

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**NEW YORK STATE PUBLIC)
SERVICE COMMISSION, NEW)
YORK POWER AUTHORITY,)
LONG ISLAND POWER)
AUTHORITY, NEW YORK)
STATE ENERGY RESEARCH AND)
DEVELOPMENT AUTHORITY,)
CITY OF NEW YORK, ADVANCED)
ENERGY MANAGEMENT)
ALLIANCE, AND NATURAL)
RESOURCES DEFENSE COUNCIL)
)
)
)
 COMPLAINANTS,)
)
 V.)
)
**NEW YORK INDEPENDENT)
SYSTEM OPERATOR, INC.**)
)
)
 RESPONDENT.)**

DOCKET NO. EL16-92-000

**ANSWER TO MOTION, AND MOTION TO FILE ANSWER TO PROTEST, OF THE
NEW YORK STATE PUBLIC SERVICE COMMISSION, NEW YORK POWER
AUTHORITY, LONG ISLAND POWER AUTHORITY, NEW YORK STATE ENERGY
RESEARCH AND DEVELOPMENT AUTHORITY, CITY OF NEW YORK,
ADVANCED ENERGY MANAGEMENT ALLIANCE, AND NATURAL RESOURCES
DEFENSE COUNCIL**

INTRODUCTION

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),¹ the New York State Public Service

¹ 18 C.F.R. §§ 385.212-.213 (2014).

Commission (“NYPSC”),² New York Power Authority, Long Island Power Authority and its wholly-owned subsidiary Long Island Lighting Company d/b/a LIPA, New York State Energy Research and Development Authority (“NYSERDA”), the City of New York (“City”), the Advanced Energy Management Alliance, and the Natural Resources Defense Council (collectively, the “Complainants”) hereby submit this Answer to the late-filed Motion to Intervene and Comments of the New York Independent System Operator, Inc.’s (“NYISO”) Market Monitoring Unit (“MMU”), and Motion for Leave to Answer and Answer to the Joint Protest of Independent Power Producers of New York, Inc. and Electric Power Supply Association (collectively, the “Generators”) filed in the above-referenced docket.

The MMU’s Comments and the Generators’ Protest respond to the Complaint Requesting Fast Track Processing (“Complaint”) that the Complainants filed with the Commission on June 24, 2016. The Complaint addresses the application of the NYISO’s current tariff provisions that impose mitigation measures limiting the participation of certain “Demand Response” providers, referred to as Special Case Resources (“SCRs”), in the NYISO’s Installed Capacity (“ICAP”) market. The Complaint details State policy objectives that rely, in part, on the successful administration of distribution-level (*i.e.*, retail) Demand Response programs,³ and explains why the actual or potential mitigation of SCRs that also participate in a retail Demand Response program interferes with these objectives. Complainants thus requested a blanket exemption from the BSM measures for all SCR program participants, including existing SCR resources currently subject to BSM mitigation measures. In the alternative, Complainants requested findings that

² The views expressed herein are not intended to represent those of any individual member of the NYPSC. Pursuant to Section 12 of the New York Public Service Law, the Chair of the NYPSC is authorized to direct this filing on behalf of the NYPSC.

³ The City shares the policy objective to promote the full utilization of Demand Response resources.

compensation provided by specific Demand Response programs should be exempt (*i.e.*, excluded) from the BSM mitigation test for prospective SCRs. Complainants also requested that the exemption be applied to existing mitigated SCRs by having the NYISO repeat the mitigation test with retail program payments excluded.

For the reasons set forth herein, the Commission should not accept the MMU's late-filed Comments for filing. Although the MMU's Comments were filed after the deadline, which was already extended by the Commission,⁴ the MMU failed to provide any justification for its failure to file its Motion by the deadline, or a demonstration as to why its comments should be accepted for filing, and considered, by the Commission. Accordingly, the MMU's filing fails to comply with Rule 214(b)(3) of the Commission's Rules of Practice and Procedure, which provides that if "a motion to intervene is filed after the end of any time period established under Rule 210, such a motion must ... show good cause why the time limitation should be waived."

If, *arguendo*, the Commission accepts the MMU Comments for filing and considers the arguments presented therein notwithstanding the MMU's failure to satisfy the Commission's basic procedural requirements, the Commission should reject the MMU's arguments. Although acknowledging that "[p]rogram-specific exemptions are likely to be appropriate in many cases," the MMU asserts that the Commission should evaluate the criteria for funding and selecting Demand Response resources to ensure that the distribution-level Demand Response programs "do not include the objective of suppressing capacity prices."⁵ The Complaint demonstrates that there is no such objective.

⁴ New York State Public Service Commission et al. v. New York Independent System Operator, Inc., Notice of Extension of Time (issued July 12, 2016) (extending the filing deadline for responses to the Complaint from July 14, 2016 to July 21, 2016) ("Deadline Extension Notice").

⁵ MMU Comments at 4.

Payments pursuant to each distribution-level Demand Response program are made to compensate Demand Response resources for their ability to address distribution system needs. Payments are not tied to those resources' response to NYISO dispatch calls, nor are they linked to the extent to which those resources may also address bulk system reliability issues. The Complaint demonstrates that each Demand Response program serves legitimate Federal, State, and local policy goals, such as "achieving targeted load relief needed for distribution system reliability purposes, deferring and/or avoiding expensive distribution-level upgrades, and/or reducing electric power sector emissions."⁶ Similarly, the Complaint explained that the NYPSC is attempting, through its "Reforming the Energy Vision" ("REV") initiative, to bring to the distribution sector market-oriented reforms involving Demand Response and other Distributed Energy Resources.⁷ The MMU's proposal to subject these programs to mitigation would have the perverse consequence of discouraging these reforms, thus promoting greater reliance on non-market (*i.e.*, rate-based) investments in distribution systems. Moreover, the NYISO's Answer to the Complaint confirmed that "no external (*e.g.*, State or State-approved) demand response program has the ability to meaningfully increase SCR Unforced Capacity ("UCAP") to suppress capacity prices in New York."⁸

The Complainants also urge the Commission to reject the Generators' Protest, which is based on a collection of erroneous assumptions and factual mischaracterizations. As discussed further below, the Generators' allegations that the programs discussed in the Complaint comprise a governmental scheme to intentionally subsidize the participation of uneconomic Demand

⁶ Complaint at 3.

