

99 FERC ¶ 61, 246
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

New York Independent System Operator, Inc.	Docket No. ER01-3155-002
Consolidated Edison Company of New York, Inc.	Docket Nos. EL01-45-009 and ER01-1385-010
Consolidated Edison Company of New York, Inc.	Docket Nos. EL01-45-010 and ER01-1385-011
Consolidated Edison Company of New York, Inc.	Docket Nos. EL01-45-002 and ER01-1385-003
Consolidated Edison Company of New York, Inc.	Docket Nos. EL01-45-003 and ER01-1385-004
Consolidated Edison Company of New York, Inc.	Docket Nos. EL01-45-005 and ER01-1385-006

ORDER ON COMPLIANCE FILINGS

(Issued May 31, 2002)

In this order, the Commission addresses a number of compliance filings made by the New York Independent System Operator, Inc. (NYISO) and Consolidated Edison Company of New York, Inc. (ConEd). These filings propose a comprehensive market power mitigation plan for New York. This action is in the public interest because it protects the New York market from the exercise of market manipulation that could result in rates that are unjust and unreasonable without discouraging the entry of new resources into the market.

I. Background

In its November 27, 2001 orders, the Commission directed NYISO to file a comprehensive mitigation proposal by March 1, 2002.¹ In doing so, the Commission noted that NYISO had several mitigation measures either in place or proposed, which included the Market Mitigation Measures (MMM), in-city mitigation, and the automated mitigation procedure (AMP). Furthermore, the Commission expressed concern that the measures would not "fully fit together in a way that adequately addresses market power problems while avoiding unnecessary mitigation."² The Commission stated that, in formulating this comprehensive plan, NYISO should bear in mind that the Commission expected "one mitigation plan for the Northeast as part of the RTO process" and further urged strong collaboration with ISO NE and PJM.

On March 20, 2002, NYISO filed its Comprehensive Mitigation Filing under Docket Nos. ER01-3155 et. al. Therein, NYISO proposes a number of modifications to NYISO's MMM. Proposed changes include: the use of lower conduct and impact thresholds in New York City (NYC) to address locational market power issues; refinements to the AMP for the Day-Ahead Market (DAM); eliminating quantity thresholds for physical withholding in NYC; implementation of a limited exemption from the lowest reference level for new generation. However, it is important to note that NYISO does not propose to change many of the existing market measures that protect consumers from the exercise of market power. NYISO will also maintain all current price and bid caps. The proposed modifications to the AMP are intended to provide a better and more selective process, which would provide automated mitigation for NYISO's in-city markets, as is currently in place in other parts of the state.

A. NYISO's Automated Mitigation Procedures

In a November 23, 1999 order,³ the Commission accepted in part and rejected in part the market monitoring and mitigation plans filed by NYISO. In instances where NYISO concludes that a specific market participant is exercising market power, the

¹ New York Independent System Operator, Inc., 97 FERC ¶ 61,242 (2001) and Consolidated Edison Company of New York, Inc., 97 FERC ¶ 61,241 (2001).

² New York Independent System Operator, Inc., 97 FERC ¶ 61,242 (2001) at 62,098.

³Central Hudson Gas & Electric Corp., et al., 89 FERC ¶ 61,196 (1999).

Commission accepted NYISO's proposal to allow it to engage in discussions to resolve the problems informally or to issue demand letters requesting the participant cease certain behavior. In addition, the Commission stated that NYISO could file on a case-by-case basis under section 205 of the FPA to impose specific mitigation measures, or to make such filings based on recurring types of conduct that warrant mitigation. However, the Commission also determined that NYISO had not described with sufficient specificity the types of conduct that would trigger the imposition of certain mitigation measures; it had not established specific thresholds or bright line tests that would lead the conclusion that market power had been exercised.

In a March 29, 2000 order,⁴ the Commission further clarified NYISO's authority under the plans. Among other things, the Commission accepted the specific thresholds proposed by NYISO to trigger possible mitigation, but rejected NYISO's proposal to keep these thresholds confidential. The Commission also allowed NYISO limited discretion as to when to mitigate (e.g., NYISO may choose not to impose mitigation if it is satisfied with the party's explanation for its behavior) and for how long, but required NYISO to clarify that mitigation for market power may be imposed only prospectively.

In a complaint filed in Docket No. EL01-55-000, the Mirant Companies (Mirant) alleged that NYISO improperly intended to implement proposed AMP without filing any changes to its MMM pursuant to either section 205 or 206 of the FPA. In its May 9, 2001 order on Mirant's complaint,⁵ the Commission found that part of NYISO's proposal is within the bounds of its existing tariff, because section 3.2(b) of the MMM specifically envisions use of the Security Constrained Unit Commitment (SCUC)⁶ to identify questionable conduct. However, the Commission concluded that if NYISO wishes to implement other aspects of its AMP proposal, it must file revised tariff sheets pursuant to section 205 of the FPA to set forth all AMP procedures.

⁴Central Hudson Gas & Electric Corp., et al., 90 FERC ¶ 61,317 (2000), clarified, 91 FERC ¶ 61,154 (2000).

⁵Mirant Companies v. New York Independent System Operator, Inc., 95 FERC ¶ 61,189 (2001).

⁶The SCUC is NYISO's Day-Ahead Software computer algorithm. It performs a series of passes, or computer runs, that sequentially evaluate the generation resources bid into the Day-Ahead Market against demand bids, NYISO load forecasts, ancillary services needs and reliability requirements. Through this analysis, the SCUC selects the optimal least-cost, security-constrained dispatch of generation and load.

On March 17, 2001, in Docket No. ER01-2076-000, NYISO filed a new Attachment H to its Services Tariff that incorporated the proposed AMP procedures. By order issued June 28, 2001,⁷ the Commission accepted NYISO's March 17 filing and allowed NYISO to implement the AMP mechanism for 2001 summer capability period when supplies may still be tight and when the effectiveness of new demand response mechanisms are uncertain. The Commission viewed the proposed mechanism as only a temporary solution, and agreed with certain of the intervenors that the AMP may mitigate bids in situations where market power is not the cause for high or volatile bids, and may not provide for sufficient consultation with generators to reasonably establish that particular bids were attempts to exercise market power. The Commission further explained that automatic market power mitigation may be most appropriate where it is tied to structural market power problems, such as must-run situations where generators would otherwise be in a position to name their price, and noted that both PJM and ISO-NE use this more limited approach to automatic mitigation.

Under Commission orders allowing NYISO to implement its MMM,⁸ NYISO's Market Monitoring Unit (MMU), in consultation with NYISO's Market Advisor, is responsible for monitoring the markets administered or controlled by NYISO and for mitigating a market participant's conduct when NYISO determines that market power has been exercised. The MMM has specific threshold values for identifying generators or transmission facilities that exercise market power. NYISO imposes mitigation when a market party's conduct has a material effect on prices or on guarantee payments. Conduct and impact criteria must be satisfied before NYISO may mitigate a generator's bid. NYISO may not mitigate market prices retroactively.

Under its manual procedures, prior to implementation of the AMP, NYISO is able to identify conduct and pricing impacts that exceed the MMM standards only after the SCUC runs for a given day-ahead market have been completed, which means that mitigation cannot be implemented until the next day's day-ahead market. The primary purpose of the AMP is to eliminate the one-day lag inherent in manual application. That delay can be important when market conditions arise that permit an exercise of market power. The AMP procedures are activated when the SCUC that calculates DAM prices makes a preliminary determination that prices in a given area of New York will exceed

⁷New York Independent System Operator, Inc., 95 FERC ¶ 61,471 (2001).

⁸86 FERC ¶ 61,062 (1999), 89 FERC ¶ 61,196 (1999), and 90 FERC ¶ 61,317 (2000).

\$150 absent mitigation.⁹ Once the AMP is activated, it only mitigates bids if specific thresholds for both bidding conduct and market impact are crossed. The conduct and impact thresholds used by the AMP are the same thresholds approved by the Commission under NYISO's MMM. Under the automated procedures of the AMP, non-competitive bidding behavior is still mitigated prospectively, as authorized in the MMM, but the mitigation will occur within the SCUC runs in which the conduct and price effect thresholds of the MMM are crossed, without the one-day delay that occurs under the manual procedures.

By order issued November 27, 2001, the Commission granted NYISO's request to extend the AMP, but only until April 30, 2002, subject to certain conditions. The Commission stated that the AMP appropriately attempts to distinguish between market power and scarcity and that it closes the one-day lag inherent in the manual application of mitigation measures in the current MMM and thus advances the ability of NYISO to mitigate market power. However, the Commission agreed with NYISO and other market participants that the AMP required some refinements and additional review concerning, e.g., determination of reference prices, unnecessary mitigation, and application to energy limited resources. In addition, because of concern that the AMP may be one of the many barriers to entry for new generating facilities, the Commission directed NYISO to work with market participants to examine such barriers and consider whether new generators should be exempted from the AMP or from must-run mitigation, as in PJM. Further, the Commission directed the parties to consider whether and to what extent various energy limited resources, including those constrained by environmental rules, should be exempted from the AMP or specially accommodated by the AMP.

The Commission also noted that NYISO has several mitigation measures in place or proposed, including its existing MMM and its proposed AMP, as well as in-city mitigation, and expressed its concern that these measures may not fully fit together in a way that adequately addresses market power problems while avoiding unnecessary mitigation. Accordingly, the Commission directed NYISO to file a comprehensive mitigation proposal by March 1, 2002, to be effective May 1, 2002. The Commission indicated that when developing a comprehensive mitigation plan, NYISO should bear in mind that the Commission expects one mitigation plan for the Northeast as part of the RTO process. Therefore, the Commission strongly urged NYISO to collaborate with PJM and ISO-NE in formulating its comprehensive mitigation plan. NYISO's instant filing responds to these directives.

