UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., New York State Electric and Gas Corp., Rochester Gas and Electric Corp., and Central Hudson Gas and Electric Corp.	)	**Docket No. EL15-26**
Complainants	)	
v.	)	
New York Independent System Operator,	)	
Respondent.	)	

REQUEST FOR REHEARING AND CLARIFICATION OF THE NRG COMPANIES

Pursuant to Section 313 of the Federal Power Act ("FPA"), 16 U.S.C. § 825l(a), and Rule 713 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.713, the NRG Companies[1] ("NRG") hereby request rehearing and clarification of the Commission's February 26, 2015, *Order Granting Complaint in Part*, 150 FERC § 61,139 (2015) ("BSM Order") adding a Competitive Entry Exemption to the rules governing buyer-side mitigation ("BSM") measures. NRG owns approximately 4,000 MW of existing capacity spread throughout NYISO and is in the process of injecting tens of millions of dollars in capital into the New York power markets. NRG thus has a compelling interest in ensuring that the market rules approved by the Commission provide suppliers like NRG a reasonable opportunity to earn a just and reasonable return on that investment.

[1] The NRG Companies are NRG Power Marketing LLC and GenOn Energy Management, LLC.

I. RELEVANT BACKGROUND

On December 4, 2014, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., New York State Electric and Gas Corporation, Rochester Gas and Electric Corporation, and Central Hudson Gas and Electric Corporation (collectively, "Complainants") sought a Competitive Entry Exemption to the current NYISO BSM rules. They argued that "the current BSM rules and exemption tests are unjust, unreasonable and inefficient because they: (1) do not permit investors to enter the capacity markets based on their own forecasts of market conditions at the time of entry; and (2) investors are forced to undergo a test as to whether their particular facility is "economic" even if the investor does not have any market power or has not received an inappropriate subsidy…."[2]

Complainants explained that "the adoption of a competitive entry exemption would allow the NYISO to grant an exemption, at time of entry, to a new entrant if it is not receiving, does not have an agreement to receive, and has not received, inappropriate support outside of the competitive markets from an entity with the incentive to affect capacity prices."[3] Complainants argued that the current NYISO BSM rules are unjust and unreasonable, and therefore, requested that the Commission modify the provisions of the NYISO Services Tariff § 23.4 to add a Competitive Entry Exemption to the BSM measures in order to operate competitively and meet the challenges associated with a changing resource mix.

On February 26, 2015, the Commission granted the Complaint in part. Specifically, the Commission found that the Complainants have demonstrated that NYISO's Services Tariff is unjust, unreasonable, or unduly discriminatory pursuant to Section 206 of the FPA without a Competitive Entry Exemption to the buyer-side mitigation rules and directs "modifications to

[2] FPA Section 206 Complaint filed in FERC Docket No. EL15-26. (Filed December 4, 2014) ("Complainants' filing").

[3] Complainants' filing, page 2.

NYISO's buyer-side mitigation rules to allow for private investors, relying solely on market revenues, to enter the capacity market unmitigated upon certifying that they are a purely merchant investment, with no out of market subsidy."[4]

II. STATEMENT OF ISSUES

In accordance with Rule 713(c)(2),[5] NRG presents the following identification of errors and statement of issues:

1. The Commission erred in finding that Complainants met their burden of proving that the existing BSM measures are unjust and unreasonable. Such a finding contradicts extensive evidence that economically efficient *merchant* projects have been exempted from mitigation and that mitigation has only applied to *subsidized* entrants.

   16 U.S.C. § 824e(b) (2014); *Bangor Hydro-Elec. Co. v. FERC*, 78 F.3d 659 (D.C. Cir. 1996); *Moral! v. Drug Enforcement Admin.*, 412 F.3d 165 (D.C. Cir. 2005); *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233 (9th Cir. 2005); *Astoria Generating Company L.P. and TC Ravenswood, LLC v. New York Independent System Operator, Inc.*, 140 FERC ¶ 61,189 (2012); *Independent Power Producers of New York v. New York Independent System Operator, Inc.*, 150 FERC ¶ 61,124 (2015).

2. The BSM Order is arbitrary and capricious because the Commission failed to respond meaningfully to concerns raised by parties that there was no concrete problem in this case. Instead, the findings in the BSM Order with respect to these issues rely on unsupported findings, misstate the facts, and are inconsistent with other Commission statements.