⁷ *Id.* at 29-31.

⁸ NYISO Answer at 3 and Affidavit of Lorenzo P. Seirup.

Response resources in the wholesale capacity market and artificially suppress capacity prices is a flagrant distortion of the Complaint and the distribution-level Demand Response programs discussed therein.

DISCUSSION

I. THE COMMISSION SHOULD REJECT THE MMU COMMENTS BECAUSE THEY ARE PROCEDURALLY DEFICIENT AND LACK SUBSTANTIVE MERIT

The MMU Comments are riddled with procedural defects that should compel the Commission to reject the untimely filing without considering the merits of the positions advanced therein. If, however, the Commission accepts the MMU Comments for filing notwithstanding the substantial and material procedural defects, it should find that the arguments presented therein are unpersuasive and provide no basis to deny the Complaint.⁹

A. The Late-Filed MMU Comments Should Not Be Accepted For Filing Based on Several Procedural Flaws

In granting a request made by the Generators, the Commission ruled that all responses to the Complaint must be filed by July 21, 2016.¹⁰ Notwithstanding this grant of additional time to respond, the MMU filed its Comments after the filing deadline lapsed. This procedural defect, coupled with a lack of any explanation of the reason for such delay, provides a sufficient basis for the Commission to reject the MMU's filing. Although the Commission's eLibrary indicates that the MMU Comments were filed on July 25, 2016, the MMU failed to allege any justification

⁹ The Complainants' arguments and answer to the MMU's motion to file comments out-of-time are specifically authorized under Rule 213 (d)(1), which allows 15 days to provide an answer.

¹⁰ Deadline Extension Notice at 1. See also 18 C.F.R. §385.210(b) (stating that "[o]nly those filings made within the time prescribed in the notice will be considered timely").

for its failure to comply with the extended deadline.¹¹ This omission potentially could have been avoided if the MMU had complied with Rule 214, which requires a party filing a motion to intervene out-of-time to “show good cause why the time limitation should be waived.” The MMU did not comply with this procedural requirement, however, and its filing did not proffer any reason why the MMU’s late-filed Comments should be accepted for filing and considered by the Commission. The MMU similarly made no attempt to explain how its Comments might add to the record in this proceeding, or otherwise might assist the Commission in reaching a decision on the Complaint. The Commission, therefore, lacks a rational basis to waive the time limitation as set forth in Rule 214.

Finally, the MMU Comments should also be rejected for filing because they are outside the scope of this proceeding. The MMU proposes criteria that it asserts should be used to evaluate whether compensation paid to resources participating in a distribution-level Demand Response program should be excluded from the test used to determine whether SCRs should be subject to the NYISO’s BSM measures. This proposal is outside the scope of the proceeding insofar as the Complaint requested BSM exemptions for specific distribution-level Demand Response programs on the basis of the justness and reasonableness of the existing tariff, and did not seek a public process to develop a new test for program-specific exemptions. Moreover, it would be irrational for the Commission to deny the requested exemptions based on the MMU’s claim that the Complaint fails to address criteria proposed by the MMU after the Complaint was filed.

¹¹ The Commission has sufficient authority to deny intervention based on the MMU’s failure to comply with 18 C.F.R. §385.214. (CNG Transmission Corporation, 55 FERC ¶61,189 [May 7, 1991].)

B. The Commission Should Reject The Evaluation Criteria Proposed By The MMU, Which Lack Merit

If, arguendo, the Commission accepts the MMU Comments for filing and considers the arguments advanced therein notwithstanding the procedural defects discussed above, the Commission should reject the evaluation criteria proposed by the MMU. In its Comments, the MMU proposes a process and criteria that it recommends be used to evaluate whether specific compensation provided by Demand Response programs should be excluded from the BSM mitigation test. Specifically, the MMU recommends that the Commission evaluate program-specific exemptions on a case-by-case basis and “exempt only those programs that are designed to achieve public policy benefits that are not fully reflected in the NYISO market prices....”¹² The MMU also recommends that the NYISO conduct annual reviews of each program-specific exemption in case the program rules and incentives have changed.¹³

These proposals should be rejected because the MMU has failed to justify the evaluation criteria it proposes and, in any event, the criteria are satisfied by the Complaint. The MMU similarly fails to justify burdening the NYISO with the obligation to engage in annual reviews of program-specific exemptions. Moreover, these programs are critical to the NYPSC’s REV initiative, which has the goal of bringing market-based reforms to the distribution utilities. In particular, REV promotes Demand Response and other distributed energy resources to reduce the need for expensive distribution system upgrades. However, the distribution utilities must be able to count on the long-term performance of these programs if they are to be relied upon in lieu of traditional non-market (i.e., rate-based) investments. The imposition of annual reviews threatens that reliability. Thus, the imposition of BSM on SCRs, in the name of protecting wholesale

¹² MMU Comments at 3.

¹³ Id.

markets (which are already robust), will have the perverse consequence of deterring the development of efficient distribution-level retail markets.