⁹NYISO explains that this threshold was selected because it is unlikely that the thresholds for mitigation of bids will be exceeded if prices are below \$150.

B. In-City Mitigation

On March 1, 2001, ConEd filed proposed tariff revisions that would have expanded the Localized Mitigation Measures (LMM) applied in NYC to apply to: (1) bids for sales of energy in the real-time market during constrained periods; (2) bids for minimum generation and start-up in all instances where generation must be operated out-of-merit due to local reliability requirements; (3) bids for start-up and minimum generation (i.e., whenever mitigation would apply to a unit's incremental energy bid) during constrained periods; and (4) all generators located electrically within NYC, not just those divested by ConEd. The Commission rejected ConEd's proposal without prejudice to refiling after the proposed revisions had first been considered through the NYISO stakeholder process.¹⁰ We noted that NYISO alleged that it could not fully implement ConEd's proposal for the 2001 summer capability period and that the proposed measures may duplicate the mitigation authority that NYISO already had. However, on rehearing (In-City Mitigation Rehearing Order), the Commission accepted ConEd's proposed revisions of the LMM, but only until October 31, 2001.¹¹

ConEd later filed a motion to extend the LMM until October 31, 2002. The Commission denied ConEd's proposed extension because it was procedurally improper. However, the Commission directed the New York Independent System Operator, Inc. (NYISO), as part of the comprehensive mitigation proposal required by our order on NYISO's AMP,¹² to address the Commission's concerns identified in the November 27 order concerning the Revised LMM¹³ (November 27 Orders).

II. Compliance Filing

A. NYISO Current MMM

NYISO addresses the November 27 Orders by revising certain features of the MMM. Currently the MMM are intended to prevent distortion or impairment of the NYISO administered markets through non-competitive behavior. NYISO states that

¹⁰95 FERC ¶ 61,216 (2001).

¹¹96 FERC ¶ 61,095 (2001), reh'g den'd, 97FERC ¶ 61,050 (2001).

¹²Order acting on September 28, 2001 filing by NYISO in Docket No. ER01-3155-001 to extend the AMP, which would otherwise expire on October 31, 2001, until April 30, 2002, 97 FERC ¶ 61,242 (2001).

¹³97 FERC ¶ 61,241 (2001).

conduct such as physical or economic withholding, and uneconomic production as well as activities that use a rule, standard, procedures or design feature that allows a market participant to exercise market power are specific examples of conduct that may be mitigated. The NYISO tariff contains specific thresholds for identifying non-competitive behaviors. The MMM uses a two part conduct and impact test to limit mitigation to only those behaviors that result in significant market impact. NYISO will, for those behaviors which are not detected through the conduct and impact tests, make a section 205 filing with the Commission to remedy conduct that departs significantly from conduct that would be expected from competitive conditions. Market parties may contact NYISO in order to provide explanation of behavior that may appear to violate the thresholds, and NYISO may contact participants for explanation of conduct in question.

NYISO states that it will substitute a default bid, designed to cause a market participant to bid as if faced by a competitive market, for participants who exceed thresholds for withholding. Such bids are by design at a level that allows participants to recover marginal costs at a minimum. The participant will be paid the clearing price for that period, except that the application of a default bid will not be allowed to set the clearing price. In addition, NYISO has in place penalties for providing false information regarding derating or outages of a facility or for a participant who fails to follow dispatch instructions resulting in a material increase of the clearing price or bid guarantee payments. Loads that consistently under schedule in the markets may be subject to penalties if their actions are found to cause a material effect on prices.

Virtual bidding markets are subject to limitations on bidders in the event NYISO determines that an unwarranted divergence between LBMPs in the DAM and RT prices occurs. NYISO may suspend the virtual market when it determines that it may not have sufficient ability to monitor the participants market liabilities.

Under the AMP, NYISO will continue the two part test, that of conduct and impact, to assess market power. NYISO will bring NYC under that same measures with an additional refinement to address locational market power issues within NYC. This consists of lower thresholds, that vary with frequency of congestion, when constraints are present. This will replace the current ConEd measures for both real-time and day-ahead markets. Other enhancements to MMM include additional thresholds for non-price bid parameters, refinements to the AMP, and limited exemptions for new generation. NYISO will assume ultimate authority for NYC transmission operation to maximize least-cost dispatch of generation and eliminate need for out of merit (OOM) dispatch. The comprehensive mitigation plan will continue the penalty provisions previously approved by the Commission. Additionally, NYISO will incorporate in the mitigation plan the ConEd price cap for installed capacity sales from divested units, and the cap on spinning

reserves bids. The \$1000 bid cap will also remain in effect.

B. NYISO's Proposal to Modify AMP

NYISO now requests that the Commission approve enhanced AMP as a permanent part of its Market Mitigation Measures. NYISO states that the AMP does not introduce new mitigation standards; it merely automates the application of the conduct and impact test thresholds which are outlined in the MMM. The AMP was originally instituted in order to reduce the time lag associated with the manual application of mitigation measures, which NYISO argues will allow it to better mitigate market power.

NYISO proposes four enhancements to AMP. The first is a minimum quantity exemption, which is aimed at ensuring that the AMP does not automatically mitigate apparent withholding of a quantity too small to represent an exercise of market power. Second, an additional computer run will be added to the software that schedules resources in the DAM (the SCUC algorithm) to limit mitigation to specific zones and hours. Third, modeling of reference curves will be enhanced. Fourth, automated mitigation of minimum generation and start-up bids will be added. In addition, thresholds for in-city mitigation will be modified, as discussed in the in-city section below.

The minimum quantity exemption enhancement establishes a level of withholding below which the AMP will presume there is no attempt to exercise market power.¹⁴ If, however, NYISO determines that withholding below the exemption level is market power abuse (which is to say they are significantly affecting LBMPs), the bid is subject to MMM via manual mitigation processes.

NYISO proposes a minimum capacity exemption level of 50 MW. NYISO finds this level reasonable because: (1) with the New York Control Area (NYCA) market's total capacity of 30,000 MW, withholding 50 MW is not likely to be an attempt to exercise market power; (2) the Day-Ahead Market also supports virtual bidding, which is not subject to any pre-established quantity limits; (3) 50 MW is relatively small in relation to the 3,000 MW of price-capped load (to which bidders can specify maximum

¹⁴The exemption is designed to work as follows: Automated mitigation measures will not be applied if the bids for a generation portfolio (defined as all generation owned by a participant and its affiliates, as well as all capacity levels and pricing determined by that participant and affiliates) violate the conduct threshold but are below a specified quantity; for bids exceeding the specified minimum level of MW: if the bids of a portfolio fail the conduct and impact tests, all MW of a participant that fail the tests will be subject to mitigation.

prices above which they do not wish to purchase energy) in the NYCA and thus is more than sufficient to protect against withholding of such a low level.

NYISO proposes to add an additional SCUC run to improve the AMP. Presently, SCUC determines if there are zones and hours where the LBMP surpasses \$150. If so, the bids of the generating resources that exceed the conduct threshold are replaced by their reference prices. Reference prices (alternatively known as reference levels) act as benchmarks against which NYISO is able to compare a generator's bid and are calculated using that generator's specific bidding history in most cases. The SCUC is re-run with these mitigated bids in order to assess the impact of the conduct in the first run. Should the second run reveal a price impact exceeding the impact threshold of \$100/MWh, the SCUC will retain the second run results to complete the commitment process. Improvements in software and hardware allow faster SCUC execution and thus permit a third SCUC run. NYISO argues that this third run will allow AMP to be more geographically and temporally selective in application. Thus, resources breaching conduct thresholds in any hour in any zone will be mitigated only in those hours and only in those zones where impact thresholds are exceeded. NYISO states that the addition of the third SCUC run may cause delays posting the DAM prices and commitments. However, NYISO asserts that any such holdups would be short (one hour or less) and the costs of them would be outweighed by the benefits to the system as a whole.

NYISO proposes to include minimum generation and start-up bids in the AMP, as soon after May 1, 2002, as the development, testing, and implementation of new software will allow. NYISO states that this is warranted because as economic commitment is based on, among other things, the attractiveness of minimum generation and start-up bids, they could be used to economically withhold resources. NYISO notes that minimum generation and start-up bids have always been subject to the MMM.

In the long term (after the Summer 2002), NYISO intends to modify the AMP software used in the SCUC model to implement the in-city locational conduct and impact thresholds. In the near term, in-city mitigation of locational market power will be addressed without use of the AMP, for practical reasons.

Because of differences “in the resolution of the curves used to implement reference levels in the Market Information System (MIS) software as opposed to the software used by the MMU” the AMP could improperly impose mitigation on a part of a seller’s output. However, NYISO proposes “improving the ability of the MIS Reference

Level curve to match the shape of the bid curve from a given unit,”¹⁵ to resolve the differences. For now, NYISO is using manual adjustments to the MIS Reference Level.

C. NYISO’s Proposal for In-City Mitigation

The Comprehensive Mitigation Filing (CMF), among other things, addressed specific mitigation measures for NYC (in-city mitigation measures). NYISO explains that the primary change proposed to address the locational market power issues in NYC is lower conduct thresholds in NYC that vary depending on the frequency of congestion. NYISO states that these thresholds appropriately recognize the higher potential exposure of these constrained areas to market power relative to the rest of the New York market.

The CMF proposes to bring the market mitigation of in-city units under the conduct and impact methodology used throughout the state. The conceptual framework, tailored to the local market power circumstances in NYC, is to be administered in both the day-ahead and real-time energy markets. The initial phase of the proposed real-time monitoring will be performed manually; however, NYISO plans to automate in-city mitigation¹⁶, as it has done with the AMP.

