20030508-3045 Issued by FERC OSEC 05/08/2003 in Docket#: EL02-125-000

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
103 FERC ¶ 63,016

KeySpan Energy Development Corporation, KeySpan-Ravenswood, LLC, New York Power Authority, Electric Power Supply Association, Independent Power Producers of New York, Inc.

Docket No. EL02-125-000

v.

New York Independent System Operator, Inc.

INITIAL DECISION ON HEARING ORDER OF OCTOBER 30, 2002

(Issued May 8, 2003)

APPEARANCES

Arnold B. Quint, Esq., J. Kennerly Davis, Jr., Esq., Joseph J. Saltarelli, Esq., Shawn Patrick Regan, Esq., Dominic Cordisco, Esq., and *Elizabeth Grisaru, Esq.* on behalf of the New York Independent System Operator

Neil H. Butterklee, Esq. and *Mary L. Krayeske, Esq.,* on behalf of Consolidated Edison Company of New York

Michael J. Wentworth, Esq., Charles M. Pratt, Esq., Robert C. Fallon, Esq., M. Eric Eversole, Esq., and *Kenneth M. Simon, Esq.* on behalf of KeySpan Energy Development Corporation and KeySpan Ravenswood LLC

Edgar K. Byham, Esq. on behalf of the New York Power Authority

Richard A. Kanoff, Esq. on behalf of Calpine Corporation

Elizabeth W. Whittle, Esq. and *Jeffrey D. Watkiss, Esq.* on behalf of PSEG Power In-City I, LLC

Joel deJesus, Esq. on behalf of Niagara Mohawk Power Corporation, a National Grid Company

Kurt Bilas, Esq. and *Michael G. Briggs, Esq.* on behalf of Reliant Resources, Inc.

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Barry Cohen, Esq. and *Susan Kelly, Esq.* on behalf of the Participating TDU Systems

Adam Bartsch, Esq. and *Stuart A. Caplan, Esq.* on behalf of New York State Electric & Gas Corporation

Jaeleen Araujo, Esq., David Yaffee, Esq., and *Joseph Nelson, Esq.* on behalf of Long Island Power Authority

Stanley Klimberg, Esq. and *Roni Epstein, Esq.* on behalf of Long Island Power Authority

James M. D'Andrea, Esq. on behalf of KeySpan Energy Development Corporation

William W. Bennett, Jr., Esq. and *Michael D. Cotleur, Esq.* on behalf of the Federal Energy Regulatory Commission

Jeffie J. Massey, Presiding Administrative Law Judge:

I. PROCEDURAL BACKGROUND

1. On May 23, 2002, the New York Independent System Operator ("NYISO") Operating Committee approved the May 15, 2002 *Cost Allocation of New Interconnection Facilities to the New York State Transmission System for the Class Year 2001* ("Cost Allocation Report"). Ex. NYI-3; Ex. KEY-3. On June 19, 2002, the NYISO Management Committee denied KeySpan Energy Development Corporation and KeySpan Ravenswood LLC's (collectively, "KeySpan") appeal of the Operating Committee's decision. On July 16, 2002, the NYISO Board of Directors denied KeySpan's appeal of the Management Committee's decision.

2. On August 28, 2002, KeySpan, the New York Power Authority ("NYPA"), the Electric Power Supply Association ("EPSA"), and the Independent Power Producers of New York ("IPPNY") (collectively, "Complainants") filed their Complaint under Section 206 of the Federal Power Act[1] ("FPA") against the NYISO with the Federal Energy Regulatory Commission ("FERC").

3. Complainants allege that the NYISO's Annual Transmission Baseline Assessment ("ATBA") for the Class Year 2001 was prepared improperly and that it is inconsistent with Good Utility Practice and Attachment S to the NYISO's Open Access Transmission

[1] 16 U.S.C. § 824e (2002).

Tariff ("OATT"). The Complainants seek an order directing the NYISO to: (1) revise its 2001 Cost Allocation Report and (2) prepare Cost Allocation Reports for succeeding Class Years in compliance with the NYISO OATT and the Commission's directives in this proceeding.

4. Notice of the Complaint was published in the Federal Register, 67 Fed. Reg. 56,994 (2002) with comments, protests and motions to intervene due on or before September 17, 2002. The NYISO filed, and the Commission granted, a request for an extension of time to file its answer until September 24, 2002. The NYISO filed its answer ("NYISO Answer") on September 24, 2002.

5. Timely motions to intervene were filed by American National Power Inc., Calpine Eastern Corporation ("Calpine"), Consolidated Edison Company of New York, Inc. ("Con Edison"), Dynegy Power Marketing, Inc., New York Transmission Owners, the NRG Companies, PSEG Power In-City I, LLC ("PSEG"), the Participating Transmission Dependent Utility Systems, and Reliant Resources, Inc. The Public Service Commission of New York ("NYPSC") filed a notice of intervention and protest on September 24, 2002. On October 11, 2002, Complainants filed a request to submit a limited response to NYISO's answer and Con Edison's motion to intervene. The NYISO filed a protest to Complainants' October 11 limited response on October 18, 2002.

6. On October 30, 2002, the Commission set the Complaint for hearing seeking to develop a factual record on: (1) whether the NYISO's selection of generic generating units was consistent with the feasibility criterion in the cost allocation rules; (2) whether the NYISO's exclusion of certain generating units from the Baseline Assessment was consistent with the cost allocation rules; and (3) whether the most recent PJM model available at the time the studies commenced was used to conduct the Baseline Assessment, and what effects an updated model might produce. Order Establishing Hearing Procedures, 101 FERC ¶ 61,099 at 61,368 (2002) ("Hearing Order").

7. On November 6, 2002, the Chief Judge issued an order designating the undersigned as presiding Administrative Law Judge in this complaint proceeding. The Chief Judge's order also scheduled a November 12, 2002 prehearing conference.

8. Mirant Americas Energy Marketing, LP, Mirant New York, Inc., Mirant Bowline, LLC, Mirant Lovett, LLC, and Mirant NY-GEN, LLC (collectively "Mirant") filed a Motion to Intervene Out of Time on November 13, 2002. On that same date, I issued an Order Establishing Procedural Schedule and Procedures. On November 25, 2002, the undersigned issued an Order Establishing Restricted Service list for this matter. I issued an Order Denying Out of Time Motion to Intervene of Mirant on December 3, 2002. Also on December 3, 2002, the NYISO also filed an Emergency Motion To Modify The Commission's Hearing Procedures. The Complainants filed an Answer in support of the NYISO's emergency motion on December 4, 2002. On December 6, 2002, the Chief

Judge issued an Order Extending Initial Decision Deadline and Suspending Procedural Schedule. In response to the Chief Judge's December 6, 2002 order, I issued an Order Re-Establishing Procedural Schedule and Procedures on December 12, 2002. A Discovery and Technical Conference was held on December 20, 2002.

9. Complainants filed direct testimony and exhibits on February 10, 2003. PSEG filed direct testimony and exhibits on February 11, 2003, as amended on March 4, 2003. The NYISO and Con Edison filed direct testimony and exhibits on February 20, 2003. Commission Trial Staff ("Staff") filed direct testimony and exhibits on February 24, 2003. The Complainants filed rebuttal testimony on February 26, 2003. The NYISO filed rebuttal testimony on February 28, 2003. Complainants, PSEG and Staff filed their respective Proposed Findings of Fact and Conclusions of Law on March 3, 2003. Con Edison and the NYISO filed their respective Proposed Findings of Fact and Conclusions of Law on March 4, 2003.

10. Hearing commenced on March 5, 2003 and concluded March 11, 2003. On March 6, 2003, the NYISO filed a Motion to Strike Testimony of William Sheehan, an expert witness for Complainants. The undersigned's order of March 7, 2003 denied the NYISO's motion to strike for reasons stated on the record during hearing on March 6, 2003. Also on March 7, 2003, the Chief Judge issued an Order Extending Date for Initial Decision to May 12, 2003. I issued an Order Confirming Post-Hearing Schedule on March 10, 2003, as amended in a March 11, 2003 Order Revising Post-Hearing Schedule.

11. The parties filed initial briefs on the April 9, 2003 due date and reply briefs on April 23, 2003. After the April 9, 2003 initial brief due date, the NYPSC filed a late initial brief on April 15, 2003. Exceptions to this Initial Decision shall be filed on or before May 22, 2003. Briefs Opposing Exceptions are scheduled to be filed on or before May 29, 2003.

II. SUMMARY OF FILED TESTIMONY

A. KEYSPAN/NYPA (Complainants)

12. KeySpan/NYPA as Complainants filed the direct testimony of Ray Plaskon, Ellis Disher, and Mark Waldron, and the rebuttal testimony of Robert Hiney and William Sheehan.

1. Mr. Ray Plaskon

13. From 1968-2001, Mr. Plaskon was employed with Long Island Lighting Company ("LILCO") and KeySpan. From September 2001, he has served as a consultant for KeySpan-Ravenswood, LLC to monitor and assist Ravenswood with the NYISO's allocation of system upgrade costs for its new facility. Ex. KEY-1 at 2.

14. Mr. Plaskon's testimony[2] focuses on the process through which the NYISO allocated system upgrade costs for interconnecting generators in Class Year 2001, as set forth in the Cost Allocation Report (Ex. KEY-3). In describing the methodology used by the NYISO to allocate costs between transmission owners and Class Year 2001 Project Developers, Mr. Plaskon explains that, under the NYISO Tariff, the costs to maintain transmission system reliability, including System Upgrade Facilities ("SUF") costs needed to maintain transmission system reliability, are the responsibility of Transmission Owners ("TOs"). Ex. KEY-1 at 3. The Commission recently referred to these non-assignable costs as the costs that would have been required "anyway." KeySpan Energy Development Corp, et. al. v. NYISO, 101 FERC ¶ 61,099 at 61, 363 (2002). A generation Project Developer is responsible for incremental costs attributed to its generation project. Id.

15. Attachment S[3] of the NYISO Tariff provides the methodology for identifying and allocating costs between the TOs and Project Developers. Id. The two principle components of Attachment S are: (1) the Annual Transmission Baseline Assessment ("ATBA")[4] - the first major step at arriving at a cost allocation between TOs and Project Developers; and (2) the Annual Transmission Reliability Assessment ("ATRA"). Id. at 3-4. Mr. Plaskon describes the purpose of the ATBA as identifying the least-cost SUFs needed over a five year period to reliably meet load growth and changes in load pattern. Id. at 4-5. If the amount of capacity provided by existing generation units is inadequate, then the ATBA must identify additional "generic" generation units to satisfy the shortfall, as well as the SUFs required to integrate these generic units into the transmission system. Id. at 4. Mr. Plaskon adds that Attachment S requires that these generic units must be "feasible solutions … [that] satisfy Applicable Reliability Requirements." Id.; see Ex. NYI-2 at First Revised Sheet No. 667. He goes on to contend that the NYISO should also perform various analyses, including short-circuit analyses, to determine whether there is sufficient interrupting capability in the Baseline system and, if breakers are overloaded, to determine what SUFs are required to mitigate overloads. Id. at 5-6.

16. Once the ATBA has been prepared, the NYISO prepares an ATRA that includes the Developers' projects for the specific Class Year. Id. at 4. The ATRA includes the least-cost SUFs required to interconnect the Developers' projects in each Class Year and

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[2] This summary is based on the Summary of Direct Testimony of Ray Plaskon. See Ex. KEY-1.

[3] Ex. NYI-2.

[4] Section 1.1 of the Cost Allocation Report states that the ATBA must comply with established Northeast Power Coordinating Council, New York State Reliability Council, NYISO, North American Electric Reliability Council, and local transmission owner criteria, rules, and procedures.

the estimated costs for those SUFs. Id. Mr. Plaskon explains that the difference in cost between the ATRA and the ATBA represents the costs assigned to Developers. Id.

17. Mr. Plaskon notes that, for the Class Year 2001, Con Edison prepared its own assessment for new generation that would be needed to satisfy reliability requirements in New York City.[5] Ex. KEY-1 at 6; see Ex. KEY-5. This assessment was presented to the NYISO at the Transmission Planning Advisory Subcommittee ("TPAS") meeting in October 2001. Ex. KEY-1 at 6. Mr. Plaskon submits that Con Edison selected six generic units to meet In-City deficiency by 2006, however it did not provide a year-by-year in-service date for these units. Id. Furthermore, while all six generics were modeled on real projects, Mr. Plaskon asserts that two of the units have had significant developmental problems and that neither is capable of being constructed in time to meet reliability requirements. Id. at 7, 11-12.

18. The Commission's October 26, 2001 Order conditionally approved the NYISO's Attachment S, with the requirement that the NYISO develop its own, independent ATBA. Id. at 8; see New York Independent System Operator, Inc., 97 FERC ¶ 61,118 at 61,575 (2001) ("October 26, 2001 Order"). The NYISO developed a 2001 ATBA. However, Mr. Plaskon testified that the NYISO used the same generic units for its 2001 ATBA as the Con Edison ATBA. Ex. KEY-1 at 9-10. He argues that the NYISO's 2001 ATBA does not appear to have any independent analysis. Id. at 10. Rather, the NYISO essentially adopted Con Edison's ATBA, with minor differences. Id. According to Mr. Plaskon, the NYISO appears to have selected generic units based on the sole criterion of minimizing transmission SUF costs to the TOs. Id. at 10-11.

19. Mr. Plaskon concludes his testimony with the claim that the NYISO also improperly excluded several units that were operating in 2001 from the 2001 ATBA. Id. at 12-13. He suggests that the NYISO selected generic units based solely upon the lowest cost impact to the transmission system, rather than also considering the feasibility of the unit to be constructed in time to meet Applicable Reliability Requirements. Id. at 13.

2. Mr. Ellis Disher

20. Mr. Disher is a consultant for the Complainants. His testimony is split into three parts.[6] He first argues that the NYISO failed to satisfy the NYISO's Attachment S feasibility requirement. After discussing the purpose of Attachment S, Mr. Disher claims that the NYISO must exercise Good Utility Practice when conducting its analysis under the ATBA process, in accordance with the Applicable Reliability Rules and other

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[5] The Con Edison Assessment estimated SUF costs for TOs to be approximately $10 million, and approximately $74.3 million for Class Year 2001 projects.