The MMU further recommends that program-specific exemptions be granted if the underlying program has “legitimate policy goals (rather than to suppress capacity prices).”¹⁴ Complainants have already shown, and the NYISO concurs, that Demand Response would not be an effective means of suppressing capacity prices; the MMU offers no evidence to the contrary. Nevertheless, the MMU insists that every Demand Response program be subjected to an annual mitigation test “to assess whether the criteria for selecting resources does not favor resources that have a larger effect on capacity prices.”¹⁵

Contrary to the MMU’s position, the distribution load relief programs pay for resources that can respond when called upon by the distribution utility to relieve distribution system constraints; these are not subsidies for NYISO capacity. Nevertheless, such resources may also, coincidentally, be able to respond to NYISO calls when needed for bulk system reliability. It is economically efficient that those resources which can provide both (distinct) services should be allowed to do so, and should get compensated fairly for both (distinct) services. Limiting resources to provide only one or the other service (but not both) is discriminatory on its face.

Despite concluding that “[p]rogram-specific exemptions are likely to be appropriate in many cases,” the MMU asserts, without explanation or discussion, that the Complaint did not provide sufficient information to enable the evaluation it proposed.¹⁶ This conclusion is mistaken, however, given that the Complaint (i) painstakingly detailed the public policy

¹⁴ MMU Comments at 2-3.

¹⁵ Id. at 4.

¹⁶ Id.

objectives advanced by the Demand Response programs discussed therein, and (ii) explained why those programs are untethered to the wholesale capacity market.

Initially, the MMU recommends evaluation criteria without justifying why they should be adopted. The MMU similarly fails to link its recommendations to the Complaint for the purpose of supporting its conclusory assertion that the Complaint is factually deficient. These deficiencies provide a sufficient basis for the Commission to reject the MMU's arguments as unsupported and unpersuasive.

As to the substance of the MMU's recommendations, the policy objectives served by the distribution-level Demand Response programs are discussed extensively and repeatedly throughout the Complaint and are corroborated by the Joint Utilities' Comments.¹⁷ Following an overview of those objectives in the Executive Summary, the Complaint presents a procedural history examining how the accommodation of Demand Response resources in wholesale markets to advance policy objectives has evolved over time.¹⁸ The Complaint next details New York State energy policy objectives, explaining how Demand Response resources are one tool that is being used to achieve a subset of those objectives.¹⁹ Against this backdrop, Complainants next specified how including compensation provided by distribution-level Demand Response programs in the mitigation test applied to prospective SCR resources prevents the State from maximizing the potential use of Demand Response resources to support electric system

¹⁷ Docket No. EL16-92-000, supra, Motion to Intervene and Comments of Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., and Central Hudson Gas & Electric Corporation (dated July 21, 2016) ("JU Comments").

¹⁸ Complaint at 1-9, 15-35.

¹⁹ Id. at 37-40.

reliability and moderate retail rates, thereby interfering with legitimate State policy objectives.²⁰ The Complaint explains why distribution-level Demand Response programs are untethered to the bulk system and wholesale markets and “do not include the objective of suppressing capacity prices.”²¹ The MMU’s assertion that the Complaint is factually deficient is without merit.

Comments filed by the NYISO and Joint Utilities demonstrate that the Complaint provides sufficient information to justify the requested BSM exemptions, and support rejecting the MMU’s arguments. The fact that the retail distribution-level programs compensate Demand Response resources only for the distribution-level benefits that they provide and do not vary based on a resource’s ability to address bulk system reliability issues is alone enough to justify the requested BSM exemptions. Moreover, empirical data makes clear that an exemption is warranted. SCR program enrollment has remained relatively flat despite increasing enrollment in, and compensation provided by, utility-administered distribution-level DR programs.²² Based on this data, the NYISO’s technical expert, Lorenzo P. Seirup, concluded that State-approved Demand Response programs do not have the ability “to meaningfully increase SCR Unforced Capacity [“UCAP”] to suppress capacity prices in New York.”²³ The Joint Utilities agree, explaining that SCRs comprised only approximately four percent of the State’s projected peak

²⁰ Id. at 41-61 and Exh. A (Affidavit of Katherine Hamilton) and Exh. B (Affidavit of Adam B. Evans). See also JU Comments at 4.

²¹ MMU Comments at 4.

²² Docket No. EL16-92-000, supra, Answer of the New York Independent System Operator, Inc. (dated July 21, 2016) at Seirup Aff. at ¶10 (“NYISO Answer”). The Affidavit of Lorenzo P. Seirup appended to the NYISO Answer is referred to herein as the “Seirup Affidavit.”

²³ Seirup Aff. at ¶9-10.

load in Summer 2015 and, in any event, “the intermittent and limited nature of [Demand Response resources] makes it an unlikely source to either have or exercise market power.”²⁴

Mr. Seirup explained further that the NYISO designs the BSM rules to balance the risks of over- and under-mitigation.²⁵ Given the “lack of evidence showing that SCRs could be used to effectively suppress NYISO capacity market prices,” Mr. Seirup concluded that the blanket exemption requested in the Complaint “would not upset that balance at this time.”²⁶ The NYISO, therefore, supports the blanket exemption as well as the alternative relief requested in the Complaint (i.e., program-specific exemptions).²⁷

Also consistent with the Complaint and contrary to the MMU’s Comments, the Joint Utilities agree that distribution-level and bulk system Demand Response programs serve different purposes. Stating that these programs “are complementary to each other but serve different purposes, provide different benefits, and compensate distinctly different services,”²⁸ the Joint Utilities explain that the retail (i.e., distribution-level) Demand Response programs “do not include the objective of suppressing capacity prices.”²⁹ The Joint Utilities similarly agree that the SCR program supports bulk system reliability, whereas retail Demand Response programs support “distribution system reliability and reducing load to maintain retail distribution reliability.”³⁰ Retail programs help utilities avoid costly distribution system investments that

²⁴ JU Comments at 5.