When there is no congestion on the interfaces into NYC or on interfaces on the 138 kV system in NYC, the same AMP conduct and impact thresholds will apply to in-city bids as to bids in the rest of the state. When there is congestion on the interface into NYC, or on the interface into the 138 kV system within NYC, or on an interface into a subpocket within the 138 kV system, NYISO proposes to apply lower conduct and impact thresholds. NYISO will determine the existence of congestion by the presence of a shadow price¹⁷ greater than a threshold value on the relevant interface. It proposes to set the in-city load pocket conduct and impact thresholds using a formula that is based on the proportion of congested to non-congested hours experienced over the preceding twelve month period.¹⁸ This approach would permit the in-city conduct thresholds to increase as the number of congested hours decreases, whether due to additional generation or increases in transmission capability.

¹⁵Compliance filing at 33.

¹⁶Automation of mitigation for the real-time market will occur by August 31, 2002.

¹⁷The term “shadow price” refers to the economic value of relieving one MW of congestion on a constraint. The shadow price threshold value would initially be established at zero, meaning that the lower thresholds would be triggered as soon as an interface becomes congested.

¹⁸Threshold = $\frac{2\% * \text{Avg. Price} * 8760}{\text{Constrained Hours}}$

In the DAM, NYISO will operate the AMP for in-city units using the same congestion trigger and reduced conduct and impact thresholds proposed for use in the in-city real-time market. As with its approach for the whole state, the NYISO will determine impact by comparing the in-city LBMP's resulting from the use of unmitigated bids to the LBMP's resulting from the substitution of mitigated bids for all units in constrained areas that exceed the locational conduct threshold, rather than relying on the proxy impact test proposed for the real-time market.

Until the AMP modifications can be implemented (estimated to be August 31, 2002), the NYISO states that it will continue to apply the ConEd DAM measures previously approved by the Commission¹⁹, but with a few proposed improvements: (1) use of NYISO reference levels in lieu of the default bids specified in the ConEd measures and (2) increase in the trigger for in-city DAM mitigation from 105% to 107% of the LBMP at the Indian Point 2, which accounts for the differences in line losses between these locations.

NYISO recommends that the quantity thresholds for physical withholding be eliminated. A breach of the impact test would continue to be required before mitigation could be imposed as a result of physical withholding.

NYISO states that in-city measures should apply to all generation in NYC because concentration levels in the City create the potential for any in-city unit to exercise market power. Further, transmission congestion into or within the City, gives any in-city unit potential to exercise market power. Also, NYISO contends that applying the measures to all (including new) units will ensure that whenever a unit becomes a "must run" unit, it will be subject to mitigation measures.

NYISO states that it will apply mitigation to Must Run units using a method similar to that used in PJM and ISO-NE. NYISO states that it has consulted with both PJM and ISO-NE and will continue to work towards a common approach to mitigation.

III. Notice and Interventions

Notice of NYISO's filing was published in the Federal Register, 67 Fed. Reg. 17,068 (2002), with comments, protests and motions to intervene due on or before March 16, 2002. In response to intervenors' requests, the time to file motions to intervene and comment was extended until March 23, 2002. Comments, protests and motions to

¹⁹84 FERC ¶ 61,287 (1998).

intervene were filed by the entities listed in the Appendix to this order.

IV. Discussion of NYISO Compliance Filing

C. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2000), the filing of a timely motion to intervene that has not been opposed makes the movant a party to this proceeding. In addition, NRG Companies filed reply comments, Morgan Stanley Capital Group, Inc filed a motion to expedite consideration of the Comprehensive Mitigation Filing, and KeySpan-Ravenswood filed an answer to comments regarding the Comprehensive Mitigation Filing. On May 13, 2002, NYISO filed a motion for leave to submit limited answer to the protests and comments. Although Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2001), generally prohibit answers to protests, we will accept the answers because they help clarify issues under consideration in this proceeding and will not disrupt the proceeding or place additional burdens on existing parties.

D. Issues

1. Conduct and Impact Mitigation as a Remedy for Market Power

NYISO's CMF continues to use NYISO's conduct and impact approach to market power detection by setting forth specific tests for market participants' conduct and resulting market impacts that warrant mitigation. NYISO seeks to replace the current in-city mitigation measures with conduct and impact mitigation that is consistent with those measures used elsewhere in the state. NYISO states that the conduct and impact tests: (1) allow it to distinguish between scarcity and market power in that bids that exceed conduct thresholds must also demonstrate a significant impact on prices before they are mitigated; (2) limit its intervention in markets; (3) maintain the integrity of the market by avoiding retroactive remedies. NYISO states that it does not intend to change the thresholds for conduct and impact from those previously approved by the Commission, except as noted in the section covering in-city mitigation below.

The AMP is applied on the basis of three steps in the SCUC, the first of which determines if there are, in any zones, in any hours, for which the LBMP exceeds \$150. The first test, called the conduct test, compares the bid level against a reference level for each generator. NYISO uses past accepted bids "over a reasonable period," as opposed to a marginal or variable production cost method, as a benchmark (reference level) in order to reflect competitiveness and the bidder's own past conduct. NYISO argues that this

method is the best evidence of a unit's marginal costs. NYISO identifies economic withholding by observing bids (*i.e.*, energy and minimum generation) that exceed the unit's reference level by a specified dollar (\$100/MWh) or percentage (300%) threshold. NYISO does not propose to alter the thresholds applicable throughout the state under normal conditions.²⁰ However, in areas that experience transmission constraints or other structural defects and that are thus vulnerable to significantly limited market participation, NYISO proposes "certain reductions" to the thresholds.²¹ Presently, "the in-city area of New York City" is the only region to which these will apply. NYISO proposes to add thresholds for "non-price" bid parameters, that identify economic withholding via, for example, altering start-up times or reducing response rates.²²

NYISO further proposes to exempt bids below a certain level from the conduct and impact tests, recognizing that small bids "are very unlikely" to exhibit an attempt to exercise market power. These "minimum bid exemptions" are: below \$25/MWh for energy and minimum generation bids and below \$5/MW for operating reserves bids.²³

If the reference level is exceeded by a predetermined amount, then the second test, the impact test, is applied. For bids that exceed the conduct test, NYISO applies the impact test to determine whether those bids cause a "material change in one or more prices or an increase in guarantee payments."²⁴ NYISO substitutes a reference price for bids that exceed a unit's reference price by the specified dollar amount or percentage level. NYISO then recalculates the clearing price. In cases where there is no such impact on prices, no mitigation is required. However, mitigation will occur if the clearing price results (generally) in an increase of 200 % or \$100 MWh over the redetermined price, whichever is lower. NYISO states that these tests mitigate only when structural problems result in the ability of a generator to increase prices above the threshold. Finally, the impact test, according to NYISO, assures that intervention is limited to situations in which there is significant evidence of an exercise of market power. The CMF does not propose changes to the thresholds applicable to normal market conditions.

Intervenors IPP, AES, Aquila and PPL object to the manner in which AMP reviews bids through the conduct and impact tests. They note that NYISO evaluates the impact threshold for all conduct threshold bids collectively so that if the combined result exceeds the impact threshold, all bids are mitigated. The result is mitigation of all bids in a zone

²⁰See page 17 of CMF for the applicable thresholds.

²¹CMF at 18.

²²Section 3.1.2 (a) (5) and (6) of Attachment H to NYSIO Tariff.

²³Section 3.1.2 (a) (1), (2) and (3).

²⁴CMF at 22.

when many of the bids do not exceed the thresholds. Intervenors note that under the MMM, these bids would be reviewed individually, and those found not in violation of the thresholds would not be subject to mitigation. Intervenors argue that the AMP unfairly presumes collusion between market participants.

NYISO defends the mitigation of bids collectively for three reasons: (1) the DAM can be vulnerable, especially in transmission constrained areas, to interdependent rather than competitive conduct; (2) running the SCUC passes needed to pick out individual bids would cause delays; (3) the proposed 50MW exemption is designed to "weed out" bids that are unlikely to reflect an exercise of market power.

Additionally, intervenors IPPNY and PPL point out that AMP, as opposed to the MMM, does not allow participants an opportunity to justify market behavior.

We accept NYISO's contention that review of bids individually in the AMP is impractical if not impossible to implement and therefore will not require the changes requested by intervenors. We further find that AMP by its very nature precludes the opportunity for market participants to justify behavior that triggers mitigation. We encourage NYISO to look for solutions as opportunity occurs.

Mirant and AES argue that because of revisions to section 3 of the MMM, specifically, section 3.1.2 (b)(4), NYISO has the authority to apply or "export" lower market conduct and impact thresholds whenever there is congestion within a constrained area, "either within the City or within an area outside the City that has been designated by the NYISO as a Constrained Area."²⁵ According to Mirant the tariff language reads as though different conduct and impact thresholds will be applied to any constrained area (defined by NYISO as an area within the NYCA that is subject to transmission constraints "giving rise to significant locational market power").²⁶ AES contends that NYISO should not be able to "unilaterally designate" an area as a constrained area and then apply special conduct and impact thresholds to bids therein. AES argues that NYISO fails to address the application of these mitigation thresholds to an area outside NYC that is deemed by NYISO to be a constrained area. Mirant argues that, even in the case of large numbers of

²⁵According to the CMF: "If and to the extent that comparable load pockets arise in other parts of the NYCA, reduced mitigation thresholds, as proposed for NYC, would likely be equally applicable in those other load pockets." **At present the only area in New York that requires the reduction of thresholds to protect against the exercise of market power is the in-city area.** (CMF at 19).

