Mission at 10-23.

²⁵ Specifically, "the NYISO determines whether a generator's bid represents conduct that appears to be inconsistent with competitive conditions by comparing the bids to its reference price plus the applicable conduct threshold." See IPPNY, Affidavit of Liam T. Baker at P 5.

²⁶ Attachment H establishes the NYISO's Market Mitigation Measures.

reference price setting methodology does not properly account for fuel price variations or that the NYISO has failed to adequately discuss fuel price issues with generators.²⁷

Since their inception, the NYISO's conduct and impact mitigation measures have provided for the adjustment of reference prices to account for changes in fuel costs.²⁸ Thus, the protests do not raise an issue that goes to the substance of any tariff provision included in the RTS Filing. Rather, they are raising practical questions about the administration of existing tariff provisions. Such questions are important, but they should be raised in the appropriate NYISO working group, or one-on-one with the NYISO, not in this proceeding, which deals with unrelated revisions to the NYISO tariffs.

Moreover, while the protests may raise important questions, they provide absolutely no particulars on what the NYISO should be doing differently, how it should improve the reference price adjustment process, or how it might get access to better fuel price information. The NYISO believes it has worked diligently to ensure that accurate and timely adjustments to reference prices are made on the basis of the best available information of fuel costs, but it is certainly open to constructive recommendations on how the adjustment process can be improved, or more timely and accurate fuel price information can be obtained. The protests provide no facts or other specifics on which the NYISO, let alone the Commission, could consider any changes to the reference price adjustment process. Nonetheless, the NYISO renews its promise, which the protests recognize has been made, to maintain an ongoing dialogue with generators on fuel prices.

²⁷ See, e.g., IPPNY at 6-7; Dynegy at 4-5.

²⁸ See Attachment H, § 3.1.4(a).

4. The NYISO Should Be Allowed to Exercise Reasonable Discretion in Identifying “Unjustifiable Changes” to Generator Operating Parameters

Dynegy argues that the NYISO has failed to establish a clear “objective standard” for determining whether generators are manipulating their operating parameters in a manner that constitutes physical withholding. Dynegy ignores the context in which the operating parameter provisions appear.

The relevant language is set forth in § 2.4(a)(1) of Attachment H, which specifies that in light of the new bidding provisions for ancillary services, physical withholding would include “making an unjustifiable change to one or more operating parameters of a Generator that reduces its ability to provide Energy or Ancillary Services.” This provision appears just before language specifying that unjustifiable changes to operating parameters will be considered physical withholding “when it would be in the economic interest, absent market power, of the withholding entity to do so.” This is the same standard that has applied to physical withholding through refusing to offer bids or schedules for an “Electric Facility” since the inception of the mitigation measures. Moreover, the immediately preceding section of the mitigation measures makes clear that mitigation is only to be imposed “to remedy conduct that is significantly inconsistent with competitive conduct.”²⁹ “Unjustified” changes in operating parameters are thus changes that would not be in the economic interests of an entity facing a competitive market, and make economic sense only if undertaken from a position of market power. Dynegy has not shown how this context makes for any less of an “objective standard” for assessing manipulation of a generator’s operating parameters as a means of physical withholding than it would for physical withholding by refusing to offer bids or schedules for a generator. Nor does Dynegy show that

²⁹ Attachment H § 2.3(a)(1).

interpreting or applying this language has presented any problems in the nearly four years that it has been in place.

Of course, as the Commission has recognized, evaluating market power problems such as physical withholding requires the use of informed judgment. Thus, the best results are achieved if the Commission enables the entities that it has authorized to be its “eyes and ears in the marketplace”³⁰ to exercise a measure of discretion, subject to review by the Commission. The Commission has consistently taken this approach, including in its orders addressing the NYISO’s market power mitigation system.³¹ Since Dynegy does not establish any reason to distinguish physical withholding through the manipulation of operating parameters from other forms of physical withholding with respect to the imposition of physical withholding sanctions, the Commission should not deviate from the approach it has taken in the past.