²⁵ Seirup Aff. at ¶11.

²⁶ Id.

²⁷ NYISO Answer at 6-9.

²⁸ JU Comments at 3.

²⁹ MMU Comments at 4.

³⁰ JU Comments at 3.

would be needed for reliability purposes;³¹ the SCR program does not. Moreover, as discussed further below, the limited overlap of program call hours reflects the intentional differences in design and purpose between the SCR program and retail Demand Response programs, and provides further evidence of their independent nature.³² Subjecting SCR resources to BSM measures would force them to choose between enrollment in a bulk system or distribution system program, thereby reducing overall Demand Response enrollment and failing to maximize the distinct system benefits provided by each type of program.³³ These outcomes would interfere with legitimate State policy objectives. For the foregoing reasons, Complainants respectfully urge the Commission to reject the proposals advanced in the MMU Comments.

II. THE COMMISSION SHOULD GRANT THE COMPLAINANTS' MOTION FOR LEAVE TO ANSWER AND REJECT THE GENERATORS' FALSE AND MISLEADING CLAIMS

Complainants respectfully request leave to file this Answer to the Generators' Protest. The Commission has permitted answers to protests based on good cause shown, *i.e.*, that the Answer will assist the Commission in its decision-making process.³⁴ There is good cause to accept this Answer because arguments raised in Generators' Protest misrepresent critical details of the Complaint. It is appropriate for Complainants to have an opportunity to correct these misrepresentations, and to ensure a complete and accurate record. For these reasons, good cause exists for the Commission to accept this Answer.

³¹ JU Comments at 3.

³² *Id.* While an exemption would be warranted even if, coincidentally, there *was* significant overlap in program call hours, the lack thereof reflects the distinct purposes that the two types of programs serve.

³³ *Id.*

³⁴ See, e.g., Pacific Gas and Electric Company, 156 FERC ¶61,036 at ¶14 (July 15, 2016); Southwest Power Pool, Inc., 156 FERC ¶61,020 at ¶51 (July 7, 2016); Arizona Public Service Company, 156 FERC 61,006 at ¶9, n.7 (July 1, 2016).

As discussed below, the Generators' Protest is based on factual misstatements and misrepresentations that should be rejected. These distortions are woven throughout the Protest with the apparent intent of casting distribution-level Demand Response programs as an illicit governmental conspiracy to manipulate the wholesale electricity markets in New York. The Generators provide no factual support for this fanciful theory.

A. There Is No Governmental Conspiracy To Manipulate Wholesale Electricity Markets In New York State

The Generators assert that distribution-level Demand Response programs administered in New York State “likely have had an implicit goal to encourage SCRs to participate in the NYISO’s wholesale energy and capacity markets to replace electric generators with demand response and provide wholesale market benefits which are ... the very same purposes of the NYISO’s SCR program itself.”³⁵ The arguments proffered in support of this plot, however, mischaracterize NYPSC orders, as well as the design and purpose of the retail Demand Response programs. Contrary to this conspiracy theory, the State has no such “implicit goal.” Any potential impacts on the wholesale market – which have not been demonstrated to exist – would be merely incidental.

The Generators first assert that the distribution-level Demand Response programs were intended to serve multiple policy objectives, including those of the comprehensive REV initiative that the NYPSC is required by State law to implement.³⁶ Although flattening and reducing peak load is one REV objective, the Generators assert without any evidence that the

³⁵ Protest at 12-13.

³⁶ See Complaint at 37-38 (explaining that the current State Energy Plan adopted REV as the focus of State energy policy through at least 2019); New York Energy Law § 3-103 (requiring every state agency to “conduct its affairs” in conformance with statutory energy policy) and § 6-104(5)(b) (mandating that all energy-related actions or decisions of state agencies must be reasonably consistent with the State Energy Plan).

distribution-level Demand Response programs were established to serve this objective. In fact, they were not. As set forth in the Complaint, these programs were developed to support distribution system reliability and defer the need for costly investments in utility distribution systems, thereby moderating upward pressure on retail distribution rates, as evidenced by the fact that these programs compensate participating resources for responding to distribution-level dispatch calls and do not compensate them for responding to NYISO (or any other bulk system-level) dispatch calls.

The Generators acknowledge the fact that distribution-level Demand Response programs were designed to meet distribution system needs, but nevertheless suggest that a statement that retail Demand Response programs also further other State policy objectives is enough to subject them to mitigation.³⁷ The retail Demand Response programs are one element of the larger REV initiative, which includes many objectives, such as efforts to promote retail customer energy efficiency, improve distribution system efficiency, and moderate distribution system line losses. While it is unsurprising that retail Demand Response programs may further some of these objectives to a degree, their design and purpose is limited to operation of utility distribution systems, and the cost of operating and maintaining them. Vague references to “other policy objectives” do not demonstrate a governmental plot to manipulate the wholesale capacity market.