   Same

3. The Commission erred in approving a Competitive Entry Exemption allowing new entrants to bid at substantially less than their actual costs. Bidding at substantially below costs allows for predatory pricing and denies merchant suppliers any reasonable opportunity to earn back their invested capital.

   The Constitution of the United States," Amendment 5; *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1011-13 (1984); *Brooke Group Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 222-224 (1993); *United States v. Winstar Corp.*, 518 U.S. 839 (1996); *Pac. Bell Tel. Co. v. linkLine Communs., Inc., 555 U.S. 438* (2009); *Elizabethtown Gas Co. v. FERC*, 10 F.3d 866, 870,

[4] *Consolidated Edison Co. of New York, Inc., et al. v. New York Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,139 P3, 14 (2015) ("BSM Order").

[5] 18 C.F.R. § 385.713(c)(2) (2014).

(D.C. Cir. 1993); *Panhandle Eastern Pipe Line Co. v. FERC*, 196 F.3d 1273, 1275 (D.C. Cir. 1999); *Devon Power LLC*, 103 FERC ¶ 61,082 (2003); *Devon Power LLC*, 107 FERC ¶ 61,240 (2004); *Bridgeport Energy, LLC*, 113 FERC ¶ 61,311 (2005); *Devon Power LLC*, 115 FERC ¶ 61,340 (2006); *ISO New England, Inc.*, 125 FERC ¶ 61,102 (2008); *New York Independent System Operator, Inc.*, 124 FERC ¶ 61,301 (2008); *ISO New England, Inc., New England Power Pool Participants Committee; New England Power Generators Association v. ISO New England Inc.; PSEG Energy Resources & Trade LLC, PSEG Power Connecticut LLC, NRG Power Marketing LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, Somerset Power LLC v. ISO New England Inc.*, 135 FERC ¶ 61,029, P 254 (2011); *ISO New England, Inc., et al.*, 135 FERC ¶ 61,029, P 61 (2011), *order on reh'g, ISO New England, Inc., et al.*, 138 FERC ¶ 61,027 (2012); *PJM Interconnection, LLC, et al.*, 137 FERC ¶ 61,145 (2011), *reh'g denied, 138* FERC ¶ 61,194 (2012);*Astoria Generating Co. L.P and TC Ravenswood, LLC v. New York Independent System Operator, Inc.*, 140 FERC ¶ 61,189 (2012); *New York Independent System Operator, Inc.*, 150 FERC ¶ 61,208 (2015).

4. The BSM Order lacks clarity around how transmission lines seeking to import highly-subsidized power from Canada should be addressed in future proceedings. Either the Commission should clarify that it is not ruling on those issues here, or grant rehearing to disallow non-economic resources from participating in the New York capacity markets without mitigation.

   16 U.S.C. § 824e (2012).*Champlain Hudson Power Express, Inc.*, 132 FERC ¶ 61,006 (2010).

III. REQUEST FOR REHEARING

Sections 205 and 206 of the FPA requires that the Commission set rates for its regulated entities that are both just (compensatory) and reasonable (fair to the consumer). In the capacity market context, the Commission has defined "just" capacity market rates as those that provide capacity suppliers a "reasonable opportunity" to earn a just and reasonable rate of return on their capital invested to provide capacity service to New York customers. Curiously, the BSM Order purports to fundamentally realign capacity market rules in New York without undertaking any investigation as to whether the revised rules continue to provide a just and reasonable level of long-term compensation. Without such an inquiry, the BSM Order is legally deficient and may chill the willingness of companies like NRG to bring merchant dollars into the New York market.

Indeed, rather than a barrier to entry, the existing rules ensure that *economic* investments are allowed into the market, while *non*-economic (and thus inefficient) investments are subject to a price floor. The BSM Order undermines the certainty parties need to invest in long-lived generation assets in New York at exactly the time in the investment cycle that New York appears to need new entry. Further, the Commission erred in finding that Complainants met their burden of proof in this proceeding. History has shown that merchant entry into New York had no trouble passing the mitigation test, while subsidized or uneconomic projects were allowed into the market with an appropriate price floor.

Finally, NRG requests clarification of two matters relating to the mechanics of applying a Competitive Entry Exemption that was ordered over the objections of stakeholders in New York. The manner of adoption here means that the new rules have not been thoroughly vetted and may have serious design flaws that further undermine the investment climate in New York. As a result, NRG requests two clarifications – first, that the Commission provide NYISO flexibility to tailor its Competitive Entry Exemption rules to "merchant" transmission projects, and second, that the Commission clarify that existing projects already in the NYISO's interconnection process should be allowed to take advantage of the merchant entry exemption as well.