[6] This summary is based on the Summary of Direct Testimony of Ellis Disher. See Ex. KEY-7.

guidelines that govern the NYISO's analysis in the ATBA process. Ex. KEY-7 at 6-12, 21. He notes that when performing the ATBA process, the NYISO has interpreted Attachment S as requiring the NYISO to plan the system based on the practices of traditional vertically integrated utilities. Id. at 12; see Ex. KEY-15.

21. He offers his perspective on how a vertically integrated utility using Good Utility Practice would have planned the system to meet Applicable Reliability Rules and would have identified generic solutions to meet any deficiency in generation. Id. at 12-13. He maintains that many factors must be considered when solving generation deficiency, and emphasizes the importance of meeting deficiency requirements on a yearly basis to ensure the safe and reliable operation of the transmission system. Id. at 13-16, 21-23.

22. According to Mr. Disher, the NYISO acted inconsistently with Attachment S by failing to annually identify feasible generic solutions. Id. at 18-21, 24-26. He takes the position that the NYISO incorrectly emphasized minimizing SUF costs, rather than overall feasibility of the solution, and relied too heavily on Con Edison's Baseline Assessment. Id. at 19-20.

23. Second, Mr. Disher also asserts that the NYISO acted inconsistently with the Attachment S rules by excluding several generating units from the 2001 ATBA. Id. at 27-28. He argues that seven NYPA Gas Combustion Turbine ("GT") units and the Hudson Avenue No. 10 unit should have been used as generic solutions in the NYISO's 2001 ATBA. Id.

24. Third, Mr. Disher contends that the NYISO failed to obtain and input the most current and accurate PJM data in the 2001 ATBA and two recent Impact Studies from January 13, 2003 (Ex. KEY-9) and January 29, 2003 (Ex. KEY-10), thereby understating the effects caused by PJM's system on the 2001 ATBA. Id. at 29-36. He believes that the NYISO should have used the June 2001 PJM Regional Transmission Expansion Plan ("RTEP")[7] in the 2001 ATBA because it provides the best picture of the PJM system over the five years being modeled in the 2001 ATBA. Id. at 35.

3. Mr. Mark Waldron

25. Mr. Waldron is also a current KeySpan-Ravenswood consultant formerly employed by LILCO and KeySpan from 1968-1999. His testimony[8] reports the changes to the fault current levels reported in the NYISO 2001 ATBA, and their probable impact on the NYISO's Cost Allocation Report, produced by: (1) including seven additional

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[7] The PJM RTEP is the first FERC approved regional planning process in the nation. See Ex. KEY-11.

[8] This summary is based on the Summary of Direct Testimony of Mark Waldron. See Ex. KEY-24.

NYPA GT units and the Hudson Avenue No. 10 unit in the existing Baseline representation for the ATBA; (2) excluding an equivalent amount of capacity from the NYISO's generic unit modeled on the Gowanus Barge SEF Project from the Baseline (Ex. KEY-24 at 7-11); and (3) using an updated short-circuit model based on the June 2001 PJM RTEP (Id. at 11-20). He argues that the impacts on fault current levels as a result of these three changes are likely to require additional or different SUFs beyond those identified by the NYISO in its 2001 ATBA. Id. at 6, 25. The costs of installing these additional SUFs would shift to the TOs, thereby reducing the cost allocation responsibility of Project Developers. Id. at 10, 15. In short, Mr. Waldron argues that the NYISO's ATBA understates the need for additional SUFs on the Con Edison system, to the benefit of the TOs and detriment of the Project Developers. Id. at 31. He concludes that the NYISO has the requisite data and technical expertise to identify the appropriate SUFs and submit a revised 2001 ATBA and Cost Allocation Report. Id. at 11, 26.

4. Mr. William Sheehan

26. Mr. Sheehan is the Complainants' rebuttal witness. He is an investment banker and consultant in the field of electric and environmental project financing, and President of Financial Management Group, LLC. Ex. KEY-25 at 3-4. His testimony[9] discusses the June 2001 PJM RTEP and the PJM interconnection process, and is intended to rebut testimony that the NYISO should have only included proposed PJM generation projects with signed Interconnection Service Agreements ("ISAs") in any updated PJM short-circuit model used for the 2001 ATBA. Id. at 6-9, 12-14. He contends that because ISAs are typically signed only 18-24 months before a unit enters service, using a May 2001 signed ISA as a criterion for determining units likely to come on-line by 2006 would likely exclude units planned for mid-2003 through the end of 2006. Id. at 12-14.

27. Mr. Sheehan reasons that the effects that an updated model might produce will depend upon what type of data is included in the updated model that is used. Id. at 5. He claims that the NYISO's January 13 and January 29, 2003 Impact Studies on the effects caused by PJM's system on the NYISO's 2001 ATBA did not include a reasonable representation of the amount of new capacity in PJM that would have been expected to be in commercial operation at the end of 2006. Id. at 11-12. He notes that the NYISO included 3,700 MW of new generation capacity for PJM in its January 13, 2003 model and 7,500 MW of new generation capacity for PJM in its January 29, 2003 model. Id. at 11-12. Mr. Sheehan concludes that the NYISO should use the 15,288 MW of active PJM projects in Queue A that had signed a Facilities Study Agreement ("FSA") as of the June 2001 PJM RTEP as a proxy for new capacity in PJM through 2006. Id. at 8-10, 14-17. He argues that the signing of an ISA is not the proper criteria for determining the likelihood of a project achieving commercial operation. Id. at 14. Rather, Mr. Sheehan

[9] This summary is based on the Summary of Rebuttal Testimony of William Sheehan. See Ex. KEY-25.

advocates using an expanded list of projects that have signed an FSA as a better representation of what projects may come into operation. Id. at 14, 17. He adds that PJM uses this signed FSA approach as a tool for determining the Baseline study for its RTEP. Id. at 14-16.

4. Mr. Robert A. Hiney

28. Mr. Hiney filed rebuttal testimony on behalf of the Complainants. In his position of Executive Vice President of Power Generation for the NYPA, he oversees all aspects of NYPA's generating operations. Ex. KEY-26 at 2-3. His testimony[10] addresses the purpose for constructing and installing the ten NYPA GT units developed in 2000-2001. Id. at 3-4. He rejects Con Edison Witness Turkin's assertion that NYPA built these units for reasons other than to maintain the reliability of the New York City electric system. Id. at 3. Mr. Hiney responds by presenting and discussing a memorandum that he submitted to the Trustees of the NYPA requesting authorization to build these units. Id. at 4; see Ex. KEY-27. He takes the position that these units were constructed and installed to meet reliability needs in the New York City region. Id. at 4-5. Mr. Hiney also submits the dates when these generating plants were placed into service. Id. at 5.

B. NYISO

29. The NYISO filed the direct and rebuttal testimony of Steven Corey, and the direct testimony of William Lamanna and James Mitsche.

1. Mr. Steven Corey

30. Mr. Corey has been the Manager of Transmission Planning for the NYISO since its inception in November 1999. Ex. NYI-1 at 1-4. He testifies[11] that the purpose of the cost allocation rules is to provide a fair and consistent process for assigning cost responsibilities between TOs and Project Developers for SUF costs needed for reliable interconnection of new generation projects to the New York power system. Id. at 6. Mr. Corey describes SUFs as pieces of equipment necessary to reliably interconnect projects to the system, which are identified through a System Reliability Impact Study ("SRIS")[12] that assesses the effect a new project will have on the system. Id. at 6-8.

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[10] This summary is based on the Summary of Rebuttal Testimony of Robert Hiney. See Ex. KEY-26.

[11] This summary is based on the Summary of Direct Testimony of Steven Corey. See Ex. NYI-1.

[12] The purpose of the SRIS is to identify the interconnection facilities required for a New Interconnection project to interconnect to the transmission system in a reliable manner, in compliance with the NYISO Minimum Interconnection Standard. See NYISO OATT, §§19B and 32B.

Mr. Corey notes that, with his staff, he has reviewed and approved every one of the 39 SRIS reports prepared on New Interconnection projects since the creation of the NYISO. Id. at 3.

31. After discussing the ATBA and ATRA in the NYISO cost allocation process, Mr. Corey notes that the Baseline Assessment is derived from data in the 2001 Load and Capacity Data Report ("Gold Book")[13], in accordance with IV.F.1.a(1)(a) of Attachment S. Id. at 10-12, 14; see Ex. NYI-5. He describes the Gold Book data as a snapshot of the power system as it exists at a given time. Id. at 13. In opposing the Complainants' position, Mr. Corey argues that it would be inappropriate to add new generation to the Baseline as it comes online. Id. at 15-16. He submits that if a new project were added to the Baseline without first going through the cost allocation process, the project would unfairly escape all responsibility for interconnection costs. Id. at 14-15. Mr. Corey then submits that, while the Hudson Avenue No. 10 unit and some of the NYPA GTs were online during 2001, these projects had not yet gone through the cost allocation process, and therefore were not included in the 2001 ATBA. Id. at 17-18.

32. In selecting generic units to resolve the gap between the baseline capacity and projected capacity requirements for the five-year ATBA study period, Mr. Corey states that the NYISO took the perspective of a traditional vertically integrated utility. Id. at 22. The NYISO then selected a portfolio of generics consisting of a mix of resources that Mr. Corey describes as designed to meet a projected supply shortage that could respond to the day-to-day fluctuations in energy demand. Id. at 21. Mr. Corey emphasizes that traditional utilities always had portfolios that were a mix of small, medium and large plants. Id. at 21-22.

33. With regard to the Attachment S feasibility requirement for generic units, Mr. Corey asserts that adopting the Complainants' logic would limit possible generic units to only combustion turbines because only that type of generation would be feasible from the Complainants' perspective. Id. at NYI-1 at 24-25.

34. Mr. Corey further claims that generic selection is also subject to the requirement that SUFs are the least cost solution. Id. at 26. According to Mr. Corey, while this least cost criterion applies throughout the entire cost allocation process, it does not require the NYISO to consider contingencies such as permitting, financing and management considerations. Id. at 26-29.

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[13] The Gold Book is prepared by the NYISO. Ex. KEY-3 at 4. The Gold Book, filed with the State of New York each July, depicts the New York Transmission System and includes units that were existing and operating as of January 1 of each year. Ex. NYI-22 at 8; Ex. NYI-1 at 14.

35. Mr. Corey claims that the NYISO rejected the Complainants' proposed generic portfolio because: (1) the electrical impact would have been greater than the generics selected under the ATBA; and (2) the NYISO did not feel that a portfolio consisting entirely of combustion turbines was a reasonable projection of utility planning practices. Id. at 29. He adds that the NYISO similarly rejected the less costly portfolio of generics proposed by Con Edison because that portfolio, made up almost entirely of combustion turbines, does not represent Good Utility Practice. Id. at 30.

36. Moving on to discuss the NYISO's short circuit data analyses, Mr. Corey characterizes the data used in the short circuit studies as a "snapshot" of system conditions as of May 1, 2001, the date agreed upon at a January 25, 2001 TPAS meeting. Id. at 31-32. He explains that the short circuit data came from the TOs because TOs have traditionally been responsible for keeping such local impact data. Id. at 35. He further notes that Market Participants, such as the Complainants, relied on the same data to develop their SRISs. Id. at 36-37.

37. The NYISO also hired General Electric ("GE") Power Systems to validate the short circuit data provided by the TOs. Id. at 38. GE Power Systems presented a report to the May 15, 2002 TPAS meeting, at which Mr. Corey states the participants inquired, discussed and ultimately approved GE's report. Id. at 38-39.

38. The final portion of Mr. Corey's direct testimony discusses a NYISO study of the impact updated PJM data would have on the cost allocation process. Id. at 41-45. He first admits that the NYISO has determined that a more current PJM representation than that used in the NYISO's 2001 ATBA was available as of May 1, 2001.[14] Id. at 41. Mr. Corey then explains that the NYISO adjusted the PJM model to be consistent and comparable to the short circuit model used for the 2001 ATBA so that the NYISO could properly assess the impact of the updated PJM model. Id. at 42. Mr. Corey claims that the NYISO did not use all the generation projects listed in the June 2001 PJM RTEP report due to: (1) the very early stages of most of the projects; (2) including all of the proposed projects would have been unreasonable from a system planning standpoint because Good Utility Practice would not assume that 27,000 MWs of new generation (a close to 50% increase in PJM's total capacity) would be built in PJM by 2006; and (3) including all that generation in the updated PJM model would have distorted the model. Id. at 43-44. In short, Mr. Corey alleges that including every project in the June 2001 PJM RTEP would have been inconsistent with the cost allocation rules, distorted the ATBA analysis, and overstated the fault current impact from the PJM data. Id. at 42-44.

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[14] In his deposition, Mr. Corey also acknowledged that he became aware that PJM data may not be current when KeySpan raised that question at a January 2002 TPAS meeting. Tr. at 706-707.

39. The NYISO's January 13, 2003 Impact Study showed that using updated PJM data from the May 1, 2001 cut-off would have increased the cost of the ATBA by $30,000, or 0.23% of the $13 million cost allocated to Con Edison. Id. at 44. A December 1, 2001 cut-off would have increased the cost by $60,000, or 0.46% of the cost allocated to the TOs, as reported in the NYISO's January 29, 2003 Impact Study. Id. at 45.

40. In his rebuttal testimony[15], Mr. Corey agrees with Staff Witness Khu's description of the process by which the NYISO must select generic generation. Ex. NYI-28 at 2. He also agrees with Mr. Khu's assertion that it is not realistic for the NYISO to select generics based on "lowest overall system cost." Ex. NYI-28 at 2. Mr. Corey and Mr. Khu are in further agreement that the ten NYPA GTs were properly excluded from the NYISO's ATBA Baseline. Id.