5. Details About the NYISO’s “Watch List” Do Not Belong in the NYISO’s Tariffs

Dynegy argues that information should be added to the tariffs describing the “watch list” procedures followed by the NYISO’s Market Monitoring and Performance Unit when generators violate the mitigation thresholds. Its rationale is that the watch list was “discussed during the stakeholder process and is an integral part of the mitigation procedures.”³² The use of “watch

³⁰ See *Communications with Commission-Approved Market Monitors*, 102 FERC ¶ 61,041 at P 10 (2003).

³¹ See *New York Independent System Operator, Inc.*, 90 FERC ¶ 61,317 at 62,054 (2000) (observing that the NYISO market monitor would retain “some limited discretion as to when to use mitigation and for how long” but that “this level of mitigation was desirable” and consistent with the Commission’s prior directives). An earlier Commission order found that certain elements of the NYISO’s original mitigation proposal gave the NYISO too much discretion. See *New York Independent System Operator, Inc.*, 89 FERC ¶ 61,196 (2000). The currently effective, Commission-accepted, mitigation measures addressed the Commission’s earlier concerns.

³² Dynegy at 4.

lists,” however, is not new or unique to the RTS Filing. It has been a part of the administration of the NYISO’s mitigation measures for some time. Dynegy has not shown why they should suddenly warrant the Commission’s attention in this docket.

Moreover, watch list procedures are the kind of administrative detail that is properly not required to be included in tariffs pursuant to the Commission’s “rule of reason.”³³ Clearly, the mere fact that a particular procedure is discussed by stakeholders, or is a component of the NYISO’s implementation of its tariff, does not require that it be included in the tariff. Detailed information about the watch list is readily available to stakeholders through a number of other means and, as Dynegy suggests, watch list issues are discussed from time to time at stakeholder meetings. Dynegy has not shown why the RTS Filing now requires burdening the Services Tariff with a level of detail never before considered necessary.

6. Edison Mission’s Attack on Conduct-and-Impact Mitigation as “Unusual Punishment” is Utterly Without Merit

Edison Mission contends that the new automated mitigation procedures for the real-time market in areas outside New York City will have the effect of “[s]ubjecting a generator for a first time offense to a six month ‘sentence’ of automated mitigation [that] is unduly harsh and borders on ‘unusual’ punishment” and that “the MMP and the Market Advisor should publish ‘sentencing’ guidelines if they are going to invoke the penalty of automated mitigation in real-

³³ See *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (confirming that the Commission has broad discretion to determine what must be included in tariffs but emphasizing that the Federal Power Act should be read as requiring the filing of “only those practices that affect rates and service significantly, that are realistically susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous . . .”). See also *New England Power Pool*, 95 FERC 61,253 (2001) (employing “rule of reason” and finding that operating protocols need not be filed); *California Independent System Operator Corp.*, 90 FERC 61,316 (2000) (finding that technical standards need not be filed under the “rule of reason”).

time.”³⁴ Such overblown rhetoric does not warrant response, except to point out that being subject to automated mitigation will have no effect on a generator, let alone act as “unusual punishment,” unless the generator is submitting bids at levels consistent with the exercise of market power, and those bids are having a significant effect on prices. Moreover, even if the conduct and impact mitigation thresholds are triggered, a generator is not “punished.” It is not fined, or made to disgorge profits. It will only have an unjustifiably high bid replaced with a bid set at competitive levels, through the use of a default bid that almost always is determined by the generator’s own bidding history when facing competition. Finally, the NYISO’s Market Power Mitigation Measures, Attachment H to the Services Tariff, provide clear “guidelines” for the imposition of such default bids: the conduct and impact thresholds are specified, and procedures for determining default bids, *i.e.*, reference levels, are set forth. Edison Mission’s comments are entirely out of place.