An additional example of the Generators’ serial mischaracterization of the retail Demand Response programs is provided by their speculation regarding potential wholesale cost savings. Noting that the NYPSC included, in a REV implementation Order, estimates of reductions in near-term price volatility and long-term price inefficiency potentially arising from efforts to flatten peak demand, the Generators suggest that the distribution-level Demand Response

³⁷ Protest at 11-12.

programs were designed to secure a material portion of these savings.³⁸ As detailed herein and in the Complaint, however, the distribution-level Demand Response programs are not designed to impact wholesale energy or capacity prices, but rather to provide savings on the distribution system. In fact, the NYISO concluded that retail Demand Response programs do not have the ability to suppress capacity prices through the SCR program.³⁹

The Generators incorrectly imply that the State lacks jurisdiction to promote peak load reduction because such matters lie “squarely within the NYISO’s province.”⁴⁰ This argument is a red herring. States clearly have authority to take actions to facilitate bulk system peak load reduction.⁴¹ Regardless, the distribution-level Demand Response programs addressed in the Complaint are not designed for this purpose. They operate independent of the NYISO’s transmission-level SCR program and compensate Demand Response resources for a service provided to the distribution system that is not compensated by the wholesale market. As explained in the Complaint, this point is illustrated by program compensation rules that depend on *distribution*-level dispatch calls. It is reflected further by the fact that the utility-administered

³⁸ Protest at 12.

³⁹ NYISO Answer at 4, 6. Contrary to the Generators’ conclusory statements, the NYISO supported its conclusions with an Affidavit sworn by a technical expert.

⁴⁰ Protest at 12.

⁴¹ Although the Supreme Court affirmed FERC’s authority to set compensation for demand response resources participating directly in organized wholesale electricity markets as a “practice directly affecting wholesale rates,” the same decision also recognized the states’ longstanding “power to regulate retail sales,” which naturally affect peak load. *FERC v. Electric Power Supply Ass’n*, 136 S. Ct. 760, 784 (2016). Indeed, the Court recognized that “the wholesale and retail markets in electricity are inextricably linked,” implicitly recognizing that FERC (and by extension NYISO) and the states may permissibly address the same goals so long as each does so through means within its own jurisdictional sphere. Further, although the NYISO administers the bulk transmission system subject to the Commission’s oversight, the Federal Power Act also explicitly acknowledges states’ authority to address reliability and planning as they pertain to distribution systems. 16 U.S.C. §§ 824 and 824o(i).

distribution-level Demand Response programs and the SCR program often are called upon at different times of the day and on different days of the year.⁴² For instance, from 2011 through 2015, the Distribution Load Relief Program (“DLRP”) and Commercial System Relief Program (“CSRP”) administered by Consolidated Edison Company of New York, Inc. (“Con Edison”) overlapped with the SCR program only during 6% and 55% of total hours, respectively.⁴³ Moreover, these retail programs are designed to relieve distribution system constraints that often do not occur near bulk system peak load.⁴⁴

The Generators argue that the “main purpose” of the NYSERDA-administered Demand Management Plan (“DMP”) is “to impact the level of wholesale capacity.”⁴⁵ In fact, the DMP is one component of a larger NYPSC effort to avoid the intrastate electric system issues that would arise if the Indian Point Energy Center (“IPEC”) were to close.⁴⁶ Complainants explained that the NYPSC’s action falls “squarely within the system planning activities that the Federal Power Act reserves to the states and New York in particular.”⁴⁷ Complainants explained that DMP participants receive a “one-time incentive that offsets part of the cost to install equipment that enables Demand Response,” but they do not receive additional or continuing payments under the DMP.⁴⁸ Also, “the DMP does not compensate participating companies for responding to any

⁴² Complaint at 45 and Evans Aff. at ¶¶16-22.

⁴³ Complaint at 45 and Evans Aff. at ¶¶17-20.

⁴⁴ Complaint at 45 and Evans Aff. at ¶19.

⁴⁵ Protest at 13.

⁴⁶ Complaint at 33-34 (citing Case 12-E-0503, Generation Retirement Contingency Plans, Order Accepting IPEC Reliability Contingency Plans, Establishing Cost Allocation and Recovery, and Denying Requests for Rehearing [issued November 4, 2013].)

⁴⁷ Id. at 33.

⁴⁸ Id. at 60.

SCR call.”⁴⁹ DMP incentives, thus, are not payment for installed capacity within meaning of the NYISO’s BSM rules. These incentives should therefore be excluded from the BSM mitigation test. Including DMP incentive payments in that calculation would serve to make prospective SCRs appear uneconomic, thereby increasing the likelihood of mitigation, suppressing participation in the program, interfering with legitimate State policy objectives, and forcing customers to pay twice for the same capacity resource.⁵⁰

Finally, Complainants demonstrated in the Complaint that Con Edison’s DLRP and CSRPs and the NYISO’s SCR program typically were activated at different times from 2011 through 2015.⁵¹ The Generators argue that the lack of such data for equivalent distribution-level Demand Response programs administered by Orange & Rockland Utilities (“O&R”), New York State Electric & Gas Corporation (“NYSEG”), and Central Hudson Gas and Electric Corporation (“Central Hudson”) should preclude any BSM exemption for these programs.⁵²

The Complaint did not present call overlap data for the O&R, NYSEG, and Central Hudson programs because they just commenced in Summer 2015, and were not activated during Summer 2015. Complainants do not have access to program performance data for Summer 2016 which, in any event, would be incomplete given that Summer 2016 has not ended. The design of the O&R, NYSEG, and Central Hudson programs, however, mirrors that of Con Edison’s distribution-level Demand Response programs. There is no reason to expect that activation of these programs would exhibit a materially-greater overlap with the SCR program than the Con

⁴⁹ Id.

⁵⁰ Id. at 61. Customers would pay for the DMP incentive used to achieve a state policy objective, and also would pay for an amount of capacity equivalent to the mitigated resource. (Id.)

⁵¹ Id. at 45-46.

⁵² Protest at 17-18.