²⁶Mirant Protest at 18 and 19.

non-pivotal players in a given area, NYISO would assume “an exercise of market power whenever a transmission constraint occurs.”²⁷

NYISO, in its answer, argues that the wording, "determination of the number of Constrained Hours shall be subject to adjustment by the NYISO to account for significant changes in system conditions,"²⁸ does not give the NYISO undue discretion to change the in-city thresholds, as suggested by Aquila. Rather, it gives it the authority to take into account changes in the transmission system that would significantly affect congestion levels into or in NYC.²⁹

AES states that the only step required of NYISO to implement these reduced thresholds would be to file with the Commission to designate an area as a constrained area, rather than filing to modify the MMM in its Services Tariff expanding mitigation thresholds beyond NYC. Mirant suggests that the Commission require a new tariff filing, providing full notice and a response opportunity to affected generators, before allowing NYISO to impose the “the kinds of restrictive measures that the NYISO proposes for the NYC units.”³⁰ AES makes a similar request.

Under its tariff, NYISO must submit such designations to the Commission for approval. This will provide all parties an opportunity to comment on the requested action.³¹

On the other side, the Attorney General of New York City and the NY State Commission (NYPSC) argue that NYISO’s proposal should offer more protection to in-city consumers. The Attorney General's office interprets NYISO's claim that the mitigation thresholds have not been exceeded often in the past as an indication that those thresholds may be too loose. The Attorney General urges NYISO to continue to monitor behavior in the markets and to revisit threshold levels at the end of the coming summer. The NYPSC has no objection to the proposed thresholds for non-price bids or to the

²⁷Mirant Protest at 19.

²⁸NYISO Answer at 10. Also see NYISO Services Tariff, revised attachment H § 3.1.2 (b)(1) for "Determination of the number of Constrained Hours shall be subject to adjustment by the NYISO to account for significant changes in system conditions."

²⁹NYISO Answer at 11.

³⁰Id.

³¹NYISO reiterates in its Answer that under the language in its tariff, NYISO can propose a new area for designation as a "constrained area," but the designation, and any lowered thresholds, will not go into effect until approved by the Commission. NYISO Answer at 10.

proposal to exempt energy and minimum generation bids, provided that “the 10 minute non-synchronous reserve remains capped at \$2.52 until the stakeholders have had the opportunity to explore the consequences of any changes.”³² However, NYISO should not allow thresholds for load pockets to rise above \$20/MWh, even if the number of constrained hours is small, as this figure allows for bidding opportunities well above the costs of fuel and other variable costs. A \$100/MWh is far more generous than should be allowed.

NYISO challenges NYPSC's contention that the in-city conduct test should not be allowed to rise above \$20. NYISO says that as the number of constrained hours in NYC declines, the ability of sellers to sustain unwarranted price increases will proportionately decline. Eventually, if the congestion declines to nominal levels, the in-city market will rejoin the rest of the state. The graduated thresholds proposed by NYISO will still limit annual price increases to 2%. Thus, there is no basis or need to limit the graduated thresholds proposed by NYISO to an arbitrary \$20 upper limit.³³ We agree with NYISO in its contention that \$20 as an upper limit would result in unwarranted mitigation.

We find that NYISO's use of the conduct and impact tests is a practical compromise. We find no compelling argument to modify the methodology previously accepted by the Commission.

2. Reference Levels

NYISO establishes reference levels for all generators. Reference levels are benchmarks against which NYISO can evaluate bids to see if market power exists. In short, the MMM provide for several methods of determining reference levels, including the lower of the mean or median of a unit's acceptable bids over the previous 90 days (for similar hours or load levels adjusted for changes in fuel prices) or, if insufficient data exist to calculate a reference level, NYISO shall determine a reference level on the basis of estimated facilities costs. Alternative methodologies are available to develop reference levels for units seldom run in merit order or at levels rarely reached; reference levels vary with output levels and track changes in fuel costs, and may be adjusted for particular circumstances. Finally, reference levels are applicable to all units including in-city units because such units share general characteristics and competitive pressures with all NYISO resources when constraints are not binding.

³²Footnote 2, NYPSC Motion at 6.

³³NYISO Answer at 12.

NYISO proposes to enhance its determination of reference levels to address in part stakeholder concerns about the transparency of the process for setting reference levels. NYISO has added language to explain how reference levels are adopted in practice, a default formula to use as a starting point when a bid-based reference level cannot be determined. NYISO has proposed a default formula for Reference Level determination in order to provide transparency, though NYISO does not agree that this is an issue. This formula represents a beginning point and can be adjusted to account for additional factors.

*((heat rate * fuel costs) + (emissions level * emissions allowance price) + other variable operating and maintenance costs)*

In addition a reference level floor determination has been added for new capacity entrants which affords the new entrants a higher reference level for a period of three years. It recognizes that as growth occurs and units are retired in the in-city area, the reference level reverts to the standard for all generation after three years.

A number of intervenors argue that NYISO's negotiated Reference Level process is not transparent. ConEd, Multiple Intervenors, the City of New York, the Consumer Protection Board, and the Public Service Commission of the State of New York argue that there are only two parties determining reference levels: NYISO and generators. NYPSC argues that with NYISO as the "factfinder and decision-maker" and a given generator as the party with the ability to contest, there is a danger of overstating reference levels, as generators would contest those that had been understated but would have no incentive to contest a level that had been overstated. These intervenors recommend that the Commission retain oversight and review over the Reference Level-setting process, particularly when a Reference Level has been established via the NYISO/generator consultation process. ConEd asserts that this would ensure that reference levels are "appropriately devised," while Multiple Intervenors argues that this review would confirm fairness of process for all participants.

ConEd, the NYSCP (New York State Consumer Protection Board) and Dynegy call for disclosure of the implementation and impact of reference levels. ConEd requests a confidential report, issued quarterly, addressing which and how frequently reference prices are applied in NYISO markets. The NYSCP calls for a "complete analysis" illustrating the impact of the change to a single methodology for determining reference levels in the City as in the rest of the state. It also requests a release of aggregate reference price data so that participants can understand how prices are determined. Dynegy seeks a secure website for each generator where it can access information regarding its specific Reference Level.

NYISO states in its answer that it periodically distributes reference levels to each market participant (each market participant is only entitled to see its own reference levels, not the levels of its competitors) and provides market participant with their reference levels at any time upon request. However, these requests are not frequent, because consistent with the LBMP market design, market participants bid on the basis of marginal costs, not reference levels. Furthermore, NYISO contends that 92 percent of reference levels are determined on the basis of an average over a relevant period of the seller's bids. Thus, less than eight percent of reference levels are determined on the basis of discussions with a market participant. In addition, NYISO claims that it has found discussions with market participants to be relatively straightforward and uncontroversial.³⁴

NYISO's formula that serves as the starting point for setting reference levels when a bid-based Reference Level cannot be determined according to Dynegy, fails to make the process transparent. Dynegy further argues that despite NYISO's commitment to adjust reference levels for fossil fuel generators based on changes in the spot fuel price,³⁵ "none of these adjustments or any other ones made by the NYISO are provided on a routine basis."³⁶ Mirant, KeySpan, AES and the Electric Power Supply Association (EPSA) assert that NYISO has not committed to allowing recovery of any costs beyond marginal costs, particularly fixed costs, opportunity costs or risk premia. The failure to allow the recovery of such costs will not provide incentive for new entry into the NYISO markets.

NRG argues that generators in the in-city DAM should receive a new default bid equal to the reference price plus the same threshold that applies to RTM, which would work as a new default bid when in-city LBMP would be greater than 107% of LBMP at IP2.³⁷ Mirant suggests a period of five years, during which generators would be exempt from all bidding restrictions. Multiple Intervenors argues that the three year exemption period is a "considerable amount of time" and should not be extended if requested. KeySpan argues that the Commission should not apply different thresholds in a constrained area than it employs in the rest of the state.

Finally, the City of New York says that the 3 year reference level proposal inappropriately benefits generators. City of New York would provide payment to the new generation supplier equivalent to the reference floor model without removing all benefits

³⁴NYISO answer at 13.

³⁵According to NYISO Technical Bulletin No. 68: "The Reference Level for units that operate on a fossil fuel will be adjusted for changes in spot price indexes for the relevant fuel type."

³⁶Dynegy protest at 10.

³⁷NRG Protest at 34 and 35.

to consumers of new entry. Thus, City of New York suggests compensating new generators with a bid production cost guarantee payment to the extent that the unmitigated bid exceeds LBMP. This is to ensure that compensation to new generation would not exceed the average of new-entry prices.

Dynergy offers a number of criticisms of the reference levels. It asserts that, because of time constraints and inflexibility, generators are not able to modify reference levels in the short run (“two to three days out”³⁸), which impedes those generators from selling power to adjoining markets. NYISO’s failure to develop a more efficient process will not solve the seams issues in the region. Dynergy recommends that NYISO be directed allow for more flexibility in the adjustment process.

Furthermore, Dynergy argues that during times of high energy demand the market is most vulnerable to invalid reference levels. Units or portions of units that are called to meet load during high demand periods (which is to say, they do not run regularly) do not possess a robust bidding history and therefore present increased operational risk, as they are scheduled when prices approach the highest levels. Dynergy requests that NYISO be required to work with generators to incorporate an operating risk component in reference levels.

Lastly, Dynergy argues that the previous 90 days' bidding history for a generator is not an accurate benchmark for reference levels in that, for example, the reference levels for June will be based on accepted bids from March, April and May. Dynergy proposes an alternative methodology based on bids from comparable periods:

Period 1: Dec, Jan, Feb
Period 2: Mar, Apr, May
Period 3: Jun, July, Aug
Period 4: Sep, Oct, Nov

In the NYISO's answer, it raises some concerns with using the methodology proposed by Dynergy. However it states that use of earlier periods may be appropriate in certain cases. NYISO agrees to discuss on a case-by-case basis, adjustment of reference levels using earlier periods. In response to EPSA and others, NYISO states that reference levels are intended to reflect "legitimate production costs." Alternatively, NYISO gives participants the opportunity to argue for the inclusion of any perceived legitimate costs if a participant believes its bid history does not reflect appropriate production costs.