7. The NYISO’s Proposed Revisions to the Services Tariff’s “Constrained Hours” Formula Should Be Upheld

NRG asserts that the NYISO’s clarification of Sections 3.1.2(b)(1) and 3.1.2(b)(2) of Attachment H, which relate to economic withholding in “Constrained Areas,” is unjustified and would result in the inefficient over-mitigation.³⁵ The NYISO has proposed revising the definition of Constrained Hours, which is currently described as “the total number of hours over the prior 12 months in which the real-time Shadow Price has been greater than zero on all interfaces or facilities leading into the Constrained Area” (emphasis added) to “the total

³⁴ See Edison Mission at 21-23.

³⁵ See *Protest and Comments of the NRG Companies*, Docket No. ER04-230-000 (December 22, 2003) at 4-6.

number of hours over the prior 12 months in which the real-time Shadow Price has been greater than zero on any interface or any facility” (emphasis added).

The current language uses an “all interfaces or facilities” trigger because the NYISO’s existing Security Constrained Dispatch software is only capable of testing load pockets for market power on this “all or nothing” basis. The NYISO’s RTS and SCUC software, however, is capable of more refined interface- and facility-specific examinations. Contrary to NRG’s view, this enhanced approach will lead to more, not less, efficient mitigation decisions. While more hours may be deemed to be “Constrained Hours” under the revised language, this is appropriate given the very limited number and capacity of the interfaces into New York City, the only area currently designated as a Constrained Area and thus the only area affected by this change. Market power may well arise in New York City when fewer than all of the interfaces are constrained. At the same time, generators will not actually face mitigation unless they violate both the conduct and impact thresholds. Moreover, the levels of the thresholds generated by the New York City formula are under constant scrutiny by the Market Monitoring and Performance Unit and the Market Advisor, neither of which would hesitate to propose revisions to the formula if the New York City market is being subjected to unduly strict mitigation.

8. There is No Need to Develop a Detailed Methodology to Govern How Minimum Down Times and Minimum Run Times Will Be Included in Reference Prices

IPPNY and its supporters claim that the NYISO should be required to “develop a detailed methodology that describes how a unit’s minimum down and minimum run time will be reflected in the reference prices for the unit’s start-up bids.”³⁶ This approach would unjustifiably shift the initial burden of identifying legitimate costs from generators, who will have the relevant cost

³⁶ IPPNY at 3, 12-14.

data, to the NYISO, which will not. The RTS Filing does not diminish generators' current ability to come to the NYISO and demonstrate that any of the costs IPPNY mentions should be included in their reference levels.³⁷ It would be far less efficient to require the NYISO to move to an elaborate tariff-based methodology defining when costs will be recoverable in advance, which will very likely result in the improper exclusion or inclusion of certain costs when it is implemented in the real world, instead of resolving these issues on a case-by-case basis in light of actual circumstances.

C. The NYISO Has Not Taken the Position that Co-Optimizing Demand Side Resources Is Inappropriate

Multiple Intervenors' description of the NYISO's position on incorporating demand side resources into the same co-optimization process as generators is inaccurate. The NYISO has not "agreed that the as-filed RTS model does not work for DSRs"³⁸ Nor does it believe that a fully co-optimized approach could not be viable model. In reality, the NYISO is neutral on this issue and believes that there are legitimate efficiency, and fairness, arguments that could be made on either side.

As discussed by Multiple Intervenors in their comments, all parties agreed that there was a need to revisit how demand side resources could best participate in the reserves markets in light of the potential difficulties with the NYISO's original proposal. The NYISO committed to work with its stakeholders to find a way to allow demand side resources to participate in the market that is both attractive to them and acceptable to other NYISO stakeholders. As always, the

³⁷ IPPNY also fails to acknowledge the NYISO's commitment, which was expressed at a June 2003 meeting of the AMP/In-City task force that it would take account of start-up time issue in the light of generators' ability to make start-up bid under RTS.

³⁸ See *Motion to Intervene and Comments of Multiple Intervenors*, Docket No. ER04-230-000 (December 22, 2003) at 8.