41. Mr. Corey disagrees with Mr. Khu's assertion that the Hudson Ave. No. 10 unit should have been included in the NYISO's 2001 ATBA Baseline. Id. at 2-4. He also disagrees with Mr. Khu's position that the NYISO should not have relied exclusively on the 2001 Gold Book for developing the NYISO ATBA. Id. Mr. Corey argues that Mr. Khu misunderstands the significance of using the 2001 Gold Book to define the Baseline of the New York system. Id. at 3. He contends that the methodology for constructing the Baseline and the question of what source or sources of information should be used for load forecasting were topics of *extensive discussion and ultimately consensus* during the TPAS and Interconnection Issues Task Force ("IITF") process. Id. Mr. Corey claims that the Market Participants recognized the importance of having an objective and transparent source of information for determining the New York Baseline. Id. Further, he asserts that it was agreed and understood that the Gold Book would be the exclusive source of this forecast information for use in the NYISO's preparing the ATBA. Id.

42. Mr. Corey supports Staff Witness Sammon's conclusion that generic generators need not be capable of coming on-line during the five-year study period. Id. at 4. However, he disagrees with Mr. Sammon's assertion that the selected generics should have the least "total production and transmission costs." Id. at 5. Mr. Corey claims that Attachment S does not require such an analysis, and that the NYISO lacks both the data and time to perform such an analysis within the duration of the cost allocation process. Id. Mr. Corey argues that neither Staff nor the Complainants have identified another set of generics with lower cost SUFs, nor does Mr. Sammon state that the generics proposed by the NYISO are not feasible under Attachment S. Id.

43. Mr. Corey also disagrees with Mr. Sammon's position regarding the independence of the NYISO in selecting generic units. Id. at 5-9. He concludes by asserting that

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[15] This summary is based on the Summary of Rebuttal Testimony of Steven Corey. See Ex. NYI-28.

nothing prevents the Project Developers from submitting their own proposed ATBA or generic solutions to the NYISO for consideration. Id. at 9.

2. Mr. William Lamanna

44. Mr. Lamanna is the NYISO Transmission Planning Department's Senior Engineer. Ex. NYI-16 at 2-3. He has served as the Project Lead or Lead Engineer in various studies related to Annual Transmission Reviews and SRIS analyses. Id. at 4.

45. Mr. Lamanna testifies[16] that the cost allocation rules originally called for TOs such as Con Edison and the Long Island Power Authority ("LIPA") to prepare and submit annual transmission reviews for their transmission districts. Id. at 5. Shortly after the TOs submitted their transmission reviews to the NYISO, the FERC issued an October 26, 2001 Order directing the NYISO to have "decisional control" over the ATBA. Id. at 6. Mr. Lamanna then undertook a variety of new studies to assess the transmission reviews. Id.

46. Mr. Lamanna's studies concluded that any generic generation in the ATBA had to address four In-City load pocket[17] shortfalls. Id. at 7. He claims that Con Edison's six proposed generics were feasible and addressed these In-City load pocket deficiencies. Id. at 7-9. In comparison, Mr. Lamanna contends that the Complainants' generic proposal including the NYPA GTs would not have remedied the four identified load pocket deficiencies. Id. at 11. Furthermore, he claims that the Complainants proposal would not have resulted in the least costly configuration of SUFs. Id. at 11-12. Mr. Lamanna characterizes combustion turbine units such as those installed by the NYPA as relatively inefficient, and often only an interim solution that are removed once additional generation capacity becomes available. Id. at 9-10.

47. Mr. Lamanna opposes the Complainants' contention that Generic Units #1 (Gowanus) and #5 (East River) were not feasible. Id. at 9. He argues that an integrated utility forecasting a future capacity shortfall (the perspective the NYISO took) would not have relied solely on single cycle gas or combustion turbines, but would instead have selected a mixed portfolio of base, intermediate and peak units. Id.

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[16] This summary is based on the Summary of Direct Testimony of William Lamanna. See NYI-16.

[17] A load pocket is an area of a system where demand for electricity exceeds the ability of the system by its transmission wires to import electricity into that area such that demand in the area must be met by a generation located inside the area. Ex. NYI-16 at 20-23. New York City itself is a load pocket and also has within it a number of load pockets that can be understood as sub-load pockets. Tr. at 992; Ex. Key-5 at Table IV.

48. Mr. Lamanna goes on to assert that Attachment S does not require, and as a practical matter the NYISO cannot evaluate, every contingency, such as political, environmental, regulatory, and financial considerations, that may affect whether a proposed project actually comes into service. Id. at 10-11.

49. After the NYISO was ordered to have "decisional control" over the ATBA process, Mr. Lamanna testifies that the NYISO staff reviewed Con Edison's proposed SUFs and identified additional SUFs necessary to address reliability concerns. Id. at 12. This additional SUF cost of approximately $3 million effectively increased Con Edison's cost allocation by nearly 30%. Id. at 12-13. Mr. Lamanna argues that this cost allocation revision which Con Edison objected to contradicts the Complainants' assertion that the NYISO sought to minimize Con Edison's SUF costs. Id. at 14-15.

50. Mr. Lamanna goes on to address the impact of using updated PJM short circuit data. Id. at 15-17. The NYISO prepared two evaluations with updated PJM data. The first study used a May 1, 2001 cut-off date, and the second study used a December 1, 2001 cut-off date. Id. at 17. In evaluating data, Mr. Lamanna explains that the NYISO selected all PJM projects which had executed an ISA, a milestone in the PJM interconnection process that he argues is similar to acceptance of cost allocation in the NYISO process. Id. at 16. Mr. Lamanna asserts that this was done to create comparable representations of the PJM and NYISO Baseline representations. Id. Mr. Lamanna's analysis shows that this updated PJM data increased costs by $30,000 for the May 1 cut-off date evaluation and by $60,000 for the December 1 cut-off date evaluation. Id. at 17-18.

3. Mr. James Mitsche

51. Mr. Mitsche is the President of PowerGEM, a consulting firm specializing in electric transmission assessment, and is currently a consultant for the NYISO. Ex. NYI-22 at 3. He was also the Chair of the TPAS of the NYISO's Operating Committee, as well as the Chair of the IITF until July 2002. Id. at 3-4. TPAS and IITF were responsible for the development of the NYISO's interconnection and cost allocation procedures, respectively. Ex. NYI-22 at 4; Ex. NYI-1 at 4-5.

52. Mr. Mitsche testifies[18] that under the NYISO's cost allocation process, proposed generating facilities were studied in groups known as Class Years. Id. at 5. The process involved a series of transmission studies to determine the "anyway" and "but for" SUF costs. Id. at 6. "Anyway" SUF costs were those that the TOs would be responsible for in order to meet applicable reliability criteria, without consideration of any proposed new generation. Id. This study was called the ATBA. Id. The "but for" SUF costs were

[18] This summary is based on the Summary of Direct Testimony of James Mitsche. See Ex. NYI-22.

those for which Project Developers would be responsible in order to meet Applicable Reliability Rules, assuming the addition of their proposed units. Id. These "but for" costs were evaluated in the ATRA. Id.

53. Mr. Mitsche states that the first step in the ATBA determines whether generation or transmission facilities are required to meet Applicable Reliability Rules over a five-year horizon, without the inclusion of the class projects being studied in the ATRA. If such facilities are required, the NYISO must propose "feasible" "generic" solutions to satisfy the reliability criteria. Id. at 6. Mr. Mitsche alleges that the term "feasible" was purposely left undefined by the IITF to give the NYISO discretion to select generic solutions. Id. at 7.

54. In determining that additional facilities were required to meet reliability criteria, Mr. Mitsche notes that the NYISO relied on the 2001 Gold Book in accordance with Attachment S of the NYISO OATT. Id. at 7-9. The NYISO determined there was a gap between existing generation and projected load growth, and then proposed generic solutions. Id. at 9-10.

55. Like Mr. Lamanna, Mr. Mitsche opposes the Complainants' contention that Generic Units #1 (Gowanus) and #5 (East River) were not feasible. Id. at 10-11. Mr. Mitsche reiterates that the NYISO utilized the perspective of an integrated utility in forecasting future needs. Id. at 11. Yet, he also takes the position that Attachment S does not require the NYISO to evaluate the generic units based on a full range of traditional utility planning criteria. Id. at 11-12. Mr. Mitsche argues that undertaking extensive analysis simply to determine "feasibility" would be impossible in the timeframe of the cost allocation process called for in Attachment S. Id. at 12.

56. Mr. Mitsche characterizes the Complainants' proposal as not feasible. Id. at 12. He maintains that an integrated utility would not have planned to install ten GT units to meet projected load requirements, particularly because such combustion turbines are generally sited and installed for emergency measures. Id. at 12-13.

57. Mr. Mitsche opposes any interpretation of Attachment S that would require the NYISO to consider anything more than SUF costs when conducting the ATBA and ATRA. Id. at 13. He states that the NYISO was required to utilize Good Utility Practice for proposing feasible generic solutions, but asserts that there is no commonly accepted practice for making such determinations because the process is unique to Attachment S and the NYISO cost allocation process. Id. at 13-14.

58. With regarded to the updated PJM data, Mr. Mitsche testifies that utilities customarily adjust data received from adjacent utilities. Id. at 15. He submits that it was reasonable for the NYISO to adjust the PJM data because that data included generation projects which were at a very early stage of development, and hence would not have

reached the higher stage of development that Mr. Mitsche alleges is required for evaluation under Attachment S. Id. at 15-16. He adds that it is also unreasonable to assume that 27,000 MW of proposed generation will be added to the PJM system in the five-year study period. Id. at 17. Because of the systems' different criteria for determining proposed generation, Mr. Mitsche contends that it was reasonable for the NYISO to adjust the PJM model in connection with its impact evaluation. Id. at 17-18.

C. CON EDISON

59. Con Edison filed the direct testimony of Raymond Turkin and Stuart Nachmias.

1. Mr. Raymond Turkin

60. Mr. Turkin is the Section Manager for Special Projects in the Transmission Planning Department for Con Edison. He testifies on six topics.[19] First, he describes Con Edison's role in the development of the 2001 ATBA that Con Edison submitted to the NYISO as part of the 2001 Cost Allocation Study. Ex. CE-1 at 4-7. Mr. Turkin claims that Con Edison and the NYISO complied with the requirements of Attachment S of the NYISO OATT in developing the 2001 ATBA and that the results of the NYISO's 2001 cost allocation between TOs and the Project Developers is correct.

61. Second, Mr. Turkin testifies that the generic generators proposed by Con Edison (see Ex. CE-3) and adopted by the NYISO for use in the 2001 ATBA were both appropriate and consistent with the feasibility requirements contained in Attachment S. Id. at 7-28. He explains that generic generators do not have to represent the generation resource solution that is proposed by the Project Developers in the relevant class. Id. at 7-8. With regard to feasibility, Mr. Turkin asserts that "feasible solutions" should be reasonable, and could represent Developers' projects, but do not have to. Id. at 9. He adds that the generic generators selected by Con Edison were representative of actual projects that various Developers were pursuing. Id. at 16-17; see Ex. CE-5. The SUFs that the NYISO identified as necessary to satisfy the 2001 ATBA requirements, and their costs, are shown in Exhibit CE-6.

62. Mr. Turkin also argues that Attachment S clearly excludes *proposed* Developers' projects, including those that may have been placed in service, from the Baseline system of the ATBA unless those units have been allocated interconnection facility costs, and such costs have been accepted by the Developers of those projects. Ex. CE-1 at 23-24; see Ex. NYI-2 at First Revised Sheet No. 666. He opposes the Complainants' allegation that seven of the NYPA GTs were improperly excluded from the Baseline system of the 2001 ATBA prepared by Con Edison. Ex. CE-1 at 24. Mr. Turkin claims that these

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[19] This summary is based on the Summary of Direct Testimony of Raymond S. Turkin. See Ex. CE-1.

NYPA GT units were not included for two reasons: (1) These units were not included in the Gold Book used by the NYISO in the 2001 study; and (2) These units had not yet received a cost allocation. Id. Mr. Turkin takes the position that any Developer that has not accepted the allocated cost for its project cannot have its project included in the Baseline system. Id.

63. Third, Mr. Turkin maintains that the original NYISO 2001 ATBA, the January 13, 2003 revised ATBA, and the January 29, 2003 second revised ATBA, all for Class Year 2001, properly accounted for all of the relevant generating units in the New York Control area.

64. Fourth, he explains why it is essential that up-to-date data be used for all three ISO regions – PJM Interconnection, NYISO, and ISO New England ("ISO NE"). Id. at 28-30. Mr. Turkin contends that updated data should be used from all three ISO regions because there are offsetting impacts that come into play. Id. at 30, 38. Updating only one system could result in higher or lower fault current levels depending on which area is updated. Id. at 30.

65. Fifth, Mr. Turkin reviews the results of Con Edison's updated 2001 ATBA. Id. He claims that the results of the NYISO's 2001 ATBA and cost allocation would not have been different if a more up-to-date short circuit study representation for the PJM, ISO NE, and NYISO systems had been used for the study. Id. at 31-39.

66. Sixth, he addresses certain aspects of the Complainants' testimony. Id. at 39-47. There are five reasons that he opposes the Complainants' Updated 2001 ATBA Database selected for their analysis of the 2001 ATBA. First, Mr. Turkin alleges that the Complainants used an updated PJM short circuit study representation based on the June 2001 PJM RTEP that became available only *after* the NYISO began work on the Class Year 2001 Cost Allocation on May 1, 2001. Id. at 39-40. Second, he claims the Complainants' base case only has an updated representation for the PJM system and not for the New York and New England systems. Id. at 40. Third, the system representation selected by the Complainants includes Developers' planned projects that were not in service as of May 1, 2001, or even December 1, 2001. Id. Mr. Turkin notes that this updated PJM representation includes over 27,000 MW of projected new generation in the PJM system. Id. Furthermore, he asserts that many of these proposed projects had not signed ISAs with PJM prior to May 1, 2001. Id. Fourth, the Complainants selected generic generators that represent all the NYPA GTs. Id. Fifth, the Complainants included Con Edison's Hudson Avenue No. 10 unit in the Baseline system. Id.

