DPS Staff Questions for Discussion
Buyer Side Mitigation

1) Would the mitigation measures apply to all new capacity or only new capacity which has a bilateral contract with an LSE? Does it apply for a bilateral contract with an incumbent regulated LSE or even a competitive LSE or both?

The purpose of the load side capacity mitigation measures is to address inappropriate reductions in the capacity market clearing price that could result from Out of Market actions aimed at procuring new generation. Out of Market actions include bilateral contracts. The mitigation measures would apply to all new capacity built by any LSE or bilaterally contracted to any LSE. The mitigation measures are designed to address the impact that a buyer of capacity can have in placing the market in a "long" capacity situation with respect to the existing IRM requirements and bidding the unit into the market at a price significantly less than its true capacity cost. The mitigation measures should apply to any new capacity that counts toward meeting the installed capacity requirements, is bid into the market and would include new capacity that has a bilateral contract with, or is owned by, an incumbent regulated or a competitive LSE.

2) Would the mitigation measure apply to new capacity which has a bilateral contract with a load which purchases no additional capacity in the NYICAP market other than the quantity in the bilateral contract?

Yes. The mitigation measures would apply to any new capacity that has an out-of-market arrangement that allows it to recover its costs from a source other than the market. Although such an LSE may not be a net purchaser, the fact that the LSE has an out-of-market arrangement that allows it to recover its costs from a source other than the market allows the LSE to bid in a manner that does not accurately reflect its costs and distorts the market outcome. As a result, mitigation measures would still apply to ensure that the self-supply of capacity does not artificially suppress the market as a whole. Furthermore, the capacity rules in New York make it highly unlikely that an LSE's capacity requirement will precisely match the amount of its capacity that is bid into the market.

3) If new capacity bids below .75 CONE and presents cost data to the NYISO MMU to support the bid, how is the cost data evaluated? For example, if a bilateral contract covers several years, how should the total contract cost be allocated across the years? What if the contract covers not just capacity but also energy and other ancillary services?

The bid would be compared to the target minimum percent of the net Cost of New Entry (CONE) that is approved by the FERC ("Target Minimum"). Because the net CONE is approved by the NYISO and FERC as the best estimate of the net capacity payment needed for new entry, it provides a basis for determining acceptable levels of bids. Bids for new capacity that fall below the Target Minimum are suspect. During the last ICAP meeting a percentage level of .75 CONE was used for illustrative purposes.

For bids that are less than the Target Minimum, the market participant will have the opportunity to demonstrate to the NYISO MMU that the bid accurately represents the cost of the resource. If justified, the bid would be allowed to stand.

In the case of a multi product contract, part of this evaluation would include determining whether the energy and ancillary service aspects of the contract include guaranteed revenues or discounts for the service that effectively result in a need to increase or decrease the relevant "capacity" cost of the contract. The terms and conditions of the multi-product contract must be reviewed carefully and comprehensively to ensure that costs are not inappropriately shifted or buried through mechanisms such as large contract termination payments or otherwise.

4) Would the mitigation be applied to demand-side management activities, and if so, how is that evaluated?

Out of Market actions targeted at new entry would be subject to review. This would include Out of Market actions to procure demand-side management.

For DSM bids that are less than the target minimum percent of net CONE the market participant will have the opportunity to demonstrate to the NYISO MMU that the bid accurately represents the cost of the resource. If justified, the bid would be allowed to stand. If the demand-side management action was being taken to address a localized reliability benefit that cannot be represented in our capacity market, this benefit *would need to be considered in determining the appropriateness of the capacity market bid for the resource.*

5) How will new capacity be defined? For example, for how long will a new unit be under the mitigation plan? How would upgrades to existing resources be treated?

New capacity is any capacity that has entered service since the implementation of the demand curve. Because new capacity with out-of-market arrangements would be able to continue to suppress prices for as long as the over-supply exists, new capacity should be subject to the proposed mitigation measures until either (i) the surplus has been eliminated by load growth or decreases the amount of generation available to the auction, or (ii) the out-of-market arrangement has expired. Repowered resources, or those resources that have made significant capital expenditures to install environmental upgrades or for operating efficiency, would raise concern only if those resources have an out-of-market arrangement. Otherwise, the existing resources would seek to recover their costs from the market and thus should bid efficiently.

6) Will capacity under bilateral contract be allowed to count towards an LSE's requirement even if it was determined to be above-market price?

Only the amount that clears the NYISO Spot Auction will count towards the LSE's requirement. Because the proposed mitigation mechanism would allow new capacity procured through Out of Market mechanisms to bid at some discount from the net CONE to be determined, the mechanism bears a risk that load side market participants could force the market to stay at prices just above the conduct threshold over time. Allowing the LSEs to take credit for all the Out of Market capacity (including any capacity that does not clear the market at the required bidding point) would make this strategy on the part of the LSEs more desirable. Prohibiting them from taking credit for any capacity that does not clear the Spot Auction is an important part of the mitigation and is related to placing the conduct threshold at a discount from the net CONE. ISO-NE, which allows the uneconomic new capacity to be counted towards the LSE's obligation, has designed its mitigation so that the new entrant cannot suppress the market clearing price.

We would be willing to discuss the need for, and the structure of, potential transition mechanisms to address capacity that has already entered service.

7) Self-supply at above-market prices is considered by some as an example of "physical" market power abuse, comparable to retirement of supply as a means of manipulating market prices. Should mitigation measures be applied to uneconomic retirements (*i.e.* retiring a profitable unit in order to increase prices for remaining units) as well as uneconomic entrants?

The NYISO MMU has express jurisdiction under the NYISO tariff to address the issue of physical withholding. The NY PSC has recently implemented a retirement notification requirement.