For the reasons set forth herein, NRG respectfully requests that the Commission grant rehearing or in the alternative provide clarification in this proceeding.

A. The BSM Order Ignored Compelling Evidence that the Existing Buyer-Side Market Power Rules Work.

As a threshold matter, the BSM Order erred in finding that Complainants met their burden of demonstrating that the NYISO's existing buyer-side market power mitigation rules are unjust and unreasonable. History shows that economic merchant projects pass mitigation and are allowed to enter the market as price takers. Given this history, the Commission's conclusion in the BSM Order that Complainants met their burden of proof is head-scratching.

Moreover, the BSM Order ducked this issue, failing to address arguments raised in the joint protest of the Independent Power Producers of New York and Electric Power Supply Association (together, "IPPNY/EPSA") citing this compelling factual history. The BSM Order states in its summary of parties' arguments that "IPPNY/EPSA state that because two projects were subject to offer floor mitigation, the buyer-side mitigation rules worked as intended and limited the effects of uneconomic entry."[6] However, nowhere in the BSM Order does the Commission meaningfully address the fact that two merchant projects cleared under the existing NYISO Services Tariff. Rather, the Commission notes "that many parties argue over the merits of the existing mitigation exemption test. The incumbent generators argue that the test is working as intended, such that uneconomic entry is prevented."[7] The Commission dismisses these arguments by stating that it is not basing its decision on "whether there are flaws with the calculation methodology underlying NYISO's existing mitigation exemption test."[8] This *non sequitur* fails to address the record evidence that contradicts the BSM Order's conclusion that the current Tariff is unjust or unreasonable pursuant is plain error.[9]

The history that the BSM Order so blithely disregards is actually compelling evidence that the existing system works. For example, the Bayonne Energy Plant ("Bayonne"), an approximately 512 MW generating facility being developed by Bayonne Energy Center, LLC ("BEC"), was determined to be economic and thus exempted from mitigation by the NYISO.[10]

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[6] BSM Order at P 32 (citing IPPNY/EPSA January 15, 2015 Protest at p. 13).

[7] BSM Order at P 51.

[8] BSM Order at P 51.

[9] Any agency decision cannot withstand review if the decisionmaker fails to articulate a rational connection between the facts and the decision, or ignores or minimizes relevant evidence as the BSM Order has done. *See, e.g. Bangor Hydro-Elec. Co. v. FERC*, 78 F.3d 659, 663 n. 3 (D.C. Cir. 1996); *Moral! v. Drug Enforcement Admin.*, 412 F.3d 165, 178 (D.C. Cir. 2005); *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1241 (9th Cir. 2005).

[10] *Astoria Generating Company L.P. and TC Ravenswood, LLC v. New York Independent System Operator, Inc.*, 140 FERC ¶ 61,189, at PP 1, 41-42 (2012) ("Astoria Opinion").

NYISO forecast that the three-year average Installed Capacity ("ICAP") price applicable for Bayonne would be $35.67/kw-year.[11] BEC proved that its plant was needed economically efficient, and thus it was appropriate for the facility to enter the market as a price taker. Indeed, Bayonne began service in the summer of 2012 and was allowed to enter the market with no mitigation.[12]

In addition, NRG is taking steps, based on its own analysis, to invest in the NYISO market. NRG currently has two projects, the Berrians GT Unit III Project in Astoria, and the Bowline Project in the Lower Hudson Zone, going through the BSM process. Indeed, NRG's Barrians project will be subject to an offer floor. However, NRG has determined that the project is sufficiently economic to move forward with accepting its class year costs and has posted the necessary security.[13] Rather than a detriment to development, the existing rules simply require the project to bid into the market with a price floor. If NRG's predictions about future market conditions bear out, then the project will clear the market at its mitigated price. Alternatively, the project will continue to bid into the market at its actual cost. A mitigation scheme that requires bidding at a resource's actual cost is the very definition of appropriate bidding. Contrary to the BSM Order's apparent logic, it is appropriate that such a non-economic project should bid at its actual cost in order to avoid suppressing prices below compensatory levels.

The Commission erred in ignoring this compelling evidence that the existing rules work. And while the existing rules may be imperfect, Section 206 requires a higher showing than

[11] *Astoria Opinion* at P 42.

