

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Mirant Americas Energy Marketing, L.P.,)	
Mirant New York, Inc.,)	
Mirant Bowline, LLC,)	
Mirant Lovett, LLC, and)	
Mirant NY-Gen, LLC)	
)	
v.)	Docket No. EL01-55-000
)	
New York Independent System Operator, Inc.))	
)	
New York Independent System Operator, Inc.))	Docket No. ER01-____-000

AFFIDAVIT OF
JAMES H. SAVITT

James H. Savitt, having been duly sworn under oath deposes and says:

1. My name is James H. Savitt. I am the Market Monitor for the New York Independent System Operator, Inc. (“NYISO”). My business address is 3890 Carman Road, Schenectady, New York 12303. As Market Monitor, I am responsible for reviewing and analyzing the bidding and offering behaviors of participants in the NYISO-administered electricity markets. I am also responsible for the administration of the NYISO’s current, manual, Market Mitigation Measures (“MMM”). I have initiated, or participated in, the vast majority of NYISO staff consultations with market participants to determine whether bids that trigger the NYISO’s “conduct” threshold were justified by market conditions. I have also been involved in the NYISO’s development of its proposed automated mitigation procedure (“AMP”) and I am very familiar with the way in which the AMP would operate if it were approved by the Commission.

2. The purpose of this affidavit is to affirm that the factual statements identified herein, and made in the NYISO's filing letter requesting expedited Commission approval of the NYISO's AMP proposal, are true to the best of my knowledge, information and belief.

3. First, the filing letter's description of the AMP, its purpose and its limited scope (at p. 4) is accurate. The AMP's implementation would not alter the NYISO's existing, Commission-approved, two-part test governing the imposition of mitigation measures. Instead, the AMP proposal would simply automate, and thus expedite, the application of this two-part test by adding additional "runs" to the NYISO's Security Constrained Unit Commitment ("SCUC") process, which is used to determine Locational-Based Marginal Prices ("LBMPs"), for the NYISO's Day-Ahead Market ("DAM").

4. Second, the filing letter is correct to warn that under the current, manual, MMM process, market power abuses may go unmitigated for one day after they are detected because the NYISO cannot currently mitigate abusive bids to the appropriate reference levels until the evaluation of bids for the next DAM. This loophole can result in the calculation of LBMPs that are tainted by the exercise of market power and unjustly and unreasonably increase prices by millions, or hundreds of millions, of dollars. On one occasion, this mitigation gap led to a substantial price increase in the NYISO-administered markets. There is every reason to believe that this will happen again if the AMP is not in place.

5. Third, the filing letter is accurate when it states that "in most cases, bids exceeding the conduct thresholds are pending, and are spotted by the NYISO, before they have a market impact, and the bidding parties are then contacted for an explanation of the bids." This is because most DAM bids are submitted the evening before the deadline for submitting DAM bids, *i.e.*, 5 A.M. on the day before the dispatch day, and can thus be spotted by NYISO staff before the SCUC program calculates DAM

prices. A number of these bids are submitted more than one day in advance. In these situations, NYISO staff has time to consult with market participants, and, in cases where it appears that their bids will ultimately trigger mitigation, has often persuaded them to change their bidding behavior before they are used to calculate market-clearing prices. The AMP therefore will not materially alter the way in which most market participant consultations are conducted.

6. Fourth, the filing letter is accurate when it states that, “[a]s a further safeguard against unwarranted mitigation, the AMP implementation process also includes opportunities for each Market Party to consult with the NYISO on the bidding history, cost, risk or other factors that should be considered by the NYISO in determining the Market Party’s reference levels.” Such consultation has been taking place with suppliers since the NYISO sent its initial set of reference prices to them on 26 April 2001. As a result of these consultations, a new set of reference prices may ultimately be established. Thus, if anything, the consultation process that has developed in connection with the implementation of the AMP is even more extensive than what has gone on previously under the NYISO’s manual mitigation procedures.

7. Fifth, to the best of my knowledge, information and belief, the filing letter is correct when it states that it is “unlikely that the AMP will result in mitigation being imposed when yet further consultation would indicate that it should not have been.” In my experience, market participants have ample opportunity to avoid improper mitigation and, if they are reasonably diligent in communicating with NYISO staff, will not have their bids mitigated inappropriately.

8. Sixth, the filing letter is accurate when it states that “the likelihood that improper mitigation will occur, or will give rise to significant adverse market effects, are both quite small.” As the filing letter explains, the AMP includes: (i) extensive procedures for consultation with market participants

which should make errors rare; (ii) bid mitigation thresholds that are designed to be triggered only in clear cases of market power abuses that should not be permitted to continue, even for relatively short period; and (iii) other sellers, and the market as a whole, is unlikely to be harmed if mitigation measures were applied erroneously.

9. Seventh, the filing letter is accurate when it states that the AMP will not establish a new market power mitigation threshold at \$150, or any other price level. The AMP proposal simply requests that the NYISO be permitted to define a price level below which using the AMP is unlikely to serve any purpose. The AMP will not alter the Commission-approved two-part test, nor the mitigation thresholds, that are currently part of the MMM.

10. Eighth, and finally, the filing letter is accurate when it describes the categories of suppliers, and transactions, that are excluded from the AMP and the reason for their exclusion.

This concludes my affidavit.