NYISO's primary goal in this area is to develop effective ways of strengthening demand responsiveness in the markets it administers.

The Commission could help in this effort by clarifying the extent to which it believes it is appropriate for demand side resources to be treated differently from other kinds of suppliers with respect to co-optimization.³⁹ Policy guidance on the "dual ancillary services bid process" described by Multiple Intervenor⁴⁰ would be especially useful. Any guidance would preferably be preliminary, and subject to the ultimate technical feasibility of various options.

D. The Proposed Default Bid Rules for Suppliers of Day-Ahead Operating Reserves Is Appropriate

Dynegy erroneously complains that the NYISO would establish a "prohibited must offer obligation"⁴¹ by establishing that Suppliers which offer resources capable of supplying reserves in the DAM but that do not specify an Availability Bid will be assigned an Availability Bid of \$0/MWh. The obvious flaw in Dynegy's argument is that any supplier which does not wish to have a zero Availability Bid is free to specify a different value. Dynegy's citation of the Commission's Midwest ISO precedent is irrelevant because those cases concerned the potential imposition of penalties on suppliers that did not bid into the DAM. By contrast, under RTS, a \$0/MWh Availability Bid can only be assigned to the extent that a supplier voluntarily offers capacity into the DAM.

³⁹ The Commission's July 2002 *Notice of Proposed Rulemaking on Remediating Undue Discrimination Through Open-Access Transmission Service and Standard Electricity Market Design* in Docket No. RM01-12-000 does not appear to have contemplated that demand side resources would be treated differently than other kinds of suppliers. *See* n. 138, P 290.

⁴⁰ *See* Multiple Intervenor at 8-9.

⁴¹ Dynegy at 7-8.

Moreover, a generator selected as a reserves supplier in the DAM, regardless of whether it submitted a bid or was assigned a \$0/MWh bid, leaves the generator in at least the same financial position as it would have been in had it not been selected as a reserves supplier, since reserves suppliers are paid the opportunity costs of providing reserves (the value of energy sales foregone to provide reserves) and the clearing price for availability payments. As a result, more likely than not, selection as a reserves supplier would leave the generator better off financially. Being selected as a reserves supplier imposes no financial harm and may enhance day-ahead revenues otherwise available from an energy-only schedule. There is thus no basis for the relief requested by Dynegy and the Commission should reject this element of its protest.

E. The NYISO Should Have the Flexibility to Leave Unused Demand Curves Unchanged in Exceptional Cases

Several protesters contend that the NYISO should be required to automatically adjust an ancillary services demand curve upwards in the event that the NYISO has to acquire reserves that are not made available by the demand curve prices on even one occasion.⁴² Although the NYISO anticipates that it will generally find that it is appropriate to adjust the relevant demand curve, it would be short-sighted to mandate this outcome in the tariff. There may be circumstances in which it would be preferable not to modify a demand curve, for example an unforeseen type of contingency that created system stresses but was deemed extremely unlikely to recur. The NYISO and its Market Advisor are on record expressing a strong preference for acquiring ancillary services through the demand curve mechanism, rather than through direct operator intervention. Both the NYISO and the Market Advisor have recognized the inefficiencies that can result from not acquiring reserves through the demand curve mechanism.

⁴² See, e.g., IPPNY at 10-12.

There is no *a priori* reason to assume that the NYISO, with the advice of the Market Advisor, will arbitrarily refuse to increase a demand curve that has been shown to have been set too low. Moreover, stakeholders will always have the opportunity to challenge a NYISO decision not to increase a demand curve at the Commission.

F. Bidding Flexibility

A few of the protests⁴³ are concerned about the NYISO's proposal to switch from its current rules governing the modeling of incremental energy bids, which is based on piece-wise linear bid curves, to a system that allows such bids to be represented using as many as eleven stepped price/quantity blocks. The NYISO believes that this change is a clear improvement that will give Suppliers more bidding flexibility than they have in New York today or than is available in neighboring markets in the Northeastern United States.⁴⁴ There is no reason to modify this proposal or to overburden the NYISO by granting the relief requested by the protesters.