[12] *Id.* at P 64.

[13] As described in the NYISO's January 6, 2015 "Notice of 2012 Second Round Decision- Call to Post Security," NRG's 250 MW Berrians III project has accepted its class year cost allocation and deliverable MWs. Berrians I and II are not exempt from an Offer Floor, and NYISO has calculated an Offer Floor for the Berrians Project at the lower of: (a) the Unit Net Cost of New Entry ("CONE") of the Berrians Project and (b) the Default Net CONE which is 75% of the Mitigation Net CONE.

simply finding that the existing rules could be improved upon.[14] Therefore, rehearing should be granted.

B. Rehearing of the BSM Order is Required Because it Denies Suppliers any "Reasonable Opportunity" to Recover their Fixed Costs – Even Over the Long Run.

The Commission set forth a clear description of what it means to provide "just and reasonable" compensation to capacity suppliers in a variety of different proceedings. The Commission described its statutory obligation as requiring a regulatory regime that provides generators a "reasonable opportunity" to earn a return of and on equity, over a sufficiently long period of time.[15] While the Commission is not mandated to guarantee generator profits, the Commission's past orders clearly recognized that its compensation scheme must meet this standard or risk violating not only the Federal Power Act, but the U.S. Constitution's prohibition on takings, as well.[16] The BSM Order makes the FERC-jurisdictional wholesale capacity markets in NYISO susceptible to price suppression caused by generation resources being bid into the market at far less than their actual costs. By permitting this class of new entrants to enter the market as price takers, without any form of mitigation, the BSM Order abandons the Commission's obligation to ensure just rates for capacity service without cause or justification.

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[14] Indeed, the Commission rejected a complaint on uneconomic retention in the NYISO market within days of granting this complaint. In that order, the Commission denied the complaint despite finding clear evidence "regarding potential price suppressive impacts of repowering agreements." *Independent Power Producers of New York v. New York Independent System Operator, Inc.*, 150 FERC ¶ 61,124 (2015). It is difficult to reconcile the Commission's allocation of the § 206 burden in these two cases.

[15] *See Bridgeport Energy, LLC*, 113 FERC ¶ 61,311 at P 29 (2005). *See also ISO New England, Inc.*, 125 FERC ¶ 61,102 (2008); *Devon Power LLC*, 115 FERC ¶ 61,340 (2006); *Devon Power LLC*, 103 FERC ¶ 61,082 (2003); *Devon Power LLC*, 107 FERC ¶ 61,240 (2004); *ISO New England, Inc., New England Power Pool Participants Committee; New England Power Generators Association v. ISO New England Inc.; PSEG Energy Resources & Trade LLC, PSEG Power Connecticut LLC, NRG Power Marketing LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, Somerset Power LLC v. ISO New England Inc.*, 135 FERC ¶ 61,029, P 254 (2011) (*citing Elizabethtown Gas Co. v. FERC*, 10 F.3d 866, 870, (D.C. Cir. 1993)).

[16] "The Constitution of the United States," Amendment 5.

Existing owners of generation facilities have always faced, and should always face, competition from economically-*efficient* new sources of supply. Indeed, the Commission expressly adopted capacity market rules designed to financially reward the most economically efficient firms and allow marginal sources of capacity to be displaced. However, with the BSM Order, the Commission has fundamentally altered the regulatory structure that NRG, and other suppliers, have relied on to make their investments. Now, instead of competing against economically-efficient supply, existing suppliers are faced with a regime where they will be competing with economically *in*efficient suppliers as well.[18] This is just the type of regulatory bait and switch the Fifth Amendment prevents.[19]

Indeed, classic predatory pricing doctrine explains why some competitors may find it in their interest to sell their product (in this case, capacity) at substantially less than cost in hopes of

[18] *See Panhandle Eastern Pipe Line Co. v. FERC*, 196 F.3d 1273, 1275 (D.C. Cir. 1999) (holding that the agency may not abandon its prior policy without providing a reasonable explanation for "the reasons for its departure").