67. Mr. Turkin recommends that the NYISO's original Class Year 2001 Cost Allocation be accepted, that the SUFs that the NYISO determined for the 2001 ATBA be accepted, and that Con Edison, the TO, be responsible for the $13 million cost associated with these SUFs and that the Project Developers be responsible for the remaining SUF

costs. Id. at 47. He suggests that if the Commission determines that the 2001 ATBA must be recalculated, the short circuit study representation used for analysis should include the most up-to-date date for the PJM, NYISO, and ISO NE systems as were available on May 1, 2001. Id.

68. Finally, Mr. Turkin argues that proposed generating projects that were not in service on May 1, 2001 should not be included in the analysis, except for those generating projects in New York that had been allocated interconnection facility costs and where the Developers of those projects accepted those costs. Id. He also seeks to have the Hudson Avenue No. 10 unit excluded from the 2001 ATBA Baseline system, and have the generic generators that the NYISO selected for the original 2001 ATBA analysis be used for the revised analysis. Id.

2. Mr. Stuart Nachmias

69. Mr. Nachmias is the Senior Advisor in Con Edison's Energy Market Policy Group responsible for developing proposed solutions for wholesale electric market issues affecting Con Edison. Ex. CE-19 at 1-3. During the hearing, Complainants' objected to the foundation and relevance of Mr. Nachmias' submitted testimony and moved to strike major portions of his testimony. Transcript (Tr.) at 1138-1149. Based on a *voir dire* examination of the witness, the undersigned ruled that Mr. Nachmias was not qualified to be an expert witness with respect to Attachment S. Id. at 1149. Furthermore, his testimony could not be admitted as the testimony of an expert witness, but rather would be admitted for the limited scope of what his personal knowledge is about events that he participated in that are relevant to this proceeding. Id.

D. PSEG

1. Mr. Thomas Piascik

70. PSEG filed the direct testimony of Thomas Piascik.[20] He is the Interconnection Manager for PSEG Power, LLC and specializes in transmission system interconnections. Ex. PSE-1.

71. Mr. Piascik maintains that the NYISO must adhere to Good Utility Practice and prudent integrated resource planning when selecting generic units to model in the ATBA. Id. at 2. He alleges that the NYISO has too narrowly interpreted the definition of System Upgrade Facilities by selecting generic units using only one criterion: the minimization of SUF costs. Id. at 5. Mr. Piascik takes the position that SUFs by definition explicitly mandate adherence to Good Utility Practice and Applicable Reliability Rules in

[20] This summary is based on the Summary of Direct Testimony of Thomas Piascik. Ex. PSE-1.

determining required SUFs. Id. He submits that Good Utility Practice and prudent integrated resource planning more broadly require the NYISO to consider and weigh multiple relevant factors such as the costs of permitting, construction, financing, the location of fuel, access to transmission facilities, and environmental issues when selecting a site for development of a generator. Id.

72. Mr. Piascik goes on to question the feasibility of units selected solely on the basis of minimizing SUF costs due to the failure to consider other important factors. Id. at 6. He suggests that selecting generic units solely on the basis of minimization of SUF costs will effectively understate the cost responsibility of Transmission Owners and overstate the cost responsibility of interconnecting generators. Id. Piascik concludes by asserting that the NYISO could have used actual units in New York City that the NYPA and Con Edison have constructed and placed in service as proxies for the NYISO's generic units for purpose of the Baseline Assessment. Id. He recommends that the NYISO be ordered to re-run the 2001 Cost Allocation Study utilizing Good Utility Practice and integrated resource planning to select generic units that are feasible. Id. at 7.

E. STAFF

73. Commission Trial Staff filed the direct testimony of John Sammon and Kim Khu.

1. Mr. John Sammon

74. Mr. Sammon is an Energy Industry Analyst in the Office of Administration and Litigation at the FERC. His direct testimony[21] focuses on the process by which the NYISO selected generic generating units in this proceeding.

75. Mr. Sammon cites to Exhibit S-5 in explaining that for the Class Year 2001, the NYISO has computed the ATBA to be $13 million and the ATRA to be $72.7 million. Ex. S-1 at 12. The Project Developers are responsible for the difference between those two figures ($59.7 million for the NYISO's Class Year 2001). Id. Essentially, a smaller ATBA figure results in the Project Developers being allocated a larger cost responsibility. Id.

76. After discussing his understanding of Attachment S , Mr. Sammon goes on to explain that the six generic generators used in the NYISO's ATBA study were all located at sites where Project Developers are either constructing or planning to construct merchant capacity. Id. at 9. He takes the position that these generic generators need not be capable of coming on-line during the five year study period, but rather only that they

[21] This summary is based on the Summary of Direct Testimony of John Sammon. See Ex. S-1.

be units that a TO would have reasonably planned and built had the TO remained an integrated utility in order to meet its expected loads during the study period. Id.

77. Mr. Sammon also discusses how Attachment S's failure to define the term "feasible" underlies the parties' very different views of how generic generators should be selected. Id. at 11. Resolution of this issue will directly affect how interconnection costs will be allocated between TOs and Project Developers in New York. Mr. Sammon explains that this is why it is essential that the NYISO carry out its Attachment S responsibilities as accurately and impartially as possible. Id. at 13.

78. Mr. Sammon concludes his testimony by questioning the degree of independence with which the NYISO developed their analysis. Id. at 13-16. In his opinion, it does not appear that the NYISO either considered a range of real options or acted independently of Con Edison, a self-interested party, in selecting generic generators. Id. at 14 citing Ex. S-8. In closing, Mr. Sammon submits that, to date, the NYISO has not shown that it considered a range of seriously presented options for generic generators. Id. at 15. He recommends that the NYISO select generic generators without initially receiving any suggestions from TOs. Id. If TO input is necessary due to a lack of expertise on the NYISO's part in selecting generators, the Project Developers and other stakeholders should have a real and fair opportunity to propose alternative generic generators to the NYISO before the NYISO begins its own, independent ATBA analysis. Id. at 15-16. Another alternative Mr. Sammon proposes is to have the NYISO call in an independent third party engineering firm or consultant to manage the ATBA process. Id.

2. Mr. Kim Khu

79. Mr. Khu is employed as an Electrical Engineer in the Office of Administrative Litigation at the FERC. He testifies[22] on his position that the term "feasible solution" has a specific meaning in the reliability evaluation of generic generators, generally known among study engineers as an iterative study process. Ex. S-11 at 4. In discussing the process of selecting generic generators, Mr. Khu states that there is a great difference between a real-system expansion study and the NYISO interconnection cost allocation study. Id. at 5. While Complainants argue that the NYISO should consider "the lowest overall system cost" for the cost allocation process, Mr. Khu asserts that it is not realistic to expect Market Participants to share their economic data in order to have the NYISO come up with a truly least-cost expansion plan. Id. at 6. Moreover, Mr. Khu contends that the annual time-cycle of the cost allocation process does not allow for the NYISO staff to do a complete least-cost expansion plan concurrently with the cost allocation process. Id. at 6-7.

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[22] This summary is based on the Summary of Direct Testimony of Kim Khu. See Ex. S-11.

80. After offering his understanding on the NYISO cost allocation process, Mr. Khu testifies to the second issue of whether the NYISO's exclusion of certain generating units from the Baseline Assessment was consistent with the cost allocation rules. Id. at 7-11. He references Attachment S, Section IV.F.1.a. (1)(b) to support his claim that generators requesting interconnection do not belong in the ATBA. Id. at 9. As such, it is Mr. Khu's position that all ten NYPA GTs should not be in the ATBA. Id. In addition, Mr. Khu believes that the NYISO was unjustified in excluding the Hudson Avenue No. 10 unit simply because it did not appear in the 2001 Gold Book. Id. at 10. He alleges that the NYISO had sufficient notice and time to review the Hudson Avenue No. 10 unit data and include the unit in the ATBA. Id. Mr. Khu adds that a company following Good Utility Practice would recognize that the Gold Book is not cast in concrete, but rather that ISO participants regularly provide changes to their original projections. Id. at 10-11.

81. Mr. Khu's testimony concludes with him offering his position on the third issue of whether the most recent PJM model available was used to conduct the Baseline Assessment, and what effects an updated model might produce. Id. at 11-13. He claims that the NYISO did not seek up-to-date PJM system data for the Class Year 2001 SUF Cost Allocation Study at the time the process began. Id. at 11.

III. DISCUSSION OF ISSUES

A. ISSUE ONE: Whether the NYISO's selection of generic generating units was consistent with the feasibility criterion in the cost allocation rules?

BACKGROUND—ISSUE ONE

82. In its order conditionally approving the NYISO's OATT, the Commission directed the NYISO and Market Participants to "jointly develop guidelines for allocating cost responsibility with regard to new interconnections." Central Hudson Gas & Electric Corp., 88 FERC ¶ 61,138 at 61,384 (1999). In response to the Commission's directive, the NYISO submits that its Business Issues Committee formed the IITF and charged it with developing, through a consensus, stakeholder process, rules for the fair allocation of costs related to the interconnection of proposed generation projects in New York State. Ex. NYI-1 at 5; Ex. NYI-22 at 4. The NYISO's Witness Corey describes Attachment S as the fruit of that process. Ex. NYI-1 at 3-4.

83. Around the same time, the NYISO formed the TPAS, an advisory subcommittee that reports directly to the NYISO's Operating Committee.[23] Ex. NYI-1 at 5; Ex. NYI-22

[23] The NYISO's Operating Committee is one of three committees through which the NYISO operates. Its membership includes all five types of Market Participants, and decisions are made through a Commission-approved, weighted voting process. The Operating Committee has approval authority for the cost allocation. Ex. NYI-1 at 4-5.

at 3; Ex. NYI-24. The NYISO characterize TPAS's role as reviewing and commenting on transmission and interconnection-related studies and assessments performed by NYISO Staff or Market Participants, including SRIS, and as conducting studies related to the cost allocation process. Ex. NYI-1 at 5; Ex. NYI-24, at § 4.3. Mr. Mitsche, a NYISO expert witness, was the elected Chairperson of IITF and TPAS at all times relevant to this proceeding. Ex. NYI-22 at 3-4; Ex. NYI-23; Ex. NYI-24, at § 3.3.

84. The 2001 cost allocation process consisted of two distinct phases. In the spring of 2001, the NYISO's IITF recommended that Attachment S be approved. The NYISO's Management Committee voted in approval of Attachment S on June 6, 2001. Ex. NYI-22 at 5; Ex. NYI-35. The original version of Attachment S, filed on August 29, 2001 with the Commission, contemplated that the TOs would be responsible for conducting the ATBA. See NYISO, Inc. Filing Of New Attachment S To OATT To Implement Rules to Allocate Cost Responsibility For the Cost of New Interconnection Facilities, Docket No. ER01-2967, Transmittal Letter at 6 (filed August 29, 2001). The undersigned took judicial notice of the contents of the original version of Attachment S during the hearing. Tr. at 970-971.

85. During this first phase of the 2001 cost allocation process, the NYISO's initial role was limited to coordinating the efforts of the TOs. For example, the NYISO established May 1, 2001 as the cut-off date for proposed projects to establish their eligibility for Class Year 2001 status by completing their SRISs and meeting the established regulatory milestones. Ex. NYI-1 at 31-32; Ex. NYI-22 at 6; Tr. at 760-761; Ex. NYI-8, at para. 3. KeySpan, NYPA, and seven other Developers met these requirements and were included in the Class Year 2001. Ex. NYI-1 at 32; Ex. NYI-8; Ex. KEY-3 at 3-4.

86. The Commission's October 26, 2001 Order conditionally accepting Attachment S required the NYISO to revise Attachment S so that the NYISO alone would exercise independent decisional control over the entire cost allocation process. October 26, 2001 Order, 97 FERC at 61,575-76. The NYISO filed a revised Attachment S with the Commission in a December 26, 2001 compliance filing. New York Independent System Operator, Inc. Compliance Filing, Docket No. ER01-2967-000. The Commission accepted the cost allocation rules by an order issued February 27, 2002. New York Independent System Operator, Inc., 98 FERC ¶ 61,201 ("Order on Compliance Filing") (2002).

87. The NYISO 2001 Cost Allocation Report (Ex. NYI-3) was presented to TPAS on May 15, 2002, and approved by the NYISO's Operating Committee on May 23, 2002, over the objections of some Market Participants, including Con Edison and KeySpan. See Ex. NYI-13 (Operating Committee Minutes, May 23, 2002). The reported projected costs for SUFs for Class Year 2001 were $72.7 million, with $59.7 million allocated to Project Developers and $13 million allocated to Con Edison. Ex. NYI-3 at 40; Hearing Order, 101 FERC at 61,363. KeySpan's appeal of the 2001 cost allocation to the NYISO

Board of Directors was dismissed on July 16, 2002. Ex. KEY-13. After the NYISO issued its 2001 Cost Allocation Report, an opt-out period began, and certain Project Developers, including Complainant KeySpan, did not accept their 2001 Class Year Cost Allocation.[24]

88. Complainants challenge the NYISO's interpretation and application of the cost allocation rules in Attachment S as inconsistent with the purpose of Attachment S, and therefore not just and reasonable. Hearing Order, 101 FERC at 61,363-364. The NYISO is applying this cost allocation process for the first time to the Class of 2001.[25] Id. at 61,363; Ex. S-1 at 15; Ex. S-10 at 2. The cost allocation objective is to determine how much of the cost of transmission system upgrades should be attributed to the TOs, and how much should be allocated to the Project Developers of new generation facilities.

89. Attachment S is intended to "allocate responsibility for the cost of the new interconnection facilities that are required for the reliable interconnection of generation projects and merchant transmission projects to the New York State Transmission System…" Ex. NYI-2 at Second Revised Sheet No. 653; see also Hearing Order, 101 FERC at 61,363. Attachment S specifies how facilities are to be classified (either "Attachment Facilities" or "SUFs") and implements a two-part system for allocating costs between TOs and Project Developers. Hearing Order, 101 FERC at 61,363; Ex. KEY-1 at 3-4; Ex. NYI-1 at 10; Ex. NYI-2 at First Revised Sheet No. 661.