Edison programs. Moreover, the Con Edison DLRP/CSRP and SCR program call hour overlap data was provided to illustrate that bulk system and retail Demand Response programs are designed to address distinct needs on distinct electric systems, and not to prove the point. Regardless of the extent to which O&R, NYSEG, and Central Hudson Demand Response program call hours ultimately overlap with the SCR program, the retail programs are designed for, and will be administered to support, distribution system reliability in response to local system contingencies for which SCRs can provide no relief. Consequently, the Generators' arguments should be rejected, and benefits from all utility-administered distribution-level Demand Response programs should be excluded from the BSM mitigation test, as requested in the Complaint.

B. The BSM Exemption Requested In The Complaint Is Necessary To Avoid Interference With Legitimate State Policy Objectives

The Generators argue that the Complaint “failed to demonstrate that the State’s programs and policies to promote demand response cannot be implemented without exemptions from” the NYISO’s BSM measures.⁵³ This argument is irrelevant to the legal standard.

As explained repeatedly in the Complaint, the Commission has held that Complainants may “seek an exemption where including benefits received from a state program in the SCR Offer Floor would interfere with a legitimate state objective.”⁵⁴ This standard is starkly different than the Generators’ erroneous claim that an exemption may be considered only when a policy

⁵³ Protest at 14.

⁵⁴ See, e.g., Complaint at 23-24 (citing New York Public Service Commission, New York Power Authority, and New York State Energy Research and Development Authority v. New York Independent System Operator, Inc., 153 FERC ¶61,022 at ¶105 [issued October 9, 2015] [emphasis added] [“BSM Exemption Order”].)

objective cannot be implemented otherwise. Their arguments address the wrong standard and are therefore unpersuasive.

The Generators apparently argue that the status quo does not interfere with legitimate state policy objectives, and contend that subjecting Demand Response resources to the BSM mitigation test should not impact State efforts to rely on those assets to reduce or delay local distribution infrastructure investments.⁵⁵ According to the Generators, SCRs would be mitigated only when a retail Demand Response program payment would cause the SCR to be uneconomic in the NYISO mitigation test.⁵⁶ Consequently, the Generators continue, “a rational SCR provider” would elect to participate only in the retail Demand Response program and the State’s policy objective would be met.⁵⁷

However, the Generators’ approach fails to yield efficient outcomes. If a portion of the distribution system becomes very congested, for example due to a potential feeder line overload, the need for local distribution relief may become acute. The efficient approach is to increase distribution payments for Demand Response in that local region, including for some resources that may also be SCRs. However, once the distribution-level Demand Response payment reaches the forecast ICAP price, new local SCRs would fail the mitigation test and be denied ICAP payments. This would discourage new local resources from supplying distribution relief, when and where it was most needed. And if payments for distribution relief were increased further to entice local resources to enroll in the retail distribution program (despite their loss of ICAP payments), this would inflate the cost of the distribution relief program, thus discouraging

⁵⁵ Protest at 15.

⁵⁶ Id.

⁵⁷ Id.

the use of efficient Demand Response and encouraging the utilities to revert to more expensive, traditional rate-based distribution investments. Moreover, the Generators' hypothetical is incorrect insofar as it fails to consider one scenario that may impact a sub-population of SCRs. One tool that may be used by Responsible Interface Parties ("RIPs") that aggregate Demand Response resources is to establish a guaranteed minimum payment for the capacity provided by the SCRs in their portfolio. The SCRs would be mitigated if the sum of their retail distribution program payment and minimum payment for capacity exceeded the capacity market clearing prices. If the retail distribution program payment is less than market clearing price, the retail program would be less lucrative than the SCR program for the Demand Response resource, in which case a "rational SCR provider" would choose to participate in the SCR program alone to avoid mitigation and secure the higher program payment.⁵⁸

Forcing Demand Response providers to choose to participate only in the more lucrative program would cause aggregate participation in all Demand Response programs to be diminished.⁵⁹ The Complaint explains that one of the State policy objectives is to maximize the deployment of Demand Response resources in New York State, and identified this compelled choice as one reason why the exemption is needed to avoid interference with the State's objectives.

Forcing a choice between programs also may induce a cycle of program design changes that inflate program costs to lure customers into the retail distribution programs without a

⁵⁸ The following illustrates this point using purely hypothetical numbers. Assume that the forecast market clearing price is \$5/kW-month, the RIP minimum guaranteed payment is \$3.50/kW-month, and the retail program payment is \$2.50/kW-month. Here, the sum of the SCR minimum guaranteed payment and retail program payment would exceed the forecast market clearing price by \$1.00/kW-month, thereby causing the SCR to be mitigated. The retail program, however, would not be more lucrative than the SCR program.

⁵⁹ Complaint at 43-44.

corresponding increase to program benefits. Such competition among bulk system and retail distribution Demand Response programs is unproductive and should be avoided.

The Complaint explained that this unproductive competition also would interfere with the State's plenary retail rate-setting and distribution system operations and planning authority; the Generators do not rebut this point. One reason that REV emphasizes dynamic load management and increasing reliance on distributed energy resources for distribution system planning and operations is to moderate retail utility rates by deferring the need for new distribution system infrastructure investment.⁶⁰ Resources participating in the distribution-level Demand Response programs serve the distribution system and are compensated with funds collected from retail customers.⁶¹ Current BSM rules that compel Demand Response resources to choose between bulk system and distribution-level Demand Response programs inflate retail rates by forcing the State to (i) increase distribution program compensation through retail rates in order to promote enrollment in the utility program at the expense of enrollment in the SCR program, and/or (ii) forego the use of Demand Response as a tool that may enable deferment of costly distribution system infrastructure investments. Creating a framework that compels Demand Response resources to choose between bulk system and distribution-level programs thus interferes with the State's ability to rely on Demand Response resources to moderate the pace and/or magnitude of retail rate increases.