[19] As Lawrence Tribe recently explained in testimony before the U.S. Congress:

> …it ill-behooves the Government to strand so much of the investment it has encouraged and to deny compensation to those from whom it has profited. The courts have repeatedly recognized that such a bait-and-switch policies trigger the obligation to pay compensation. . . . For example, when [the Agency] initially promised confidential treatment to pesticide makers who submitted proprietary data in their registration applications, and then subsequently reversed course and publicly disclosed the data, the Supreme Court had no trouble finding that the manufacturers could bring a claim for a compensable taking. *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1011-13 (1984). The Court found that the possibility that the data retained some modicum of value for other purposes did not preclude a taking claim. *Id.* at 1012 ("That the data retain usefulness for Monsanto even after they are disclosed — for example, as bases from which to develop new products or refine old products, as marketing and advertising tools, or as information necessary to obtain registration in foreign countries — is irrelevant . . . ."). Similarly, when the federal government encouraged banks to take over failing savings and loan associations by promising that they could take advantage of a special accounting treatment, and then later changed its mind and disallowed the accounting treatment, the Supreme Court held that the banks could sue for breach of contract. *United States v. Winstar Corp.*, 518 U.S. 839 (1996).

Testimony of Lawrence Tribe before the House Committee on Energy and Commerce on EPA's Proposed 111(d) Rules for Existing Power Plants: Legal and Cost Issues (March 17, 2015), at pp. 31-32.

driving out competitors. Once the competitors have been driven from the market (in this case, otherwise economic generation is retired), the predatory firm is able raise prices above competitive levels.[20] Such a strategy may be good for the predator, but ultimately increases costs to the ratepayers, as economic capacity is driven from the market by market participants willing to take a short-term loss in exchange for gaining a dominant pricing position in the future. Allowing uneconomic generation resources to enter the market with no price floor exposes existing suppliers to predatory pricing for which there is no obvious defense or remedy.

i. The Competitive Entry Exemption Significantly Weakens Buyer-Side Market Power Protections.

The Commission has long recognized that the exercise of market power, on either the seller or buyer side, is one of the greatest threats to its obligation to ensure just and reasonable rates. The Commission has recognized the need to adequately protect capacity markets against uneconomic entry in a slew of orders, including those in New York,[21] New England, and PJM.[22] Specifically, in a case regarding the Forward Capacity Market in ISO New England, the Commission stated that "all uneconomic entry has the effect of depressing prices below the competitive level and that this is the key element that mitigation of uneconomic entry should

[20] *See Pac. Bell Tel. Co. v. linkLine Communs., Inc., 555 U.S. 438* (2009) ("… to prevail on a predatory pricing claim, a plaintiff must demonstrate that: (1) "the prices complained of are below an appropriate measure of its rival's costs"; and (2) there is a "dangerous probability" that the defendant will be able to recoup its "investment" in below-cost prices") (citing *Brooke Group Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 222-224 (1993).

[21] *See Astoria Generating Co. L.P and TC Ravenswood, LLC v. New York Independent System Operator, Inc.*, 140 FERC ¶ 61,189 at P 64 (2012) (waiving a tariff requirement in a specific instance in order "[t]o be an effective deterrent to uneconomic entry").

[22] *PJM Interconnection, LLC, et al.*, 137 FERC ¶ 61,145 at P 62 (2011) (accepting tariff changes to "prevent uneconomic offers from escaping mitigation"), *reh'g denied, 138* FERC ¶ 61,194 at P 19 (2012) (reaffirming that the unit-specific review process "appropriately balances the need to protect against uneconomic entry . . .").

address."[23] While the details differ in these cases, the underlying economic challenge is the same: how to protect the sunk investments made by existing generators and the needed new resources from unjust and unreasonable (and artificial) price suppression created by the clearing of new generating units at below their actual cost. Without such protections, investment in the merchant sector will dry up, existing resources will prematurely exit the market, and ratepayers will bear the freight associated with inefficient investment. In short – the Commission cannot find an inherent right for generators to bid below their verifiable cost and still meet its statutory and Constitutional obligations.

Moreover, the BSM Order ignores the fact that the existing BSM rules are designed to be easy to pass. For example, the Commission recently re-affirmed its decision to set the BSM Offer Floor at 75% of the Mitigation Net Cost of New Entry ("Mitigated Net CONE"), which is already well below the actual estimated cost of bringing a new facility to the market.[24] As the Market Monitor has repeatedly pointed out in its State of the Market Reports, setting the Default Net Cone 25% lower than the administratively determined Net CONE of a new resource, weakens the existing BSM rules making it even easier for new entrants to pass BSM. A Default Offer Floor is designed to ensure that uneconomic entry does not compromise the ability of the market to provide for just and reasonable rates. With already a low offer floor, economic, new entry should be able to clear without a Competitive Entry Exemption. If not, it is a small administrative burden to show one's actual costs when the potential effect could be detrimental to the market. It is hard to see how any new capacity resource that is even remotely economically meritorious would not easily pass the NYISO's existing rules.