90. First, the ATBA identifies the costs of SUFs that the TOs would have to build anyway ("anyway costs"), even without new projects. Ex. KEY-1 at 4; Ex. NYI-1 at 10; Ex. NYI-22 at 6-7. The ATBA requires the NYISO to develop a "baseline" representation of existing New York State generating capacity and to compare existing generation with predicted load growth and changes in load patterns over the five-year study period. Ex. NYI-1 at 12; Ex. NYI-22 at 6.

91. In the second part, the ATRA identifies the costs of SUFs[26] needed to reliably interconnect the new projects. Ex. KEY-1 at 4; Ex. NYI-1 at 10; Ex. NYI-22 at 6-7. If the total cost of SUF identified in the ATRA *exceeds* the total cost SUFs identified in the

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[24] As a result of the opt-out process, the NYISO issued a revised 2001 Cost Allocation Report on July 19, 2002 that allocated $58 million in SUF costs to the remaining Project Developers and $13 million in SUF costs to Con Edison. Complainant NYPA's portion of the SUF costs allocated to the Project Developers increased from approximately $13 million to approximately $20 million. Con Edison Initial Brief ("IB") at 13.

[25] Attachment S defines the Class Year as the "group of generation and merchant transmission projects included in any particular ATRA." Ex. NYI-2 at First Revised Sheet No. 656; see also Ex. NYI-1 at 10; Ex. NYI-22 at 5.

[26] The SUFs typically required for projects are circuit breakers or series reactors needed to deal with short circuit current.

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ATBA, this amount ("Overage Cost") is allocated among the Project Developers for the relevant Class Year based upon each Developer's previously identified *pro rata* responsibility for each SUF. Ex. NYI-2 at Original Sheet No. 678A; Ex. KEY-1 at 4; Ex. NYI-1 at 9; Ex. CE-1 at 5. Therefore, the costs from the ATBA are attributed to the TOs, while the remaining net SUF costs from the ATRA are allocated among the Class Year Developers according to the electrical impact each project has on the power system.[27] Ex. NYI-2 at Original Sheet Nos. 678A-678B.

92. Attachment S now requires the NYISO to exercise independent decisional control over both the ATBA and ATRA during the cost allocation process. Ex. NYI-2 at First Revised Sheets Nos. 664 and 673. Given that the Commission approved the effective date of Attachment S as September 26, 2001, Attachment S governed the NYISO's 2001 cost allocation process. Order on Compliance Filing, 98 FERC at 61,702.

93. For the ATBA, Attachment S requires the NYISO to identify SUFs that, during the five-year planning horizon, will be needed to ensure the reliability of the New York Control Area. Ex. NYI-2 at Original Sheets Nos. 664A-665A; see also Hearing Order, 101 FERC at 61,365. If the NYISO determines that the existing transmission or generating facilities are insufficient to meet the reliability requirements, "then the NYISO staff will develop *feasible* solutions that include the identification of [SUFs] that are sufficient to either interconnect additional generic generation and/or increase transmission transfer capability in order to satisfy the Applicable Reliability Requirements."[28] Ex. NYI-2 at First Revised Sheet No. 667 (emphasis added); Ex. NYI-1 at 20; Ex. NYI-22 at 6-7; see also Hearing Order, 101 FERC at 61,365-66.

1. Complainants' Position on Issue One

94. Complainants assert that the NYISO's selection of generic generating units is inconsistent with the feasibility requirement in the cost allocation rules. They claim that the selection of generic generators by NYISO was inappropriate and unfairly shifted transmission upgrade costs from the TOs to the Project Developers. In particular, Complainants contend that the NYISO's Generic #1 (Gowanus) and Generic #5 (East River) units could not be in-service in time to meet real-world deficiencies. Tr. at 577-578 (Corey); Tr. at 938-939, 941-942. The result is an understatement of TOs' cost

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[27] Under Attachment S, "[a] developer is held responsible for the cost of the interconnection facilities that would not be required *but for* its project." Ex. NYI-2 at Original Sheet No. 653A (emphasis added); see also Ex. NYI-1 at 9; Ex. NYI-22 at 6.

[28] The Applicable Reliability Requirements are the "NYSRC Reliability Rules, NPCC Basic Design and Operating Criteria, NERC Planning Standards, NYISO rules, practices and procedures, and Local Transmission Owner criteria included in FERC Form No. 715." Ex. NYI-2 at Original Sheet No. 664A – First Revised Sheet No. 665.

responsibilities that discourages investment in, and development of, the most efficient, least-cost generation able to meet system reliability requirements.

95. Complainants maintain that the ordinary usage of the words "feasible" and "solutions" and the provisions in Attachment S make clear that feasible generic solutions are those which are capable of being installed and made operational in time to meet an identified deficiency in accordance with Applicable Reliability Requirements. See Merriam-Webster's Collegiate Dictionary at 425, 1119 (10th Ed.); Ex. NYI-2 at First Revised Sheet No. 667. Complainants suggest that the term "feasible solutions" in Attachment S means an answer that is capable of solving an identified problem in accordance with Applicable Reliability Requirements. Complainants IB at 27.

96. Complainants point out that NYISO Witness Mitsche agreed that if a plant had a "fatal flaw" it could not be a feasible solution. Tr. at 1046-1047. Complainants take the position that a generic generator with a fatal flaw is infeasible because such a unit would be incapable of solving the capacity deficiency in accordance with Applicable Reliability Requirements. As Witness Disher testified, a generic unit can not be a feasible solution if it cannot be permitted, constructed and tested in time to meet a shortfall in capacity. Ex. KEY-7 at 22-23.

97. Furthermore, Complainants emphasize that Attachment S provides that the ATBA is to identify *the SUFs* "that [TOs] are expected to need *during* the five-year period covered by the Assessment to reliably meet the load growth and changes in the load pattern." Ex. NYI-2 at Original Sheet No. 664a (emphasis added). NYISO Witness Corey agreed that Applicable Reliability Requirements apply at all times during the five-year planning horizon. Tr. at 565-566. Complainants combine this with the Attachment S requirement that *SUFs* in the ATBA are to be identified "year-by-year for the baseline system to reliably serve projected load in the [TO's] Transmission District for a five-year period" (Ex. NYI-2 at First Revised Sheet No. 665 and Original Sheet No. 665A; Tr. at 564 (Corey), 1085 (Turkin)) to argue that the NYISO must also identify *generic generator solutions* on a year-by-year basis. Tr. at 564-565, 1085-1086.

98. Complainants contend that the NYISO knew, or should have known, that its Generic #1 (Gowanus) and Generic #5 (East River) units were fatally flawed and could not be in service in time to satisfy the capacity deficiency in the year for which they were selected during the 2001 ATBA five-year planning horizon. Tr. at 577-578, 644-645; Ex. KEY-35 (Corey); Tr. at 938-939 (Lamanna). Again, Complainant's Witness Disher concluded that if units, such as the NYISO's Generic units #1 and #5, could not satisfy the capacity deficiency (i.e. reliability concern) in the year for which they were selected, they can not be considered feasible solutions that satisfy Applicable Reliability Requirements. Ex. KEY-7 at 22-23.

99. Complainants add that, contrary to the plain language in Attachment S directing that the "NYISO Staff will develop feasible solutions…" (Ex. NYI-2 at First Revised Sheet No. 667), the NYISO Staff did not independently undertake to identify its own feasible solutions to interconnect generic generation in the Con Edison transmission district. See Tr. at 532-533 (Corey). Rather, Complainants contend that the NYISO improperly relied on Con Edison's ATBA. Complainants argue that Con Edison's ATBA did not identify the year(s) in which either the locational ICAP or load pocket deficiencies would occur or how the six generic units it selected would satisfy year-by-year[29] reliability requirements. In addition, they argue that rather than study the feasibility of its generic generation to meet Applicable Reliability Requirements, Con Edison merely assumed that its generic units were feasible because they were located at the sites of proposed Developer projects. Ex. KEY-5 at 1; Ex. CE-1 at 17. Furthermore, Con Edison did not select its generic units using the planning perspective of a traditional, vertically integrated utility. Tr. at 1089 (Turkin).

100. Complainants add that Con Edison selected its six generic generators "with the objective of minimizing the fault duty impact of the generic generators." Ex. KEY-16. In particular, Con Edison's "generic generators were selected to minimize the impact on fault currents at [S]prain [B]rook and [F]arragut [substations], thereby, avoiding the need for the 345 kV series reactors." Ex. KEY-17. Complainants note that it was important to Con Edison to minimize the impact on these substations because, as Complainants Witness Waldron testifies, "ten (10) of the 345 kV circuit breakers at Con Edison's Sprain Brook Substation … are extremely closer to their rated fault current capacity…." Ex. KEY-24 at 6.

101. Waldron further testified that "the six generic units proposed by Con Edison, and accepted by the NYISO, require fewer and smaller [SUFs] … than a system that includes the seven additional NYPA units and the Hudson Avenue No. 10 unit in place of some of the generic unit capacity [as proposed by Complainants]." Id. Complainants claim that the result is an ATBA that understates the need for additional SUFs on the Con Edison system, thereby unfairly shifting costs from the TOs to the Project Developers.

2. NYISO'S Position on Issue One

102. The NYISO claims the term "feasible" was intentionally left undefined in Attachment S in order to grant the NYISO Staff discretion when selecting generic generation units for the ATBA. Ex. NYI-22 at 7. They submit that Complainants' interpretation of feasibility under Attachment S would require the NYISO to undertake a planning exercise at a level of detail and complexity (see Tr. at 401-402, 1046)

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[29] Complainants contend that Attachment S requires *generic generators* to be identified and available on a year-by-year basis. Ex. NYI-2 at First Revised Sheet No. 665 – Original Sheet No. 665A.

comparable to that employed by integrated utilities and merchant developers engaged in actual project development. The NYISO alleges that Complainants' interpretation of feasibility has no basis in the language of Attachment S, or its purpose in negotiating history. Such a requirement would not only be far beyond the hypothetical planning exercise in aid of the cost allocation process that the NYISO maintains was intended by the drafters of Attachment S, but also neither practical nor possible given the time, staff and resource constraints under which the NYISO must complete the process. Ex. NYI-1 at 22; Ex. NYI-16 at 10; Ex. NYI-22 at 11-12; Tr. at 400. They state that even Complainants' Witness Disher agreed that, under the time constraints of the ATBA process, it would not be possible for the NYISO to thoroughly analyze all of the integrated resource planning factors he argued should be considered. Tr. at 404.

103. Furthermore, while Complainants argue that Attachment S requires the NYISO to engage in integrated resource planning when selecting generic generation solutions for the ATBA (Ex. KEY-7 at 12-26), the NYISO claims that witnesses confirmed there is no such requirement in Attachment S. Tr. at 436, 459-460, 884, 1018, 1051, 1089. The NYISO also notes that Staff Witness Khu testified that it is not realistic to expect the NYISO to engage in detailed planning when developing generic generation units for purposed of the ATBA. Ex. S-11 at 6-7.

104. The NYISO characterizes the IITF and TPAS meetings as a stakeholder process through which Market Participants, working with the NYISO, deliberated, drafted and reached consensus regarding the terms of Attachment S. Ex. NYI-1 at 5, 18-19; Ex. NYI-22 at 5. IITF and TPAS participants reached decisions on Attachment S not through formal voting, but by consensus, as set forth in the TPAS Scope and Organization document and approved by the NYISO's Operating Committee. Ex. NYI-1 at 5; Ex. NYI-22 at 5; Ex NYI-24, at § 3.5. Consensus did not require unanimity. Throughout this process, the NYISO submits that the intent and purpose of Attachment S was to establish a mechanism to allocate the cost of SUFs between TOs and Project Developers, not to plan actual generation projects. Ex. NYI-1 at 22; Ex. NYI-22 at 12.

105. The NYISO also opposes Complainants' position that proposed generic units must be not only identified on a year-by-year basis over the five-year ATBA study period, but also capable, in fact, of coming into service in a specific year. The NYISO characterizes this requirement as also impossible to satisfy because no one can predict whether or not a particular project will come into service in a specific year. Ex. NYI-16 at 10; Ex. NYI-28 at 4; Ex. CE-1 at 10; see also Tr. at 1084-1085, 1116. They point to Commission Staff Witness Sammon's testimony as further evidence that generic units need not be capable of actually coming on-line during a specific year of the five year planning horizon, so long as they are feasible sometime during the study period. Ex. S-1 at 9-10.

106. The NYISO interprets Attachment S's feasibility criterion as requiring it to develop generic generation units that reasonably resemble a portfolio of projects that an

integrated utility would have developed to meet load over a five-year period. The NYISO submits that this approach requires consideration of three basic issues regarding proposed generic units: their siting (Ex. NYI-1 at 23-24; Ex. NYI-22 at 7), resemblance to an integrated utility's traditionally mixed portfolio of generating units (Ex. NYI-1 at 21-22; Ex. KEY-13 at 4; see also Tr. at 408-410 (Disher)), and the time within which they could be constructed (Tr. at 567 (Corey); Ex. NYI-22 at 11). The NYISO claims it must consider planning new generation at least five or more years prior to the start of the ATBA period, in accordance with traditional integrated utility planning. Ex. NYI-1 at 21, 24-25; Ex. NYI-16 at 9-10; Ex. NYI-22 at 11; see also Tr. at 463 (Disher), 757-759 (Corey); Ex. KEY-36.