³⁸Dynergy Protest at 7.

We are not relinquishing our rights to exercise review and oversight over the Reference Level processes administered by the NYISO. Rather, we approve today NYISO's process for setting Reference Levels and believe that NYISO offers adequate optional methods to calculate Reference Levels which will allow participants the opportunity to include appropriate production costs. In addition, we believe that there is sufficient transparency in the process of setting reference levels. Moreover, NYISO has a market monitoring unit and it may operate within the rules and guidance approved by this Commission and included in the tariff.

With regard to the requests for disclosure, the Commission notes that NYISO, in its answer, states that it will provide individual generators their reference levels on request.

3. AMP Enhancements

AMP is the ability to implement the Market Mitigation Measures in the Day Ahead Market. AMP reduces the lag inherent in mitigation, as discussed above.

NYISO proposes several enhancements to the AMP. First, a minimum quantity exemption would be applied. This is intended to prevent mitigation of supply increments too small to exercise market power. Second, NYISO would add an additional run to the software that schedules the DAM to allow review of markets by zone and hours where the impact test is met. Third, reference price curves would be improved to eliminate differences between bid and reference prices curves. Last, AMP would be extended to Minimum Generation and Start-Up bids.

a. 50 MW Exception

NYISO would exempt from mitigation under AMP bids by entities that have 50MW or less under their or their affiliates control or by entities that have more than 50MW in their portfolio if the bid(s) are for 50 MW or less. AES and NYSCP argue that the exemption will lessen the occurrence of improper mitigation. IPPNY and PPL request that for the purposes of defining control of resources, the 50 MW exemption count against the controlling bidder only, not the owner and the bidder. They point to Dr. Patton's affidavit³⁹ in which he states that if a resource has an agent bidding the unit, the resources that exceed the conduct test would be attributed to both parties. If the quantity failing the conduct test is more than 50MW, all of those MW are subject to mitigation, not

³⁹NYISO Comprehensive Mitigation Filing, Attachment VI, Patton Affidavit ¶ 105.

only those in excess of 50 MW.⁴⁰ The Commission finds no ambiguity in the tariff language and further finds that a resources' agent by definition is an affiliate of the generator. We thus deny as unnecessary the requested clarification.

Aquila states that the 50 MW exemption was established without the normal governance procedures. Aquila states that such changes are subject to vote of the NYISO Management Committee. The Commission notes that just such an exemption was passed by the Management Committee on September 21, 2001.

b. Enhanced Zonal and Temporal Selectivity

NYISO says that before this filing, the AMP was applied on the basis of three SCUC steps, with a single SCUC run used to evaluate the impact test.⁴¹ NYISO proposes to add an additional computer run to the SCUC software. It contends that since the initial implementation of the AMP, improvements in the execution speed of SCUC, as a result of software and hardware improvements now permit an additional SCUC run. This additional run will implement a reduced set of the times and locations where an impact is observed for mitigation, thus enabling the AMP to be more geographically and temporally selective in its application. NYISO states that no tariff language changes are necessary to implement this additional SCUC run. It acknowledges that in some instances the additional SCUC run may cause delays in posting final DAM prices and commitments beyond the normal deadline for posting results.

Parties who comment on this issue generally agree with NYISO's approach and urge the Commission to approve this enhancement. Parties suggest that NYISO continue discussions with market participants to develop procedures and software necessary to ensure that the MMM has the temporal selectivity necessary to avoid the improper mitigation of in-city bids that are economically justified.

We find NYISO's refinement to the AMP procedures acceptable. We understand

⁴⁰Patton Affidavit at ¶ 105.

⁴¹NYISO uses the SCUC to schedule resources in the DAM. Currently, the first run establishes whether there are zones and hours for which the LBMP exceeds \$150/MWh. If found, generation bids that exceed the conduct threshold are replaced by their corresponding reference prices. The second run is then conducted with mitigated bids and the impact test is implemented by comparing the mitigated results with the unmitigated results from the first run. Finally, if the price impact threshold of \$100/MWh is exceeded in any zone for any hour, the SCUC retains the second-run results to complete the commitment process.

that this change will allow more geographic and temporal selectivity, thus reducing unwarranted mitigation.

c. Reference Price Curves

NYISO states that there is a minor difference in the resolution of the reference price curves as implemented in AMP and MMM. This can result in unwarranted mitigation. NYISO is in the process of resolving this issue and in the interim will manually adjust the curves to eliminate the mismatch. There were no adverse comments concerning this correction.

d. Automated Mitigation of Minimum Generation and Start-Up Bids

NYISO states that as soon after May 1, 2002 as the necessary software can be implemented, it will include automated mitigation of Minimum Generation and Start-Up bids. It states that this is appropriate because economic commitment is based not only on the attractiveness of a bid, but also on the attractiveness of Minimum Generation and Start-Up bids.

Parties who comment on this issue agree with NYISO's approach and urge the Commission to approve this enhancement. Certain of these parties recommend that NYISO implement this change at the same time it adds the second SCUC run to determine impact, as part of the enhancement of the geographical and temporal selectivity of the AMP. We accept NYISO's proposal to include minimum generation and start-up bids in the AMP as an improvement over the existing MMM.

4. NYISO Assumption of Ultimate Responsibility for the In-City Transmission System

NYISO will take responsibility for dispatch of in-city generation. Currently NYISO is in the process of modifying the dispatch software to enable it to model in-city load pockets. As a result, NYISO will essentially eliminate the need of OOM dispatch in the City for congestion relief. However, calls for OOM in-city dispatch may still be made for specific needs.

National Grid notes that this will result in two pro-competition effects. First, locational price signals will not be distorted by the OOM dispatch which could otherwise depress marginal pricing. Second, some of the costs of OOM, such as bid production cost guarantee costs, are socialized, which also distorts locality pricing. However, Reliant and Constellation find unsettling the fact that transmission owners (TOs) may still request

OOM for local reliability. They suggest that such calls must be subject to review and should have specific justification for the OOM. They request that NYISO post on its OASIS site the party requesting the OOM, the specific justification for the OOM, and the system condition requiring the request. This will provide all parties the ability to monitor and review OOM and protect against possible TO abuse. The Commission agrees with the intervenors that OOM request, party requesting the OOM, the specific justification for the OOM, and the system condition requiring the request be posted on its OASIS site. At this time, however, the Commission does not find it necessary to require NYISO to implement strict guidelines to audit and monitor TO requested OOM.

5. In-City Mitigation Measures

The comprehensive mitigation plan brings the in-city generation under the same umbrella as the rest of NYISO. Reference levels will be determined for all in-city units on the same basis as the rest of the state. Recognizing the limited generation in-city, which provides opportunity to exercise market power, the conduct and impact test for in-city will be modified to lower the thresholds when a transmission constraint exists. Further, a formula to recognize the higher incidence of constrained hours with a lower threshold to detect potential for market power will be incorporated.

a. Basis for Two Percent Threshold

NYISO proposes to apply lower AMP conduct and impact thresholds whenever there is congestion on the interface into NYC, or on the interface into the 138 kV system within NYC, or on an interface into a subpocket within the 138kV system. NYISO will determine the existence of congestion by the presence of a shadow price greater than a threshold value on the relevant interface. The threshold for determining whether an interface is congested is discussed in the next section.

NYISO proposes to set the in-city load pocket conduct and impact thresholds according to a formula⁴² that is proportional to the number of congested hours experienced over the preceding twelve month period. An in-city bid will be mitigated if it exceeds the reference level by this 2% threshold. This approach would permit the in-city conduct and impact thresholds to relax as the number of congested hours decreases, whether due to additional generation or increases in transmission capability. If there was no congestion into and within NYC, the thresholds would return to the level applied to the rest of the

⁴²Load Pocket Threshold = $\frac{2\% * \text{Avg. Price} * 8760}{\text{Constrained Hours}}$

state. The two percent is the maximum sustained price increase that a bidder could realize over the course of a year. As the number of congested hours increases the conduct and impact thresholds would decrease to ensure that annual exposure to price increases would be limited to two percent.

The conduct test would be applied in the MIS, which would select the appropriate bid depending on the amount of load pocket congestion and the outcome of the conduct tests, and pass mitigated or unmitigated bids to the Security Constrained Dispatch (SCD).⁴³

NYISO describes three additional situations that can cause market conditions that could create transmission congestion. They are: (1) Storm Watch⁴⁴; (2) requesting that particular generation be out-of-merit due to environmental or other reliability requirements⁴⁵; and (3) Supplemental Resource Evaluation (SRE).⁴⁶ NYISO states that market power mitigation of OOM and SRE situations would be warranted, and mitigation at the lower thresholds would be warranted to limit the effect of such price increases being added to any congestion-related price increases.

NYISO believes an annual threshold level (i.e., 2%) must be selected to establish load pocket thresholds that give some flexibility for generators bidding in constrained areas to reflect legitimate changes in marginal costs while limiting undue exposure of the market to locational market power. The two percent annual level is recommended as a reasonable level for establishing the load pocket thresholds for the in-city load pockets. The two percent level is between levels that are impractically low and thus likely to mitigate unjustifiably (mitigate instances of legitimate conduct) and levels that would permit sustained price increases resulting from the presence of locational market power. Nevertheless, NYISO will review and analyze the results of the new in-city measures during the coming 2002 Summer Capability period, and report to the stakeholders whether a change in the threshold is warranted.

⁴³The conduct and impact tests for 30 minute GTs would be applied in the Balancing Market Evaluation (BME), since the commitment of those units occurs over a longer period of time than the five minute intervals scrutinized by SCD.