For all the foregoing reasons, the Commission should disregard the Generators' mischaracterization of Commission precedent, and reject their arguments that current BSM rules as applied to SCRs does not interfere with legitimate State policy objectives.

⁶⁰ Complaint at 51-53.

⁶¹ Id. at 52.

C. Retail Demand Response Programs Compensate Participants For A Service Provided To The Distribution System That Is Not Connected To, Or Compensated By, The Wholesale Market

The Generators claim that SCRs also participating in a utility-administered distribution-level Demand Response program (“dual” SCRs) are paid twice for providing capacity (i.e., once by the NYISO under the SCR program, and once by the utility under a retail program), whereas generators receive only one payment from the wholesale market for serving as a capacity resource. According to the Generators, the NYISO may respond to a Transmission Owner’s request for additional generation by obligating certain ICAP suppliers to offer their units in the Day-Ahead Market.⁶² These generators, they continue, would receive only wholesale market compensation for making their supply available in response to the Transmission Owners’ request for additional capacity resources.⁶³ The Generators equate the service provided by those generators to the service that an SCR enrolled in a distribution-level Demand Response program provides to the administering utility’s distribution system.⁶⁴ They argue that the SCR receives two payments for providing this service – one payment from the wholesale market, and one payment from the utility.⁶⁵

The Generators inappropriately conflate and link programs that provide compensation for distinct services. Utilities may anticipate the need for additional resources and ask the NYISO to ensure that incremental resources are made available the following day, in case they are needed. Resources committed in response to such requests are compensated by the wholesale market for the “service provided” to the bulk system. Distribution-level Demand Response programs are

⁶² Protest at 18.

⁶³ Id. at 18-19.

⁶⁴ Id. at 19.

⁶⁵ Id.

activated as needed to address contingencies on the distribution system, or to provide load relief when distribution system demand approaches peak levels, and their call hours are not linked to activation of the SCR program. These wholesale and retail market mechanisms expand the tools that a utility may use to ensure reliable system operation, but they serve separate systems and address distinct system needs. This distinction is reflected in the compensation paid to SCRs. Dual SCRs receive a single payment from the wholesale market for responding to a program call by the NYISO, and they receive a different, single payment from the utility for responding to a retail program call. The Generators, therefore, are wrong to claim that the wholesale market mechanism they describe is equivalent to the distribution-level Demand Response programs. Preventing Demand Response resources from receiving payments for participating in each distinct program denies them fair compensation for the distinct services that they provide.

D. Distribution-Level Demand Response Programs Do Not Subsidize SCRs

Throughout their Protest, the Generators assume that the utility-administered distribution-level Demand Response programs “subsidize” uneconomic resources participating in the SCR program. The Generators, however, rely only on repetition of conclusory statements to “prove” this assumption.

Retail payments provided by a distribution-level Demand Response program are paid by utilities for a service provided to the distribution system. The payments are supported by retail rates and retail customers, and the programs are not used to procure capacity. SCRs that also participate in a utility-administered program receive one payment for service provided to the bulk system in response to SCR program activation, and a second payment for service provided to the distribution system in response to retail program activation. Retail programs relieve distribution system constraints that often do not occur near bulk system peak load, as reflected in

the small overlap between SCR and retail program call hours. The wholesale market does not compensate SCRs for participation in utility-administered Demand Response programs.

Utility payments, therefore, are not subsidies because they pay for incremental services provided. The wholesale market does not compensate SCRs for participating in a distribution-level Demand Response program. Absent the utility payments (which are financed by retail customers), dual SCR resources would not be compensated for services provided to the distribution system. The Commission, therefore, should reject the Generators' arguments and find that distribution-level Demand Response program payments to SCRs are not subsidies, but unique payments for services provided.

E. SCRs Lack The Incentive And Ability To Exercise Buyer-Side Market Power

Throughout their Protest, the Generators assume that SCRs are uneconomic resources that would be used to manipulate the wholesale capacity market but for application of the NYISO's BSM measures. As with their meritless assumption that retail Demand Response programs provide out-of-market subsidies, the Generators merely repeat this assumption without proving their claim.

The Complaint explained that Demand Response resources are poor tools for the exercise of market power. The NYISO and Joint Utilities agree. The NYISO explained that, under Commission precedent, resources may be exempt from the BSM rules when they have "limited or no incentive and ability to exercise buyer-side market power to artificially suppress" capacity prices.⁶⁶ Mr. Seirup, the NYISO's technical expert, explained that Con Edison recently expanded eligibility for certain retail Demand Response programs and increased program

⁶⁶ NYISO Answer at 6 (citation omitted).

payments by a substantial amount.⁶⁷ Mr. Seirup concluded that these changes did not lead to “large influxes of SCR ... participation in” the SCR program, and incremental increases in compensation provided by retail Demand Response programs would not “present a credible risk of capacity price suppression....”⁶⁸ Based on this finding, the NYISO explained that “the evidence to date does not demonstrate that external demand response programs have the ability to support the use of SCRs to suppress capacity prices.”⁶⁹

Significantly, even if an entity had the incentive to suppress capacity prices, it would not be able to use SCRs for this purpose.⁷⁰ The Joint Utilities agree that Demand Response resources are an unlikely tool for buyer-side market power because they comprise only approximately four percent of capacity in the New York Control Area.⁷¹ This level of penetration is insufficient to have a material impact on the wholesale market.