G. Attacks on the Virtual Regional Dispatch Concept Are Premature and Should Not Be Considered in This Proceeding

Several protests ask that the NYISO be ordered to stop work on a "Virtual Regional Dispatch" ("VRD") system with ISO New England Inc. ("ISO-NE") and instead focus on incorporating fifteen-minute scheduling of external transactions into the RTS framework.⁴⁵ These protests should be rejected because they are premature and beyond the scope of this proceeding.

⁴³ See, e.g., IPPNY at 15; PSEG at 4.

⁴⁴ For example, suppliers in PJM and ISO-NE may only use six price/quantity pairs in their bids.

⁴⁵ See IPPNY at 16-17; *Motion to Intervene and Comments of Coral Power, L.L.C.*, Docket No. ER04-230-000 (December 22, 2003) at 2; PSEG at 4-5.

VRD is still at a preliminary stage of definition. Before it can be implemented the NYISO will have to work with its stakeholders to develop necessary market rule and software changes, and to coordinate with neighboring systems. This process is a long way from completion.⁴⁶ Even if the NYISO ultimately decides to go ahead, the final version of VRD could differ from the conceptual version that exists today. Moreover, the NYISO would need to file proposed tariff revisions with the Commission, and await Commission action, before VRD could take effect. This would afford interested stakeholders with ample opportunity to comment on an actual VRD proposal.

In short, VRD is not a part of the RTS proposal and the RTS Filing will do nothing to advance or accelerate its implementation. There is thus no basis for the Commission to consider challenges to the still-evolving VRD concept in this proceeding.⁴⁷

H. The Commission Should Not Set Arbitrary Deadlines on the Implementation of Future RTS Enhancements

Edison Mission asks that the Commission direct the NYISO to expeditiously implement the future market enhancements described in the RTS Filing and complains about the current lack of definitive timetables for introducing them. This ignores the NYISO's need to work with all of its stakeholders to determine the relative priority that ought to be placed on each proposed enhancement, including in relation to non-market oriented NYISO projects, and to establish implementation schedules. The NYISO respectfully asks that the Commission not preempt this

⁴⁶ According to the most recent *Update on Northeast Seams Issues* <www.nyiso.com> at 4, the NYISO and ISO-NE plan to work with their stakeholders on technical issue throughout 2004. Implementation is targeted for "mid-2005 . . . subject to stakeholder approval and prioritization."

⁴⁷ For that reason, the NYISO is not responding in detail to the protestors' substantive criticism of VRD. The NYISO is not waiving its right to object to this criticism in future proceedings that actually relate to VRD.

process by establishing implementation deadlines that do not account for the complexity of certain enhancements or the competing demands on the NYISO's resources.

I. Market Participants Should Not Be Allowed to Automatically Veto the NYISO's Determination of When RTS Is Ready for Implementation

Finally, Dynegy requests that the market participants be allowed to submit a second round of comments if "the market trials bring to light any unforeseen problems with the software that are not resolved by the NYISO." Giving market participants a right to have additional comments considered before RTS takes effect would effectively permit them to veto a NYISO decision to proceed with implementation. This should not be allowed because there is no reason to believe that the NYISO would choose not to address known software problems. Furthermore, the NYISO will be better situated than any market participant to make a balanced decision that takes full account of all relevant factors.

The NYISO has asked the Commission to let it exercise its independent judgment in deciding when the RTS software is ready for activation. The Commission allowed ISO-NE to make this decision about the implementation of its SMD system⁴⁸ and there is no reason to treat the NYISO less favorably.

⁴⁸ See *New England Power Pool and ISO New England Inc.*, 100 FERC ¶ 61,287 (2002).

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission accept this answer for filing, reject the protests addressed above, and expeditiously accept the RTS Filing without substantive modifications.

Respectfully submitted,

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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 the above-captioned proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2003).

Dated at Washington, D.C., this 14th day of January, 2004.

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