⁴⁴It is necessary to impose operational limits on the transmission capacity into the city during thunderstorms or other severe weather conditions, in order to bring on enough generation in-city to assure reliable service if a lightning strike or other weather-related event causes a transmission outage.

⁴⁵If a unit becomes a “must-run” unit it may have consequent control over prices.

⁴⁶A unit that is contracted to provide service under an SRE will generally know that it has a form of “must run” status, and consequently a measure of control over prices.

Many of the intervenors have questions about how the proposed two percent conduct threshold for bids in the NYC real-time energy market was determined. They question whether the NYISO has set the mitigation thresholds at the optimum level to prevent anti-competitive behavior. Intervenors note that NYISO has not provided solid economic support for the threshold and has not explained why a tighter two percent in-city annual exposure level is appropriate. Certain intervenors believe that the NYISO proposal will allow pricing in the coming years to equal or exceed unjust and unreasonable levels experienced in prior years. Still others urge the NYISO to continue to monitor market behavior and to revisit the threshold levels after the end of the coming summer cooling season.

Intervenors propose thresholds ranging from zero to five percent. Some urge a zero threshold. They believe this would be warranted during the transition period. They state that it would reduce the effects of market power on real-time prices in the following year, allowing conduct thresholds derived under the proposed formula for subsequent years to be based on just and reasonable prices in the prior years. Also, they believe that it is better to start a mechanism at the lowest possible level to ensure that consumers are not harmed during the initial implementation stage.

One intervenor argues that NYISO has misconstrued the Merger Guidelines⁴⁷, which NYISO references in justifying its proposal for the two percent threshold. This suggests a willingness to tolerate market power-induced price increases up to five percent. This intervenor states the Merger Guidelines are intended to preclude, not sanction, market-power-induced price increases, and to identify mergers that may result in price increases so that they can either be blocked or the price increases prevented by mitigation. The intervenor states that one of the Merger Guidelines goals was to make clear that the five-percent market definition test did not represent a tolerance for price increases.

Intervenors believe that NYISO's mitigation measures should be fairly balanced to protect consumers and generators and to reduce the risks both of mitigated prices that do not permit recovery of incremental costs and of unmitigated prices that increase above competitive levels. However, they believe that the two percent annual price increase threshold in all hours tips the scales too far to allow the exercise of market power. They state that there is insufficient information to gauge accurately the effect of these new mitigation measures. Therefore, certain intervenors recommend beginning with a more conservative approach and adopting a one percent threshold in the mitigation formula. They contend that this would still provide significant bidding leeway for generators in

⁴⁷U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines (1992).

areas that are constrained in the majority of hours, and it would provide a more certain level of protection for NYC consumers against localized market power.

Lastly, several intervenors argue for a five percent threshold for the mitigation formula. They state that generators face normal cost fluctuations that are unrelated to any anti-competitive conduct. They explain that even a five percent threshold will result in less than a five percent theoretical worst-case price increase, because half of any such increases would be based on theoretical LBMPs for buses that are affected only by constraints into NYC. They contend that increasing the threshold to a more reasonable five percent is not necessarily detrimental to energy consumers. Also, they add that a five percent level would be consistent with a level that the Commission and antitrust agencies use in analyzing market power in their merger analyses. Some of those intervenors suggest that the Commission limit the duration of the conduct impact threshold to the Summer of 2002, so that NYISO can review the appropriateness of the threshold at summer's end and replace it with a higher or lower threshold as appropriate.

Other intervenors agree with the two percent threshold. One intervenor admits that an argument can be made that mitigation of bids to marginal costs (with zero thresholds) will yield sufficient revenue streams to attract new generation to NYC, but the extra costs to consumers resulting from the proposed NYISO approach is an investment to secure the future. It is a risk-reducing strategy that may turn out to have been unnecessary, but it is prudent to pay for such protections. The two percent appropriately balances the

generator's needs for flexibility with the need to protect against unreasonable prices. It requests that the Commission ensure that any proposal it adopts ensure that the actual price increases will not exceed those levels.

NYISO relies on the analysis of Dr. David Patton (Independent Market Advisor to NYISO), who believes that the two percent annual threshold level is "conservative, particularly when considered in comparison to the 5% price increase threshold that the Commission and the Antitrust Agencies have used in the competitive analysis of mergers," but a reasonable level for setting the threshold levels for the load pockets. He contends that it is an appropriate balance between allowing justifiable fluctuations in bids versus protecting the market from unjustifiable exercises of market power. NYISO finds that 5% provides an upper bound on the range of thresholds that should be considered for the in-city mitigation measures. The ability of in-city generators to sustain a 5% average price increase would, under the Merger Guidelines, be indicative of an ability to exercise significant market power.

We agree with NYISO that a two percent threshold reasonably balances the need

for flexibility for generators bidding in constrained areas to reflect legitimate changes in marginal costs and the need to prevent undue exposure of the market to locational market power. NYISO should review and analyze the results of the new in-city measures within the stakeholder process after gaining sufficient experience in their operation.

b. Congestion Threshold (Shadow Price)

Some intervenors argue that the threshold for determination that a constraint exists (i.e., a shadow price greater than zero) is too low and will result in over-mitigation by exaggerating the number of constrained hours in the formula that sets the threshold for conduct. These intervenors state that if the shadow price exceeds zero, i.e., a difference of even a single cent in prices across the constraint, for any 5 minute segment of the hour, the entire hour is reflected in the formula. Further, they state that the existence of higher prices within an area that is a known load pocket is a natural economic phenomenon which in itself does not represent exercise of market power. The Commission is not persuaded by this argument alone. If NYISO and its market participants find through market experience that this threshold is too low, NYISO may request a change in the level. Again, the Commission directs NYISO to review and analyze the results of the new in-city measures within the stakeholder process after gaining sufficient experience in their operation.

c. Proxy Impact Thresholds

In applying the conduct and impact tests to the real time market, the two computer runs needed to apply the tests are not possible in the 5 minute interval of real time dispatch. Accordingly, NYISO proposes three proxy tests. The first would impose mitigation if a resource exceeding the conduct test was scheduled in the previous interval. Second, for a resource not scheduled, mitigation would be applied if the unit's reference level is less than the offer price of the otherwise marginal unit by an amount greater than the conduct threshold. Third, mitigation would not be imposed if the sum of the shadow prices is less than the conduct and impact threshold. There were no adverse comments with regard to proxy impact thresholds. We find NYISO's approach a practical and reasonable approach.

d. On-dispatch Operation Requirement

NYISO argues that since the real-time mitigation can be applied only to on-

dispatch⁴⁸ generation, all units in a constrained area should be required to be on-dispatch if capable. If not on-dispatch, mitigation occurs through the BME, which is run at one hour intervals and delays the application of mitigation review.

AES, IPPNY, PPL and NRG object to NYISO's proposal that all units capable of doing so be on-dispatch. They argue that being on-dispatch can result in significant costs to the generator due to the differences, for example, in ramping requirements of the reserve markets. They argue that since there is no compensation currently for being on-dispatch, the choice to be or not to be on-dispatch properly belongs to the generator.

In NYISO's answer, it claims that an on-dispatch unit can include variable costs in its bid. It also states that intervenors cite no evidence that units currently operating on-dispatch are being required to operate at a loss. Furthermore, presently the in-city units that are capable of operating on-dispatch do so. Thus, a new operating burden is not being imposed and this provision will give the NYISO optimal operating flexibility when it implements the new Security Constrained Dispatch (SCD) modeling of the in-city grid. NYISO claims that without the proposed requirement, units could seek to delay mitigation by operating off-dispatch and therefore being scheduled in BME. There is a 90 minute or more real-time mitigation lag in the BME, whereas the SCD runs every five minutes.

We will accept NYISO's proposal to require generators to be on-dispatch. Generators will have the opportunity to recover any variable costs associated with being on-dispatch through their bids.

e. Duration of Real-time In-city Mitigation

NYISO explains that real time bids are required to be effective for the one hour interval of the BME. NYISO therefore proposes that if the bid exceeds thresholds and is mitigated in any 5 minute interval of the SCD, it shall remain mitigated for the remainder of the hour. IPPNY, AES and PPL object to this.

In NYISO's answer, it states that imposing mitigation on an interval-by-interval basis is not practical or realistic. It explains that the alternative would be to cycle mitigation on and off every interval, which even if feasible, would be likely to result in alternating intervals not being mitigated when in fact they should be. Also, it contends that cycling would likely create significant operating problems as result of ramping units up and down or turning quick-start units on and off. If those operating problems affected

⁴⁸A generator is on-dispatch if it is capable of responding to computer-issued ISO instructions. NYISO Services Tariff § 2.125.

unit availability, the reliability of in-city service could be affected as well.⁴⁹ We agree with NYISO's explanation and encourage NYISO to seek alternative solutions to this issue.

f. In-city DAM Mitigation

NYISO states that as soon as the necessary modifications can be properly implemented, NYISO will operate the in-city AMP using the same congestion trigger and reduced conduct and impact thresholds proposed for the real-time market. Until then, NYISO proposes to use the existing ConEd DAM mitigation measures previously approved by the Commission, with two modifications. NYISO will use the reference levels in its mitigation measures in place of the default bids used by ConEd bringing in-city generation in line with the rest of the state. NYISO will also adjust the trigger for in-city mitigation from the current 105% of Indian Point 2 bus to 107%. Analysis of the difference in prices between Indian Point 2 bus and in-city shows that line losses can account for 2% of the delta. The change implements the original intention, which is a 5% difference in price, and will result in less intrusion into the market.