Finally, on a related note, the Generators imply that granting the relief requested would have a material, harmful impact on capacity prices because approximately 531 MW of SCRs were available in Mitigated Capacity Zones in 2016.⁷² This is incorrect however, and perpetuates the Generators’ meritless assumption that SCRs are uneconomic resources being used to suppress capacity prices. First, the number cited by the Generators includes 67 MW of SCRs in Long Island (Zone K), which is not a mitigated capacity zone. Second, the remaining 464 MW cited by the Generators implies that granting the Complaint would flood the market

⁶⁷ Seirup Aff. at ¶8.

⁶⁸ NYISO Answer at 6 and Seirup Aff. at ¶9, 11.

⁶⁹ NYISO Answer at 6 (citing Seirup Aff. at ¶¶9-10).

⁷⁰ *Id.* at 8.

⁷¹ JU Comments at 4.

⁷² Protest at 15.

with hundreds of megawatts of new, unmitigated capacity. However, the exemption sought in the Complaint would apply to new SCR resources, and enrollment in the SCR program has been relatively flat for multiple years.⁷³ The Complaint also requests that bid floors for existing SCRs be removed. Given that the level of mitigated SCRs currently is only approximately 3.3 MW, the impact of this request would be de minimis. Moreover, although the State promotes Demand Response and expanding participation in bulk system and distribution-level Demand Response programs to further legitimate State policy objectives, there is no reason to expect that SCR program enrollment would escalate to the dramatic level implied by the Generators if the requested exemption is granted.

F. The Requested BSM Exemption Also Should Apply To Existing Mitigated Resources

The Complaint explained that the program exemptions from BSM should extend to, and include, existing dual SCRs that currently are subject to mitigation under the NYISO's BSM rules.⁷⁴ Such mitigation interferes with legitimate State policy objectives, and it would be arbitrary, irrational, and inconsistent to find that such interference would occur only after the date of a Commission order granting the requested exemption.

The NYISO also supports the Complainants' request that the proposed exemption should apply to existing SCRs that currently are mitigated under the BSM rules.⁷⁵ The NYISO explains that the circumstances of this request are distinguishable from those that militate against retesting

⁷³ See http://www.nyiso.com/public/webdocs/markets_operations/market_data/icap/Monthly%20Reports/Monthly_SCR_Reports/2016/2016-08%20SCR%20Monthly%20Report%20Aug%20-%20Prior.pdf.

⁷⁴ Complaint at 58.

⁷⁵ NYISO Answer at 7, 9.

generators and Unforced Capacity Deliverability Rights projects.⁷⁶ Retesting and, potentially, removing bid floors from existing SCRs, is reasonable under the circumstances because (i) the volume of mitigated capacity is comparatively small at approximately 3.3 MW, (ii) it is very unlikely that such change would impact materially the market or Market Participants' settled expectations, and (iii) the status of SCRs as mitigated or unmitigated does not have a material impact on investment decisions made by Market Participants.⁷⁷

CONCLUSION AND RELIEF REQUESTED

For the reasons set forth herein, Complainants respectfully request that the Commission reject the MMU Comments for filing or, alternatively, reject the MMU's arguments if the Commission instead accepts the late-filed Comments for filing. Complainants also respectfully request that the Commission grant their Motion for Leave to Answer because the Answer will assist the Commission in ruling on the Complaint. In addition, the Commission should reject the Generators' arguments for the reasons detailed above.

Respectfully submitted,

/s/ Paul Agresta, Esq.
Paul Agresta, Esq.
Acting General Counsel
Public Service Commission
of the State of New York
By: S. Jay Goodman, Esq.
Assistant Counsel
New York State Department
of Public Service
Three Empire State Plaza
Albany, New York 12223-1350
jay.goodman@dps.ny.gov

/s/ Justin Driscoll, Esq.
Justin Driscoll, Esq.
EVP & General Counsel
New York Power Authority
By: Glenn D. Haake, Esq.
Special Counsel
30 South Pearl Street
10th Floor
Albany, New York 12207-3245
Tel: (518) 433-6720
glenn.haake@nypa.gov

⁷⁶ NYISO Answer at 7.

⁷⁷ Id.

/s/ Jon R. Mostel, Esq.

Jon R. Mostel, Esq.
General Counsel
Long Island Power Authority, on
Behalf of itself and Long Island
Lighting Company d/b/a Power
Supply Long Island
333 Earle Ovington Blvd., Ste. 403
Uniondale, New York 11553
jmostel@lipower.org

/s/ Kevin M. Lang, Esq.

Kevin M. Lang, Esq.
COUCH WHITE, LLP
*Counsel for the City of
New York*
540 Broadway, P.O. Box 22222
Albany, New York 12201-2222
Tel: (518) 426-4600
klang@couchwhite.com

/s/ Jackson Morris, Esq.

Jackson Morris
Director Eastern Energy
/s/ Miles Farmer, Esq.
Miles Farmer, Esq.
Legal Fellow, Energy &
Transportation Program
Natural Resources Defense
Council
40 West 20th Street
New York, New York 10011
Tel.: (570) 380-9474
jmorris@nrdc.org
Tel.: (212) 727-4634
mfarmer@nrdc.org



Noah C. Shaw, Esq.
General Counsel
New York State Energy Research &
Development Authority
17 Columbia Circle
Albany, NY 12203-6399
Tel: (518) 862-1090
noah.shaw@nyserda.gov

/s/ Anthony J. Fiore

Anthony J. Fiore
New York City Office of Sustainability
Director – Energy Regulatory Affairs
253 Broadway, 7th Floor
New York, New York 10007
Tel: (212) 676-0756
afiore@cityhall.nyc.gov



Katherine Hamilton
Executive Director
Advanced Energy Management
Alliance
1133 15th Street, NW, 12th Floor
Washington, DC 20005
Tel: (202) 524-8832
katherine@38northsolutions.com

Dated: August 9, 2016
Albany, New York