107. The NYISO asserts that all of its proposed generic units are feasible. Ex. NYI-1 at 26. While Complainants contend that the NYISO's Generic Unit No. 1 is not feasible because the actual Gowanus unit it is modeled after could not be placed into service by 2002 (due to a permitting delay), the NYISO alleges that the permit delay encountered by the actual Gowanus unit is in no way relevant to an evaluation of the feasibility of the proposed Generic Unit No.1. Ex. NYI-1 at 24-25; Ex. NYI-16 at 9. Likewise, while Complainants argue that the NYISO's Generic Unit No. 5, modeled after Con Edison's East River project, is not feasible, the NYISO states that Complainant witnesses acknowledged that Generic Unit No. 5 was feasible within the five-year ATBA study period. Tr. at 224 (Plaskon), 442 (Disher).

108. Furthermore, the NYISO maintains that the seven NYPA GTs favored by Complainants, but not included in the 2001 NYISO ATBA, would not satisfy the applicable load pocket requirements. Ex. NYI-16 at 11; Ex. CE-1 at 13; Ex. CE-5. The NYISO adds that "NYPA's portfolio of ten [GT] units does not represent what an integrated utility would have planned for to address a capacity shortfall several years later but, rather, were proposed as an interim emergency measure." Ex. NYI-16 at 9; see Ex. NYI-1 at 29; Ex. NYI-22 at 12. In any case, the selection of the NYPA GTs as generics instead of the NYISO's proposed generics would have resulted in higher total SUF costs. Ex. NYI-3 at Appendix D; Ex. NYI-20; Ex. NYI-1 at 29; Ex. NYI-16 at 12; Ex. CE-1 at 20; Ex. CE-7.

109. The NYISO also refutes the Complainants' assertion that the NYISO neglected its independent role in conducting the ATBA because the NYISO and Con Edison proposed the same generic units. See Ex. KEY-7 at 19; see also Ex. S-1 at 14. In October 2001, but prior to the Commission's October 26, 2001 Order, Con Edison, LIPA and several other TOs submitted to the NYISO proposed ATBAs covering their respective transmission districts. Ex. NYI-17 (Con Edison ATBA); Ex. NYI-18 (LIPA ATBA); Ex. NYI-16 at 5; Ex. NYI-22 at 10. Con Edison submitted the final draft of its proposed 2001 ATBA to the NYISO for consideration on November 27, 2001. This Con Edison 2001 ATBA proposed allocating $10 million in SUF costs to Con Edison. Ex. CE-2 at 2, 4.

110. After the Commission's October 26, 2001 Order, the NYISO alleges it took decisional control over the ATBA. Ex. NYI-28 at 6; Ex. NYI-16 at 6-7; Ex. NYI-22 at 10; Tr. at 534. The NYISO Staff issued its 2001 Cost Allocation Report in May 2002. Ex. NYI-3. The NYISO contends that it exercised its independent judgment in proposing the same generic units that Con Edison's 2001 ATBA proposed. Ex. NYI-16 at 8; Tr. at 1185 (Sammon). The NYISO Cost Allocation Report forecasted a Con Edison service area deficiency of 884 MW, somewhat greater than Con Edison's ATBA forecast deficiency of 848 MW. Ex. NYI-3; see Ex. KEY-1 at 10-11.

111. The NYISO Staff's 2001 Cost Allocation Report allocated $59.7 million in SUF costs to the Project Developers and $13 million in SUF costs to Con Edison. Ex. NYI-3 at 40; Hearing Order, 101 FERC at 61,363; Ex. S-1 at 12; Ex. S-5. The NYISO's 2001 Cost Allocation Report increased Con Edison's SUF cost responsibility by $3 million, or 30%, compared to Con Edison's $10 million cost responsibility determined in Con Edison's 2001 ATBA. Ex. NYI-16 at 13; Tr. at 1074-75 (Turkin). While Con Edison objected to the NYISO's 2001 ATBA, and even submitted an alternative ATBA for consideration, the NYISO rejected Con Edison's alternative proposal. Ex. NYI-16 at 14; Ex. NYI-21. In the end, Con Edison voted against approval of the NYISO's 2001 Cost Allocation Report. Ex. NYI-28 at 9; Ex. NYI-13 at 4-5.

3. Con Edison's Position on Issue One

112. Con Edison characterizes the ATBA process as a hypothetical costing exercise used to determine the SUF cost responsibility of TOs. Ex. CE-1 at 5. The company notes the limited time frame allowed to develop the ATBA in opposing the Complainants' characterization of the ATBA as a real world plan to meet system reliability needs. Moreover, Con Edison submits that Attachment S does not provide for a feasibility test, nor does it require a year-by-year implementation of generic generators. Tr. at 221-22 (Plaskon).

113. Con Edison contends that the six generics (Ex. CE-3; Ex. CE-5) it initially selected and that were subsequently adopted by the NYISO for its 2001 ATBA met all of the relevant feasibility and reliability requirements, including load pocket needs, while producing the least costly configuration of SUFs in accordance with the cost allocation rules. Ex. CE-1 at 8, 19; See Ex. NYI-2 at Original Sheet Nos. 658A-659. Con Edison reads Attachment S as requiring the generic generation selected to be feasible and produce the least costly configuration of SUFs. Ex. NYI-2 at First Revised Sheet No. 661, Original Sheet No. 661A, First Revised Sheet No. 667. However, it opposes any reading of Attachment S requiring feasibility on a year-by-year basis. Con Edison takes the position that the generics must also satisfy the load requirements of a transmission district and meet Applicable Reliability Requirements, including local reliability rules, load pocket requirements and the locational installed capacity requirement ("ICAP").

114. In preparing its 2001 ATBA, Con Edison used the forecasted load requirements for the 2002-2006 timeframe that were stated in the 2001 Gold Book (Ex. NYI-5). Con Edison's ATBA identified an 848 MW deficiency in generating resources needed to satisfy the 80% locational ICAP requirement for the In-City area in 2006, as well as certain load pocket deficiencies. Ex. CE-1 at 11; Ex. KEY-1 at 6; Ex. KEY-5; Tr. at 1112-15 (Turkin). This forecasted deficiency specifically required that additional installed capacity be located within four load pockets located within the larger New York City load pocket. See Ex. CE-4.

115. To address this forecasted deficiency, Con Edison selected six generic generators to include in its ATBA. Ex. CE-1 at 11; Ex. KEY-5 at 1. In selecting the generic generators, Con Edison asserts it took into account the 80% In-City locational ICAP requirement, the need to locate generation within certain load pockets and the overall reserve requirement of 18%. Con Edison notes that it modeled its six generics based on actual Developer projects, which at the time had projected in-service dates between 2001 and 2003. Ex. CE-1 at 10,17; Ex. CE-5.

116. Con Edison alleges that the NYPA GTs would neither satisfy the Applicable Reliability Requirements nor result in the least cost SUFs. Ex. CE-1 at 8, 12-14; Ex. CE-5. Mr. Turkin testified that under the Applicable Reliability Requirements, three criteria must be satisfied: (1) Does the generic provide a resource to satisfy load pocket design; (2) Does the generic satisfy the 80% In-City locational ICAP requirement; and (3) Does the generic satisfy the 18% installed reserved capacity requirement? Ex. CE-1 at 10; see Tr. at 216 (Plaskon). In addition, Mr. Turkin testified that the "primary concern in selecting a generic generator is to ensure that the basic projected reliability needs of the control area are met. Selecting generic generators that do not satisfy projected reliability needs is unacceptable because the generic generators would then represent a merchant proposal rather than a reliability solution." Ex. CE-1 at 13.

117. Con Edison argues that the seven NYPA GTs that it did not select were not located in load pockets (East River, East 13th Street, and West 49th Street) that needed capacity. See Ex. CE-5. Mr. Turkin claimed that the "NYPA GTs would not have satisfied the projected reliability needs of specific locations, particularly within load pockets." Ex. CE-1 at 12-13; see Ex. NYI-16 at 11. Con Edison also notes that Mr. Hiney, an NYPA Senior VP, testified that the needs of New York City load pockets were not considered in siting the GT units. Tr. at 177.

118. Mr. Turkin further testified that including the NYPA GTs would not have brought about the least cost configuration. Ex. CE-1 at 13. The Company also notes NYISO Witness Lamanna's testimony that including the NYPA GTs "would have resulted in higher fault duty levels at Spain Brook, and a more costly configuration of SUFs to mitigate the overduty condition." Ex. NYI-16 at 12.

119. Con Edison also opposes any use of integrated resource planning in the Cost Allocation Process. Witnesses agree that Attachment S itself neither requires, nor mentions, the use of integrated resource planning. Tr. at 255 (Plaskon); Tr. at 436 (Disher); Tr. at 730 (Corey); Tr. at 884 (Piascik); Tr. at 967-968 (Lamanna); Tr. at 1177 (Sammon). While developing projects through integrated resource planning may result in the least overall cost to society, Con Edison submits that Project Developers operating in an open market seek to maximize profit.

4. PSEG's Position on Issue One

120. PSEG argues that the NYISO failed to satisfy Attachment S's feasibility criteria in selecting generic generation units for its 2001 ATBA. PSEG IB at 4-5. PSEG asserts that minimizing SUF costs to TOs, rather than feasibility, was the NYISO's overriding criterion in selecting generic units. Ex. PSE-1 at 2-3, 5-6; Tr. at 884-895, 899-901 (Piascik). While the term "feasibility" is not defined in Attachment S, PSEG claims that the evidence demonstrates that its meaning is properly informed by Good Utility Practice. PSEG IB at 5. Good Utility Practice, in turn, includes "any of the practices … which… could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition." NYISO OATT, §1.14.

121. PSEG takes the position that Good Utility Practice requires consideration of integrated resource planning criteria. The NYISO claims to have evaluated the feasibility of generic solutions "from an integrated utility's planning perspective." Ex. KEY-13 at 4 (NYISO Board of Directors, *Decision on KeySpan Ravenswood's Appeal of the Cost Allocation Study for Class Year 2001 Generators* (July 16, 2002)). However, PSEG alleges that by failing to consider integrated resource planning criteria when selecting generic units, the NYISO violated Good Utility Practice and the feasibility requirements of Attachment S's cost allocation rules. PSEG IB at 5.

122. While PSEG agrees that the feasibility requirement of Attachment S does not require the NYISO to undertake a full-blown integrated resource planning process in order to select proper generic units (see Tr. at 903 (Piascik)), it is PSEG's position that a variety of factors[30] must be considered in order to satisfy Good Utility Practice and Attachment S's feasibility requirement. Ex. PSE-1 at 2-3, 5-6. In contrast, PSEG characterizes the NYISO's generic selection process as misinterpreting the "least costly

[30] PSEG submits that relevant criteria to consider include access to fuel, environmental issues, site permitting, access to transmission facilities, size and type of generating facility, lead time to design, and construct the unit, transmission upgrade requirements, capital costs, and whether a unit can be licensed, built, and operated in time to meet reliability requirements. Ex. PSE-1 at 5; Ex. KEY-7 at 20; Tr. at 884, 891-892 (Piascik); Tr. at 455-456 (Disher); Tr. at 227-228 (Plaskon).

configuration" language of the SUF definition to mean minimization of SUF costs to the TOs. Id. at 4-5. According to PSEG, this misinterpretation resulted in the NYISO's failure to consider relevant feasibility criteria, producing an outcome that unfairly over allocates upgrade costs to new interconnecting generators. Id. at 6; Tr. at 891.

123. PSEG asks the Commission to grant Complainants the relief they request and direct the NYISO to prepare: (1) a revised Cost Allocation Report for Class Year 2001; and (2) Cost Allocation Reports for future years in compliance with Commission directives.

5. Staff's Position on Issue One

124. Staff takes the position that the NYISO did not select generic generating units in a just and reasonable manner consistent with the feasibility criterion in the Attachment S cost allocation rules. Rather than independently develop its own set of generic generators as directed by Attachment S (Ex. NYI-2 at First Revised Sheet No. 667; see October 26, 2001 Order, 97 FERC at 61,575), Staff argues that the NYISO merely adopted the generic generators of Con Edison and failed to transparently explain[31] the factors it claims it considered in this decision process.

125. Staff notes that Mr. Lamanna, the principal author of the 2001 Cost Allocation Report for the NYISO, testified that of all the steps in the ATBA, selection of generic generators was the step that required the most judgment. Tr. at 1004-05. Mr. Corey, who oversaw the preparation of the NYISO's 2001 Cost Allocation Report, testified that while he believed the NYISO to be capable of independently developing a generic generator solution, the NYISO instead chose to rely on Con Edison's proposed generic solution. Tr. at 752-753; Ex. NYI-28 at 7; see Tr. at 751 (Corey), 984 (Lamanna). At hearing, Mr. Corey testified, "we relied on … the Market Participants to provide … input in regard to the proposed generic generators" and reasoned that, "we were relying on the stakeholder process to assist us in providing input to that issue." Tr. at 752-753.

126. Staff adds that while the NYISO hired GE Power Systems to validate the short circuit data provided by the TOs (Ex. NYI-1 at 38), the NYISO limited GE's work to evaluating the short-circuit impact of Con Edison's proposed generic generators. Ex. NYI-16 at 15; Ex. NYI-28 at 7. Mr. Corey acknowledged that the NYISO decided not to hire GE to provide an independent, separate set of generic generators to the NYISO. Tr. at 751. Staff contends that rather than merely collect data input from Con Edison, the NYISO *relied* upon Con Edison's solutions without generating or developing any of its own. Ex. S-9; Ex. S-1 at 15; Tr. at 1190 (Sammon).

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[31] The Commission has ruled that a planning process must be transparent so that all Market Participants will have confidence that the process is "fair and efficient." See PJM Interconnection, LLC, 96 FERC ¶ 61,061 at 61,240 (2001).

127. Staff goes on to argue that the NYISO also deviated from the feasibility criterion of Attachment S by failing to apply the perspective of an integrated utility planner when selecting generic generators for inclusion in its ATBA. Mr. Corey asserted during his December 3, 2002 deposition that generic generators under Attachment S were to be ones "that might reasonably have been constructed under the vertically integrated utility system that the ATBA seeks to emulate." Ex. S-2 at 118. In addition to factors to consider that he mentioned during his deposition[32], Mr. Corey added in his pre-filed testimony that, "In this context, 'feasibility' relates to both the siting of the facilities and the time frames in which they could be expected to come on line." Ex. NYI-1 at 23. Mr. Lamanna likewise stated that generic solutions were to be developed from the perspective of a formerly integrated utility. Ex. NYI-16 at 9.