IPPNY, Aquila, PPL, Mirant and Reliant object to the mitigation of the entire day-ahead bid when any single hour of the bid exceeds the thresholds.⁵⁰ AES cautions that additional work will be needed in NYISO's committees to resolve this lack of temporal selectivity under NYISO's proposal. AES is also concerned that NYISO failed to provide any timetable for implementing the necessary software changes to correct this flaw.⁵¹

In NYISO's answer, it states that the Comprehensive Filing proposes to modify the NYISO Procedures for the DAM to improve temporal selectivity, and that this improvement will apply to in-city DAM mitigation once it is brought within the AMP. In the interim, NYISO does not propose to divert resources to modify the selectivity of the ConEd DAM measures, because they will be replaced in their entirety once in-city DAM mitigation is brought within the AMP.⁵²

The Commission finds that this a temporary situation that exists only as NYISO

⁴⁹NYISO Answer at 8.

⁵⁰CMFat 51.

⁵¹The filing states only that they will be made "in the longer term (after the Summer 2002)". Id. at 33.

⁵²NYISO Answer at 8.

transitions from the ConEd LMM to full compatibility with the mitigation applied to the rest of the state. While we would not allow this for the long term, we will allow NYISO to use the modified ConEd LMM as a reasonable compromise until the modifications to the SCUC will be in place.

g. Basis for Increase of Indian Point 2 bus to 107% for Congestion Trigger

City of New York objects to NYISO's proposal to increase the mitigation trigger in the NYC DAM from five to seven percent. City of New York believes it should remain at five percent. It states that NYISO proposes to increase the congestion trigger on the basis of an analysis that indicates that mitigation "may be triggered by transmission losses, rather than the transmission congestion conditions that the test was intended to detect."⁵³ City of New York contends that NYISO has failed to offer a reasonable basis for increasing the congestion to seven percent. It claims that NYISO's flawed assumption is that the ConEd mitigation mechanism is supposed to trigger only when congestion alone is more than five percent of the price differential between Indian Point 2 and in-city generator buses. However, this assumes that losses were either ignored or expected to be a minimal portion of the price differential when the five percent was initially established. City of New York states that NYISO has not offered any basis for this assumption. It believes that ConEd originally proposed the five percent value as consistent with the five percent delivered price test, not based on a representation of actual congestion with a five percent price differential. Also, it says that NYISO's loss analysis is not relevant to the primary issue of whether mitigation is inappropriately being triggered by losses. City of New York claims that NYISO has failed to show how frequently mitigation is triggered when the congestion differential (*i.e.*, the total congestion less loss differential) would have been less than five percent, or how frequently mitigation would have been triggered at seven percent, even though the congestion differential was greater than five percent. City of New York states that NYISO has failed to show that the five percent congestion trigger is an inappropriate measure of congestion. Therefore, there is no compelling reason to change the trigger.

Reliant supports raising the DAM mitigation trigger from 105% to 107% of the Indian Point LBMP to reduce the likelihood that mitigation will be triggered solely by the impact that transmission losses alone have on LBMP.

In NYISO's answer, it reiterates that the proposed two percent increase in the threshold is attributable to line losses. It states that the intervenors have not shown any

⁵³CMF p. 52.

justification for mitigating transmission losses.⁵⁴

We agree with NYISO that a seven percent threshold is reasonable. As stated above, an analysis of the difference in prices between Indian Point 2 bus and in-city shows that line losses can account for more than one percent (in fact, very close to two percent) a majority of the time. Therefore, an additional two percent is appropriate. This change implements the original intention of the trigger of five percent.⁵⁵

h. Elimination of Quantity Thresholds for Physical Withholding

Currently, the MMM identifies physical withholding as withholding 10% or 100MW of a unit's capability or 5% or 200 MW of an entity's total capacity, or operating in real time at less than 90% of a unit's dispatch level. NYISO recognizes that physical withholding at much lower levels can affect the market when constraints are evident, and therefore will rely on the economic withholding provisions to detect this behavior when a constraint is in effect. No parties opposed this provision. We find that with the

exemptions requested in the AMP (50 MW and \$25 bids) that this change to the MMM is acceptable to prevent market power.

i. Incorporation of ConEd Bid caps

NYISO incorporates the ICAP provision requiring owners of divested units to bid UCAP into the capacity market along with the penalty provisions. The bid cap on ICAP is transferred from the ConEd tariff to the NYISO tariff with only comportsing changes, being set at the \$112.95 as approved by the Commission.⁵⁶ Further, NYISO notes that the bid cap and bidding restrictions on 10 Minute Non-Synchronous Reserves (10 Minute NSR) will remain in place. NYISO anticipates further study and possible changes in these measures as a result of stakeholder review. NYISO will carry forward the provision for penalizing generators who submit false information and fail to follow dispatch instructions and for LSEs who cause operational problems by repeatedly under scheduling in the DAM.

⁵⁴NYISO answer at 7.

⁵⁵NYISO Comprehensive Mitigation Filing, Attachment V, Savitt Affidavit, ¶ 16-24.

⁵⁶See Letter Order, Docket No. ER01-2536-001, Alice M. Fernandez, Director, Division Tariffs and Rates-East, to New York Independent System Operator, Inc. (Nov. 6, 2001).

6. Responses to Comprehensive Mitigation Filing Issues Raised in the November 27 Orders

a. AMP as a Barrier to Entry

NYISO addresses certain issues with respect to the market mitigation measures in response to the November Orders. NYISO finds that the AMP is not a barrier to market entry. NYISO avers that the conduct and impact thresholds operate at a level that encourages competitive bidding. Prices at this level send appropriate signals to potential market participants. Conversely, prices at levels artificially above market clearing can result in the entry of unwarranted and inefficient resources. NYISO states that sufficient latitude exists in the thresholds to permit prices to reflect scarcity and provide for flexibility in operating conditions experienced by resources.

A number of intervenors argue that the MMM as proposed in the CMF do not provide appropriate incentives to entry. Moreover, these parties contend that the MMM, even with the new enhancements, will actually deter entry into the NYSIO markets. One of most prevalent is that mitigation fails to properly communicate price signals to the market and potential entrants. "Distorted" price signals are a result of various mitigation measures: the AMP, low threshold levels, and the perception of arbitrarily-set limits. Many of these firms see the use of "excessively tight threshold levels" as tantamount to marginal cost pricing and an obstacle to proper price signals.⁵⁷ According to Morgan Stanley Capital Group, price controls mask price signals, which should communicate the scarcity premium and the level of economic response required of the market. Moreover, appropriate price signals convey specific information (i.e. the type of generation needed, necessary mode of response, etc.) to participants, allowing for adequate and responsive entry. KeySpan argues that an inability to allow price increases commensurate with scarcity discourages load responsiveness, reduces generators' incentive to maintain availability and construct new capacity, and ultimately impairs reliability. IPPNY asserts that improper mitigation is inconsistent with competitive markets, depresses prices and thus sends less-than optimal signals to investment community whose decisions whether to invest have a substantial impact on the long-term viability of the NYISO markets.

These mitigation measures also, the intervenors argue, create uncertainty amongst possible new entrants and investors. According to Aquila, beyond NYC, AMP will mitigate when prices are high and reduce a generator's ability to earn a greater share of its expected return on investment against times of surplus. Aquila further argues that the regulatory risk associated with MMM such as AMP limits amount of capital available for

⁵⁷Electric Power Supply Association Protest at 4.

new investment. The IPPNY asserts that the 2% standard (proposed for NYC) is based on conservative assumptions and offers neither the chance for bid flexibility nor the ability to recover marginal costs through bids. Mirant argues that energy prices in constrained areas must reflect the locational value of that generation, and thus constrained-area prices should never be mitigated to levels below the costs of relieving the constraint via market-based means.⁵⁸ Because many of the intervenors view the mitigation measures as arbitrary and "ill-conceived," those intervenors contend that the measures act as an obstacle to new entry, as they add an additional layer of uncertainty to any potential generation supplier's decision-making process. And, according to IPPNY, the investment community's reaction to signals received from NYISO is critical to engendering confidence in the markets' ability to provide returns.

In NYISO's answer it reiterates that the reference level floor is only intended to remove the perception that the reference level for a new generator might limit its ability to reap benefits of the market price that induced its entry. That should only occur if a new generator's reference level sets the market clearing price. It states that in reality, all generators, new or old, should have an economic incentive to bid at the level of its marginal costs, without regard to its reference level.⁵⁹ NYISO points to the long queue of generation projects as evidence that mitigation has not affected entry.⁶⁰

NYISO does not believe that new generation should not be exempt from the MMM. NYISO concedes that new entry can only be good for the market, but says that with time, changes in load through growth, retirement of existing resources and changes in transmission patterns can endow new entry with potential for market manipulation. NYISO states that the conduct and impact thresholds are set high enough that new entry will be able to realize scarcity rents without tripping the triggers. As a further incentive to new entry, NYISO proposes use of a Reference Level floor during the first three years of operation that give sufficient latitude for new entry to bid appropriately.

We find that NYISO's AMP proposal has sufficient flexibility in setting reference

⁵⁸Mirant Protest at 17.

⁵⁹NYISO Answer at 14.

⁶⁰**Steven L. Corey, NYISO Manager of Transmission Planning, in his affidavit filed with the CMF, states that NYISO has received 111 applications for new projects statewide since the commencement of its operations. Of those, eight have been placed in service, four withdrawn, and 99 are still pending. There are thirty-three proposals to locate projects in-city and seven projects physically located outside NYC but directly connected to the in-city transmission system and thus able to serve load in-city. These forty projects represent roughly "11,930 MW of new in-city generation capacity."**

levels for new generation such that new entry is not unduly burdened.

b. Application of AMP to Energy Limited Resources⁶¹

NYISO will exempt from AMP only hydro resources. NYISO states that it has adequate ability to develop reference levels for other energy limited resources. Whereas opportunity costs are very likely the only reference level applicable to hydro units, the same cannot said to be true for other energy limited resources.

c. Application of AMP to All In-city Generation

NYISO states that the frequent potential for market power in NYC requires a structural trigger using congestion thresholds. This will be applied to all generation in NYC, not just must-run units. This includes all resources in NYC, not just those designated as divested units. NYISO will use the same methodology to develop reference levels for resources in NYC that is use for the balance of state. NYISO finds that the comprehensive mitigation proposal provides for adequate mitigation of must run units, and therefore does not propose specific measures for must run situations.

d. Collaboration with PJM and ISO-NE in the Formulation of the Comprehensive Mitigation Filing

NYISO held meetings with PJM and ISO-NE to discuss the proposed mitigation plan and says that the plan is consistent with the approach of PJM and is compatible with ISO-NE. Further, NYISO states that ISO-NE is moving to a similar conduct and impact approach in its upcoming Standard Market Design Filing. NYISO also states that NYISO and PJM can co-exist during the upcoming high load season.