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[23] *ISO New England, Inc., et al.*, 135 FERC ¶ 61,029, P 61 (2011), *citing N.Y. Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,301, at P 29 (2008), *order on reh'g, ISO New England, Inc., et al.*, 138 FERC ¶ 61,027 (2012).

[24] *N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,208 (2015).

While the Commission is clear in its identification of the problem, it then proceeds to permit the "deleterious" activity that it is charged with preventing. By allowing "merchant" generators to bid into the auction at prices lower than their annualized cost of new entry the effect will be creating a rate that decreases the market power safeguards under the tariff. By permitting a Competitive Entry Exemption, uneconomic generation may enter the market and artificially depress auction prices.

C. Requests for Clarification or in the Alternative, Rehearing.

i. If the Competitive Entry Exemption is Allowed to Go Forward, TDI's Application For the Competitive Entry Exemption Should be Scrutinized.

NRG requests clarification that the BSM Order does not pre-judge how the NYISO chooses to apply the Competitive Entry Exemption to "merchant" transmission projects, such as TDI's Champlain Hudson project ("Champlain Hudson Project"). NRG does not suggest that the Commission needs to address the thorny issues surrounding whether the Champlain Hudson Project (and similarly-situated transmission lines) potentially receiving subsidies should qualify for a Competitive Entry Exemption in its rehearing order. However, we do seek clarification that the Commission is not intending to limit the NYISO's consideration of whether to allow such transmission lines to be exempt from BSM rules that the NYISO may propose on compliance with the BSM Order. If the Commission denies the requested clarification, then NRG respectfully requests rehearing.

The Champlain Hudson Project is "merchant" in name only. It will originate at an HVDC converter station located southeast of Montreal near Hydro-Quebec TransÉnergie's 765/315 kv Hertel substation.[25] The Project will provide hydro power[26] from Hydro-Quebec,

[25] *Champlain Hudson Power Express, Inc.*, 132 FERC ¶ 61,006, P3 (2010).

[26] http://www.chpexpress.com/docs/CHPE_Fact_Sheet.pdf.

which is a state-owned utility.[27] Allowing an exemption to this type of project would significantly undercut the efficacy of NYISO's BSM rules. If the Champlain Hudson Project, which receives generation from a state-owned utility, is granted the Competitive Entry Exemption, NYISO and the Commission would essentially be allowing a state-subsidized investment into the market. Such an outcome would directly undermine the BSM Order's rationale that a project sponsored with a state subsidy can have a significant impact on the market. This is particularly true since, at various times of the year, Hydro Quebec or its affiliates are a purchaser of capacity from generation resources located within the NYISO. Therefore, Hydro Quebec potentially has an interest, as a net buyer, of keeping capacity prices in New York low. Again, NRG only seeks clarification that the NYISO is permitted to address these and other concerns in its compliance filing.

ii. If the Competitive Entry Exemption is Allowed to Go Forward, Existing Projects in the Queue that Fit These Qualifications Should be Allowed to Apply for the Exemption.

As discussed above, NRG and other companies have projects that are already in the queue that may qualify under this new Competitive Entry Exemption, if allowed to apply. It would be unduly discriminatory to provide a Competitive Entry Exemption to new projects without also making the same rules available to existing projects.[28] If the Commission does not grant rehearing and allows the BSM Order to stand, then the Commission should clarify that all existing projects in the queue that meet the qualifications for a Competitive Entry Exemption as discussed in the BSM Order should be allowed to apply for the Competitive Entry Exemption as well.

[27] http://www.hydroquebec.com/hertel-new-york/en/project/index.html.

[28] *See* 16 U.S.C. § 824e (2012).

IV. CONCLUSION

Wherefore, for the foregoing reasons, NRG respectfully requests that the Commission grant rehearing in this proceeding and reject NYISO's proposed Competitive Entry Exemption so that the capacity suppliers in NYISO are provided the reasonable opportunity, over the long run, to earn a return of and on their investment.

March 30, 2015

Respectfully submitted,

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Certificate Of Service

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

Dated at Princeton, New Jersey this 30th day of March, 2015.

/s/ *Abraham Silverman*
Abraham Silverman