128. While the parties offered different views of how to interpret the term "feasible solutions" in Attachment S, Staff contends that the record establishes that the term requires the NYISO to develop generic generator solutions by acting as though it was a reasonable planner of a vertically integrated utility planning to add generation in New York City. Ex. S-3 at 118, 153 (Corey Deposition); Ex. S-1 at 11 (Sammon); Tr. at 1187-1188 (Sammon); Ex. KEY-7 at 12 (Disher); Ex. NYI-1 at 22 (Corey); Ex. NYI-22 at 12-13 (Mitsche); Ex. NYI-16 at 9 (Lamanna). Staff claims that the NYISO failed to meet this standard for the following reasons:

1. The NYISO's Generic #2 (East River) (Ex. NYI-3 at 7, Table 1.2; Ex. CE-5) was modeled to interconnect with Con Edison's 345 kV high voltage transmission system (Tr. at 1121), but not to interconnect into a Con Edison load pocket inside New York City. Ex. CE-1 at 11; Tr. at 1115-1116. In contrast, Staff contends at least four NYPA GT units were located in the Astoria load pocket, and all of them had capacity comparable to the NYISO's Generic #2. Ex. NYI-3 at 7, Table 1.2; Ex. CE-5. Additionally, Con Edison Witness Turkin testified that all of the NYPA GTs contributed to the 80% In-City locational ICAP. Tr. at 1111. Because any one of the four NYPA GT units in the Astoria load pocket was a candidate to meet demand in that load pocket, Staff argues that a reasonable planner of an integrated utility would have located a generic unit in that load pocket rather than select a generic like the NYISO's Generic #2 that was located outside New York State and which only interconnected to a part of the grid, but not into the load pocket itself. Mr. Sammon testified that NYISO's failure here is compounded by the fact

[32] The factors Mr. Corey mentioned during his deposition included zoning restrictions, potential to develop new generation at an existing generation site, the proximity of the generation site to the grid, as well as the least-cost configuration of equipment. Ex. S-2 at 119-120.

that it did not independently explore a range of its own options when seeking to address such load pockets in New York City. Ex. S-1 at 14.

2. Staff asserts that the NYISO also failed because a reasonable planner of an integrated utility would have investigated the delay of the Gowanus Project, on which the NYISO's Generic #1 was modeled. Ex. KEY-1 at 11-12; Ex. KEY-7 at 25-26; Tr. at 536, 578, 937-938, 944-945, 1187-1188. Staff contends that a reasonable planner in an integrated utility would have investigated, and taken other steps, if a project it had initiated had encountered such a delay in the permitting process that it would not be available to serve load at the projected time. As Mr. Corey testified, "'feasibility' relates to both the siting of the facilities and time frames in which they could be expected to come on line." Ex. NYI-1 at 23.

3. Finally, the NYISO failed because it did not adequately and contemporaneously explain how and why it adopted the same generic solutions as Con Edison. See Ex. NYI-16 at 14-15. Staff again notes that the Commission has determined that a planning process must be transparent in order to instill confidence in the Market Participants that the process is fair and efficient. PJM Interconnection, LLC, 96 FERC ¶ 61,061 at 61,240. Mr. Piascik of PSEG Power testified that, during TPAS meetings in 2002, the NYISO claimed that the basis upon which it used the Con Edison generic generators was to minimize SUF costs in the ATBA. Tr. at 901. Staff asserts that NYISO Witness Mitsche, the chairman of TPAS during the relevant period, corroborated this in his pre-filed testimony. Ex. NYI-22 at 13. Staff acknowledges that Mr. Corey submitted several factors during his deposition and in his pre-filed testimony that he claims to have considered. Ex. S-2 at 120; Ex. NYI-1 at 23. Likewise, Staff notes that Mr. Lamanna submitted a table that was included as part of the NYISO's Cost Allocation Report that lists the various factors he claims to have considered. Ex. NYI-3 at 7, Table 1.2; Tr. at 1000. Nonetheless, Staff maintains that the NYISO did not adequately explain the considerations underlying its decision to adopt the Con Edison generic solution during the actual decision making process. Staff concludes that this failure to provide a full and transparent explanation only strengthens the impression that the NYISO did not consider all the relevant factors that a reasonable planner would have considered, but rather relied upon the sole criterion of minimizing SUF costs to the TOs.

Staff recommends that the Commission require the NYISO to fully explain the factors it considers when developing generic solutions to ensure that the decision-making process is transparent.

Discussion and Findings – General Matters

129. In setting this matter for hearing, the Commission determined that Complainants "raised issues of fact about the justness and reasonableness of *the application of* the cost allocation methodology in Attachment S of the NYISO's OATT *to the Class Year 2001*…" Hearing Order, 101 FERC at 61,368 (emphasis added). The Commission further stated, "In addition, the issues may affect later years' cost allocations. Our approach is intended to *correct any flaws in the initial year to ensure proper results in the future.*" Id. at 61,365 (emphasis added). The Commission set this matter for hearing so that a record could be established to decide whether the NYISO in performing the cost allocation for 2001 applied the cost allocation rules of Attachment S consistently with the just and reasonable standard of Section 206 of the FPA. Moreover, the Commission's language makes clear that the cost allocation for 2001 itself is at issue, not just the potential impact on future cost allocations.

130. Section 206 of the FPA requires that "[i]n any proceeding under this section, the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant." 16 U.S.C. § 824e(b)(2002). On brief, both Con Edison and the NYISO argued that the Complainants failed to meet this burden. On the record as made, for the reasons discussed infra, I find that Complainants have met this burden by demonstrating that the NYISO failed to follow the requirements of Attachment S in carrying out their cost allocation process for the Class Year 2001.

131. The undersigned is mindful that the Commission has already declared that "the cost allocation rules in Attachment S are reasonable and can produce equitable solutions for allocating interconnection costs. [footnote omitted]"[33] I am equally mindful that in setting this proceeding for an evidentiary hearing, the Commission specifically directed "the ALJ to develop a factual record" on three specific issues. The Commission did not invite me to revisit the reasonableness or clarity of the cost allocation provisions of Attachment S. However, substantial evidence in this proceeding leads to the inescapable conclusion that, because the NYISO did not act consistently with the provisions of Attachment S, it may be necessary to modify Attachment S so that, in the future, Market Participants can be assured of the NYISO's compliance with the provisions of Attachment S. Accordingly, where the evidence supports it, I will make recommendations along those lines.

132. Another factor impacting this proceeding merits mention: the time allowed for this proceeding. While the urgency of this proceeding— the need to complete the year

[33] Hearing Order, 101 FERC at 61,365. The footnote (omitted) references the reader back to note 1 in that Order, which references the Commission's Orders accepting Attachment S with conditions, and the Order on the NYISO's compliance filing.

2001 cost allocation process so that following years can proceed— is apparent, all the parties agreed that developing the record in this case under the time constraints given to them (even with the extension) has been very difficult. The parties are to be praised for the tremendous amount of work they accomplished in a relatively short period of time. The goal of all participants was to develop a sufficiently thorough record in this proceeding for the Commission to issue a final Order resolving this matter.

Discussion and Findings – Issue One

133. Attachment S provides:

> If the existing transmission or generation facilities, combined with previously approved and accepted System Upgrade Facilities, are insufficient to meet Applicable Reliability Requirements, then the NYISO staff will *develop feasible solutions* that include the identification of System Upgrade Facilities that are sufficient to either interconnect additional generic generation and/or increase transmission transfer capability in order to satisfy the Applicable Reliability Requirements.

Ex. NYI-2 at First Revised Sheet No. 667 (emphasis added).

134. With respect to the first issue, a critical fact is that the term "feasible" is not defined in Attachment S. Tr. at 1037 (Mitsche); Tr. at 438-439 (Disher); Ex. NYI-1 at 23 (Corey); Ex. S-4 at 1-2 (Corey deposition); Ex. S-1 at 11 (Sammon); Ex. KEY-13 at 4. Furthermore, Attachment S does not contain procedures for how the NYISO is to identify feasible solutions. Ex. NYI-2 at First Revised Sheet No. 667.

135. As referenced supra, the NYISO witnesses represented that the term "feasible" was intentionally left undefined in Attachment S so that the NYISO would be free to establish "solutions" as they needed. Likewise, the NYISO witnesses argued that if any guidance was needed with respect to what "feasible" means, the undersigned need only look to the TPAS meetings for that guidance. For the reasons explained infra, I have concluded that it is not appropriate to turn to recollections of the TPAS meetings for this guidance, nor can I recommend to the Commission that they do so.

136. As detailed in this decision, the evidence was overwhelming that the NYISO did not "select" generic generating units in a manner which was "consistent with the feasibility criterion in the cost allocation rules." Hearing Order, 101 FERC at 61,368. The first shortcoming of the NYISO was that they didn't "select" units at all— they simply took what Con Edison had done, slightly massaged it, and put it forward as their own selection. Attachment S clearly requires the NYISO to develop its own "feasible solutions." Ex. NYI-2 at First Revised Sheet No. 667.

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137. The second shortcoming of what the NYISO did was sponsor specific generic generating units that were chosen primarily because they resulted in the least cost SUFs to the TOs.[34] The cost allocation provisions of Attachment S do not instruct the NYISO to consider this fact when determining "feasible solutions."

138. The third shortcoming of the NYISO in this area was to view the entire process of developing "feasible solutions" as a "fantasy plan"—a term coined by a key employee of the NYISO.[35] Having given itself permission to detach the development process from reality, the NYISO expressed freedom to approve any solutions save for the most bizarre— in this proceeding known as the "you can't put a generator in Central Park" scenario.

139. Based on the record before me, the inescapable conclusion is that the NYISO did not comply with the terms of Section IV.F.1.a.(1)(e) of Attachment S. Ex. NYI-2 at First Revised Sheet No. 667. That is the short answer to the question posed by issue one. However, the parties also submitted competing (and conflicting) evidence in this record about generic generators which did comprise "feasible solutions" in accordance with Attachment S. The Commission did not direct me to come up with my own feasible solutions, and I will not do so. Perhaps the Commission will desire to impose "feasible solutions" on the NYISO for the year 2001; or, perhaps the Commission will direct the NYISO to develop feasible solutions along more clearly enunciated guidelines.

140. Whichever path the Commission chooses to follow, I do recommend to the Commission that they consider favorably the arguments and conclusions of Staff on this issue, as well as those of the Complainants. Clearly their positions are the most consistent with Attachment S, and the most reasonable. Particularly, the Commission should require that any generic generator identified by the NYISO be able to be built and in service for the year for which there is an associated deficiency identified. Unlike the

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[34] While this convoluted interpretation of Attachment S by key NYISO personnel (as detailed supra), is in contravention of the clear language of Attachment S, what I find more troubling is the fact that this misinterpretation of the plain language of Attachment S provides support for the Complainants' argument that the cost allocation process, as carried out by the NYISO for the year 2001, demonstrates a bias in favor of TOs by the NYISO. It is this bias which compels me to recommend to the Commission steps to make the cost allocation process more transparent.

[35] Indeed, in its September 24, 2002 Answer to the Complaint in this proceeding (and in a response to KeySpan's Data Request No. 10), the NYISO claimed that it had developed generic units which were "plausible". See NYISO Answer at 25; Ex. Key-7 at 24. One need only review the definition of "plausible" in the dictionary to know that a "plausible" solution is not the same thing as a "feasible" solution. Wisely, the NYISO abandoned this line of reasoning prior to the hearing; however, it is clear from the argument in its Answer what its mindset was.

evidence related to the third issue in this proceeding, I do believe that the record is complete with respect to this first issue. Accordingly, if the Commission desires to designate "feasible solutions" for the year 2001, it should be able to do so.

141. Turning to additional recommendations for the Commission, based on the record before me, let me first address the TPAS meetings (and to a lesser degree the IITF meetings). In Complainants' Reply Brief, they counter the argument made by the NYISO that the discussions at the TPAS meetings can be and should be used to illuminate the provisions of Attachment S.[36] Complainants arguments are eloquent, and the authorities cited are convincing, but there is no need to recite them here. In accordance with those arguments and authorities, I recommend that the Commission consider evidence of discussions at TPAS meetings only for the purpose of supporting Complainants' allegations of bias.

142. To hear the NYISO witnesses tell it, on all key issues affecting Market Participants, there was a "consensus" reached at the TPAS meetings, and that "consensus" was passed on to the NYISO Board. Second, the NYISO relied on the TPAS meetings as the means by which the "stakeholders" were allowed to provide input into the decisions made by the NYISO Board. Third, at the TPAS meetings, representatives of the NYISO expressed opinions on their interpretation of Attachment S which favored the TOs in the cost allocation process.[37]

143. According to the document that created the TPAS process, Exhibit NYI-24, the TPAS was established by the Operating Committee of the NYISO for three purposes:

> (1) Support transmission planning activities in New York State;
> (2) Provide reports, recommendations, and technical advice to the Operating Committee in regard to transmission planning matters and issues; and
> (3) Provide technical review and guidance to the NYISO transmission planning staff and other parties that may be involved in the conduct of transmission planning studies.

Section 3.5 of that same document provides: "TPAS shall conduct business on a consensus basis. In the event of disagreement among the participants on a report or

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[36] See KeySpan Reply Brief ("RB") at 4-8.

[37] For example, NYISO's "selection" of generic generators was based upon minimization of the system upgrade costs. Tr. at 273, 282, 901. Also, NYISO's resistance to the idea of identifying deficiencies year by year, rather than at the end of the five year period, and the need to specifically identify when each generic unit would be available, both so the ATBA would be a "viable plan." Tr. at 223.

recommendation to be submitted to the Operating Committee, majority and minority opinions shall be reflected in the report." Id. at 2.