Aquila protests that while NYISO may have met the letter of the November Order, it did not meet the spirit of the Order. It says that NYISO moves further from a common approach with PJM and ISO-NE through expansion of the mitigation measures into areas where no underlying structural problem exists. The New York State Consumer Protection Board (NYSCPБ), says that NYISO approaches the objective from a different perspective than PJM, but finds that the two approaches can co-exist. NYSCPБ notes that both PJM and NYISO are committed to on-going consultations and have signed the Interregional Coordination and Issue Resolution Agreement to facilitate the resolution of any

⁶¹An energy limited resources is one that, due to design, environmental, cyclical or other non-economic requirements cannot operate on a daily basis, but can operate at least four consecutive hours each day.

interregional market mitigation disputes and related mitigation issues. The Commission finds that the continued coordination and consultation between the three ISOs satisfies the requirements of the November Order.

e. Experience with the In-City Mitigation Measures During the 2001 Summer Capability Period

In the ConEd LMM Order,⁶² the Commission ordered NYISO to consider its experience of mitigation in the in-city market in the 2001 summer period. NYISO, in an affidavit of Dr. James H. Savitt, states that the number of bids mitigated is less than the number of bids subject to mitigation and not mitigated. NYISO finds that the changes in the proposed mitigation for NYC make further analysis moot. It says that it based changes in the Comprehensive Mitigation proposal on reconciling the fundamental approaches to market mitigation underlying the ConEd and NYISO approaches, rather than on historical experience. NYISO states that it is focused on adoption of the appropriate mitigation methodology for NYC going forward.

V. Consolidated Edison of New York's Compliance Filings

A. Dockets Nos. ER01-1385-003, ER01-1385-006, EL01-45-002 and EL01-45-005, Compliance Filing providing timetables for implementing the revisions to the LMM.

On July 30 and August 14, 2001, in accordance with an order issued by the Commission on July 20, 2001⁶³, NYISO, as the agent implementing the ConEd LMM, submitted a compliance filing providing timetables for implementing the revisions to the LMM.

The narrow issue in this compliance filing is whether the filing complies with the Commission's July 20 Order, and the Commission will not consider arguments raised in a compliance filing that are not responsive to that narrow issue. KeySpan's argument that it is unfair for NYISO to making billing adjustments back to July 20, because prior to August 14 the market participant had no notice that bills would be adjusted retroactively to July 20, is without merit. The Commission finds that KeySpan's response and arguments are not relevant to this filing. ConEd's filing of March 1, 2001 put generators on notice that revised LMM would be effective the date of the Commission's acceptance and the

⁶²Consolidated Edison Company of New York, Inc., 97 FERC ¶ 61,241 (2001).

⁶³95 FERC ¶ 61,216 (2001) (July 20 Order).

Commission's July 20 Order explicitly accepted for filing the revised LMM effective July 20, thus parties were aware.

B. Docket Nos. ER01-1385-004 and EL01-45-003, Compliance Filing pertaining to revised tariff sheets regarding the effective dates of it Revised LMM.

On July 30, in accordance with an order issued by the Commission on July 20, 2001⁶⁴, ConEd submitted revised tariff sheets regarding the effective dates of its Revised LMM.

NRG Companies states that the Commission should reject or approve the tariff sheets subject to the outcome of the pending rehearing of the July 20 Order. NRG Companies states that it is physically impossible to implement most of the expanded/extended mitigation measures by October 31, 2001, which is the date they are to terminate. In an order issued on October 15, 2001,⁶⁵ the Commission denied rehearing of its July 20, 2001 order, therefore, the issues raised by NRG are now moot.

KeySpan contends that the existing LMM is flawed. KeySpan also believes that all NYISO mitigation should be reviewed. It says that the Commission should clarify in acting on this compliance filing that a comprehensive review is necessary. As a result of the instant CMFand our finding herein, KeySpan's concerns are now moot. The tariff sheets are accepted as filed.

C. ER01-1385-011 and EL01-45-010, Compliance Filing Containing Notice of Cancellation of ConEd's First Revised Rate Schedule FERC No. 199, the Localized Market Power Mitigation Power Mitigation Measures

On March 27, 2002, in accordance with an order issued by the Commission on November 27, 2001⁶⁶, ConEd submitted a notice of cancellation of its First Revised Rate Schedule FERC No. 199, the Localized Market Power Mitigation Power Mitigation Measures. ConEd seeks to make this cancellation effective the date on which the Commission accepts NYISO Comprehensive Mitigation Filing.

KeySpan and Reliant contend that ConEd has placed several conditions on the effectiveness of its tariff language. KeySpan requests that ConEd's "contingent" cancellation be rejected. Reliant requests that the Commission direct ConEd to revise its

⁶⁴Id.

⁶⁵97 FERC ¶ 61,050 (2001).

⁶⁶97 FERC ¶ 61, 241(2001) (November 27 Order), page 9.

compliance filing, striking its condition that its tariff are effective only "without change or condition adverse to Consolidated Edison Company of New York, Inc." Both parties request that the Commission determine the effective date.

Consistent with the Commission's November 27 order, the cancellation of ConEd's First Revised Rate Schedule FERC No.199 will be effective coincident with the Commission's approval of NYISO's revised Attachment H in NYISO's Comprehensive Mitigation Filing.

D. Notice, Interventions and Procedural Matters for ConEd Compliance Filings

Notice of ConEd's filing were published in the Federal Register, 66 Fed. Reg. 42,527 (2001), 66 Fed. Reg. 42,852 (2001), 66 Fed. Reg. 44,608 (2001), and 67 Fed. Reg. 17,986 (2002), with comments, protests and motions to intervene due on or before August 20, 2001, August 20, 2001, August 30, 2001, and April 23, 2002 respectively. Comments, protests and motions to intervene were filed by the entities listed in the Appendix to this order.

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2000), the filing of a timely motion to intervene that has not been opposed makes the movant a party to this proceeding.

VI. Conclusions, ConEd Filings

We accept the compliance in ER01-1385-003, et.al., establishing timetables for implementation of LMM as ordered by the Commission, effective July 20, 2001. We reject KeySpan's protest as outside the scope of the compliance. We accept the compliance filing in ER01-1385-004 and EL01-45-003. NRG's protest is rendered moot in the Commission's denial of rehearing in the October 15 order. Further, consideration of the Comprehensive Mitigation Plan herein renders contentions of KeySpan moot. Lastly, the Commission accepts the cancellation of its LLM (First Revised Rate Schedule FERC No.199), in ER01-1385-011 and EL01-45-010, as of the May 31, 2002. Consistent with the Commission's November 27 Orders, ConEd will remove in-city mitigation measures from it tariff.

VII. Conclusions, NYISO Filing

Until the Commission issues its final rulemaking in Standard Market Design, which will include market mitigation planning, we will accept the NYISO proposal. We require NYISO to monitor the various inputs that serve as triggers to mitigation to verify that they

are neither too high nor too low, but reflect accurately current market parameters. Additionally, we require NYISO to continue consultation and planning with PJM and ISO-NE to allow transition to a form of mitigation that will not impede market entry into these and other markets.

The Commission orders:

- (A) NYISO is hereby directed to submit a revised compliance filing as discussed in the body of this order within 30 days of the date of this order.
- (B) NYISO is further directed that the effective date of the tariff revisions is June 1, 2002.
- (C) NYISO's and ConEd's compliance filings, as modified under Ordering Paragraph (A), are hereby accepted for filing, to the extent discussed in this order.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.

Appendix

New York Independent System Operator, Inc.
Docket No. ER01-3155-002, et al.
Comments and Protests

AES Eastern Energy, L.P.
Aquila Merchant Services, Inc. (Aquila), Edison Mission Energy, Inc. and Edison Mission
Marketing & Trading, Inc. (together Edison Mission)*
City of New York
Consolidated Edison Company of New York, Inc
Constellation Power Source, Inc.*
Duke Energy North America, LLC
Dynegy Power Marketing, Inc.*
Electric Power Supply Association*
HQ Energy Services
Independent Power Producers of New York, Inc.*
KeySpan-Ravenswood, Inc.*
LIPA and Central Hudson Gas & Electric Corporation
Member Systems of the New York Power Pool (Member Systems)*
Mirant Americas Energy Marketing, LP, Mirant New York, Inc., Mirant Bowline, LLC,
Mirant Lovett, LLC, and Mirant NY-GEN, LLC (Mirant Companies)
Morgan Stanley Capital Group, Inc.
Multiple Intervenors
National Grid - U.S.A., New York State Electric & Gas Corporation, and Rochester Gas
and Electric Corporation
New York State Attorney General's Office
New York State Consumer Protection Board
New York State Public Service Commission
NRG Power Marketing, Inc, Arthur Kill Power LLC, and Astoria Gas Turbine Power LLC
(NRG Companies)*
Power Authority of the State of New York
PPL EnergyPlus, LLC
PSEG Energy Resources and Trade LLC
Reliant Energy Power Generation, Inc.

* Protest