144. The NYISO staff had the affirmative responsibilities of both seeing that notes were taken at each TPAS meeting *as well as* posting those notes on the NYISO website. See Id. at 2, §3.7. However, the record establishes that notes were taken at only one TPAS meeting. Ex. NYI-8. These notes, of the January 25, 2001 TPAS meeting, do not record any majority or minority opinions on any topics discussed.

145. Testimony from Market Participant attendees of the TPAS meetings makes clear that there was considerable disagreement on points affecting those participants. Corroborating evidence of dissension can be found in the minutes of the May 23, 2002 meeting of the Operating Committee. See Ex. NYI-13. At this meeting, there was a vote on the Class 2001 Study Report and Proposed Cost Allocation. The motion passed with the following vote breakdown: For: 65.40% Against: 34.60%. Interestingly, there followed a vote on a motion to table the motion on the Class 2001 Report and recommend that TPAS do further analysis on two key aspects of the report. That motion to table failed by a relatively narrow margin: For: 42.32% Against 57.68%. See Id. at 4-5.

146. Additional disturbing conduct by the NYISO, based on uncontroverted evidence in the record, involves the sharing of information with Con Edison—information that was not shared with other Market Participants. Specifically, a key employee of the NYISO held private discussions with Con Edison about the report prepared by GE and GE's recommendations as to other reviews that GE recommended should be performed, but were not authorized by the NYISO. Tr. 664-667, 696.

147. Based on the record before me, I cannot conclude that a "consensus" was ever reached on any controversial issue at any TPAS meetings. While the stated purpose of the TPAS meetings are valid and were designed to add value to the transmission planning and cost allocation process under Attachment S, the NYISO's failure to implement the TPAS process in a meaningful way has materially contributed to a perception of impropriety by Market Participants (other than Con Edison). The abuse of the TPAS process leads me to conclude that the NYISO was not interested in providing all Market Participants with a meaningful avenue by which to contribute to the decisions ultimately made by the NYISO Board.

148. As noted by Staff, transparency in the transmission planning process is necessary in order to instill confidence in the Market Participants. PJM Interconnection, LLC, 96 FERC at 61,240. On its face, Attachment S, along with the TPAS process, was designed to provide this transparency. Unfortunately, the evidence in this proceeding shows that the NYISO manipulated both Attachment S and the TPAS process with respect to its duty

to "develop feasible solutions." Thus, the question becomes: How can the transparency be restored?[38]

149. Having recognized the NYISO's credibility problem, the Commission's further guidance could help to instill the transparency that currently does not exist in the NYISO cost allocation process. This guidance could be in the form of clarifying additions to the provisions of Attachment S. Along these lines, the Commission could consider any or all of the following: (1) providing a definition of "feasible"[39]; (2) requiring the NYISO to perform a fatal flaw analysis[40] on any generic generator it contemplates using as part of a "feasible solution"; (3) requiring the NYISO to weight different factors it considers when considering "feasible solutions" in a specific fashion[41]; (4) requiring the NYISO to identify, on a year-by-year basis, the deficiencies which make it necessary to develop "feasible solutions" in the first place[42]; and (5) adjusting the due dates of various information so that sufficient time is allowed for compliance with Attachment S provisions related to the ATBA.

B. ISSUE TWO: Whether the NYISO's exclusion of certain generating units from the Baseline Assessment was consistent with the cost allocation rules?

BACKGROUND—ISSUE TWO

150. During the months of June through September 2001, the NYPA placed ten GTs in service throughout New York City. Con Edison IB at 11. These GTs were placed in to service to help meet a locational reserve requirement deficiency faced by NYPA, to alleviate the potential for NYISO market price spikes in New York City, and for reliability reasons. Id. Additionally, Con Edison reactivated and returned to service its already existing Hudson Avenue No. 10 unit, to help meet capacity requirements in New York City. Id. None of these units were included in the NYISO's ATBA for 2001.

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[38] Again, I realize this is not a question that the Commission asked me to answer. However, there was no way for the Commission to know, when it issued its October 30, 2002 Order, what the evidence in this proceeding was going to show.

[39] I recommend the definitions given by Witness Disher (Tr. at 455-456) and Witness Plaskon (Tr. at 227-228). See also Footnote 31, supra.

[40] Witness Disher provided one explanation of fatal flaw analysis during the hearing, "as an investigation that simply attempts to determine on the basis of available information and available resources whether a particular plan can, in fact, be accomplished, whether it can be brought into being, and if there is any aspect of it that indicates that it cannot be realized as an actual implementation of a plan…" Tr. at 401.

[41] See Tr. at 455-463.

[42] Attachment S already requires year-by-year identification of SUFs. See Ex. NYI-2 at First Revised Sheet No. 665.

151. A central component in the determination of the ATBA is an assessment of the Applicable Reliability Requirements "in effect when the [ATBA] is commenced." Ex. NYI-2 at First Revised Sheet No. 665. In the NYISO service area, these requirements are anything but simple, as New York has multiple load pockets, and sub-load pockets, as detailed herein. It is my assessment of this proceeding that the parties did not have sufficient time to focus on the reserve margin requirements. Some testimony was devoted to it, but not an exhaustive amount. Of course, the NYISO's 2001 Cost Allocation Report had to mention the requirement. I direct the Commission's attention in particular to Table 1.4 of this Report, which is in the record as Exhibits NYI-3 and KEY-3. If the NYISO is instructed to re-compute the ATBA, the Commission will want to assure compliance with this requirement in the determination of the ATBA.

1. Complainants' Position on Issue Two

152. Complainants contend that the NYISO's exclusion of seven of the ten NYPA GTs and the Hudson Avenue No. 10 unit from the NYISO 2001 ATBA is inconsistent with the cost allocation rules because those units were, in fact, needed to maintain reliability and helped solve locational capacity deficiencies on the Con Edison system. Tr. at 581 (Corey); Ex. KEY-26 at 4; KEY-27; Ex. KEY-34a. They argue that the NYISO was aware— in advance of the 2001 cost allocation process— that the NYPA GT and Hudson Avenue units were being brought on-line to meet critical reliability needs in the summer of 2001. Ex. KEY-26 at 4-5; Tr. at 607-608 (Corey); Ex. KEY-34.

153. Complainants characterize the NYISO's position that the NYPA units were not existing units because they had not accepted their SUF costs as flawed. Complainants argue that Attachment S only excludes *proposed* projects from being included in the baseline. See Ex. NYI-2 at First Revised Sheet No. 666. They state that the NYPA GTs were real, operational units serving the needs of In-City reliability during the summer of 2001. Ex. KEY-26 at 5-6; Tr. at 186-187, 196 (Hiney). Complainants reason that because they were in-service, these NYPA units were going to have electrical impacts on the Con Edison transmission system regardless of whether they accepted their cost allocation. These units should therefore have been included in the ATBA. Furthermore, Complainants assert that the NYPA units had already paid for the initial SUFs needed to interconnect them outside of, and prior to, completion of the cost allocation process. Tr. at 196-197 (Hiney).

154. With respect to the Hudson Avenue No. 10 unit, Complainants further assert that Attachment S does not require the NYISO to exclude units from the *existing* Baseline if they are not listed in the Gold Book. Ex. NYI-2 at First Revised Sheet No. 665; Tr. at 599-600 (Corey); Tr. at 1042 (Mitsche). The Complainants add that Con Edison Witness Turkin testified that Con Edison reactivated Hudson Avenue No. 10 in 2001 to satisfy a Con Edison capacity requirement. Tr. at 1099. Finally, Complainants note that the NYISO admitted to making adjustments to the 2001 Gold Book data. Tr. at 638-639.

155. By excluding the NYPA GT units and Hudson Avenue No. 10 unit from the 2001 ATBA existing generation Baseline, even though they were in fact operating on the Con Edison system, Complainants argue that the NYISO failed to reflect the actual Baseline system existing in 2001. Complainants take the position that excluding actual operating units distorts the electrical impact on the transmission system, and in this instance, understates the SUFs that would be required to maintain system reliability, without consideration of Class Year 2001 projects. Ex. KEY-24 at 7. For these reasons, Complainants seek to have the NYISO be required to revise the 2001 ATBA to include the NYPA GTs and Hudson Avenue No. 10 units as "existing" generation, or, in the alternative, model all of these units as generic units.

2. NYISO'S Position on Issue Two

156. Like Con Edison, the NYISO did not include the NYPA GTs or the Hudson Avenue No. 10 unit as existing units in developing its ATBA. The NYISO alleges that it relied on the Gold Book (Ex. NYI-5) as the basis for determining the load forecast component of its ATBA. Ex. NYI-1 at 12; Ex. NYI-28 at 3. They describe the Gold Book as the definitive reference tool for load and capacity in New York. Ex. NYI-1at 14; Ex. NYI-22 at 9. Mr. Corey testified that Market Participants determined during the IITF and TPAS stakeholder process that it was appropriate and consistent with the aim of Attachment S for the NYISO to utilize the Gold Book as the *exclusive* source of capacity data, as well as for load forecast data, in constructing the Baseline system representation. Ex. NYI-1 at 14; Ex. NYI-22 at 9; Ex. NYI-28 at 3. Mr. Mitsche added that this determination was the subject of considerable discussion and, ultimately, consensus at the IITF. Ex. NYI-22 at 9. The NYISO further notes that Complainant Witness Plaskon acknowledged that the IITF and TPAS participants discussed using the Gold Book as the source for identifying existing generating capacity. Tr. at 269.

157. The NYISO notes that Attachment S does not allow a proposed Developer project to be included in the ATBA unless and until interconnection costs for the project have been allocated as well as accepted by the Developer. Ex. NYI-2 at First Revised Sheet No. 666; Ex. NYI-1 at 15, 17; Ex. S-11 at 9. The NYISO asserts that the ten NYPA GT units, Class Year 2001 projects, were properly excluded from the 2001 ATBA because they had not accepted their cost allocation. Ex. NYI-1 at 17-18. They point to Staff Witness Khu's testimony as further support that "all the NYPA GTs should not be in the ATBA." Ex. S-11 at 9.

158. The NYISO likewise excluded the Hudson Unit No. 10 from its 2001 ATBA because it was not listed as existing capacity in the 2001 Gold Book. Ex. NYI-1 at 18; Ex. NYI-22 at 8; Ex. NYI-28 at 3. Mr. Mitsche testified that Market Participants specifically discussed during TPAS meetings whether to include several units in the ATBA, including Hudson Avenue No. 10, whose status was uncertain for the coming

year. Ex. NYI-22 at 8. He alleges that in each of these instances, units that were not listed in the 2001 Gold Book were not included in the ATBA. Id. at 8-9. Furthermore, the NYISO notes that the reactivated Hudson Avenue No. 10 unit was reported as part of the existing power system in the 2002 Gold Book, and thus is being added to the Baseline system depicted in the 2002 ATBA. Ex. NYI-6 at 18; Ex. NYI-1 at 18; Ex. NYI-28 at 4.

159. The NYISO acknowledged that two units– Athens and Bethlehem– that also *were not* listed as existing units in the 2001 Gold Book were nonetheless included in the 2001 ATBA. Tr. at 604-605, 761. They submit that TPAS members determined by consensus that NYISO Staff should essentially grandfather these two units in to the 2001 ATBA existing system Baseline because these plants were considered to be the equivalent of Class Year 2000 – each had an approved SRIS and had accepted their respective interconnection costs prior to implementation of the cost allocation process governed by Attachment S. Ex. NYI-22 at 8; Tr. at 761.

3. Con Edison's Position on Issue Two

160. Con Edison takes the position that excluding the seven NYPA GTs and Hudson Avenue No. 10 units from the existing Baseline for the 2001 ATBA was consistent with Attachment S. None of these generators were listed as existing units in the 2001 Gold book. Ex. CE-1 at 24, 26. Furthermore, Con Edison alleges that none of the NYPA GT units were in service by the May 1, 2001 closing date for the Class Year 2001 or by July 1, 2001, the date the Gold Book was issued. Ex. KEY-26 at 5.

161. Con Edison maintains that it considered using each of the NYPA GTs as generic units in its ATBA, and in fact selected three of the NYPA GTs as Generic #6. Ex. CE-2. Con Edison submits that the remaining seven GT units were rejected as potential generic generators because they were not located within the necessary load pockets and/or did not produce the least costly configuration of SUFs. Ex. CE-1 at 12-14.

162. Con Edison further claims that Attachment S requires that units must have been allocated, and accepted, their cost allocation for them to be included in the ATBA. Ex. NYI-2 at First Revised Sheet No. 666. Given that the NYPA GTs had not yet been allocated, nor accepted, their cost responsibility, Con Edison argues that the NYISO properly exclude these units from the ATBA. Ex. CE-1 at 24. Mr. Turkin testified that permitting the NYPA GTs to be included in the ATBA would insulate these projects from all SUF costs and create an unfair subsidy at the expense of other Developers. Ex. CE-1 at 24; see also Ex. NYI-1 at 15.

163. Con Edison opposes Complainants' contention that the NYPA GTs should be in the ATBA because these units were used during the 2001 summer for reliability purposes. Con Edison submits that the NYPA had various reasons, not simple reliability considerations, for installing the units. First, the NYPA was responsible for procuring

installed capacity to meet its In-City capacity requirements. Ex. KEY-27 at 29-30; Tr. at 185; Ex. CE-9. The installation of these GTs also allowed NYPA to meet its locational ICAP requirement for 2002. Tr. at 206. Furthermore, Con Edison maintains that the NYPA did not consider local reliability rules or factor in load pocket needs when siting these GTs. Tr. at 176-177. Con Edison also points to the fact that the NYPA was aware that one of the expected benefits from installing the GTs would be a decrease in market prices. Ex. CE-10; Tr. at 173-174 (Hiney). Con Edison goes on to characterize the installation of the NYPA GTs as "but for" SUF costs because the NYPA had discretion over the specific size and location of these resources. Finally, the company suggests that the NYPA agreed that its GTs should not be in the ATBA. Ex. CE-8 at 2.

164. With regard to the Hudson Avenue No. 10 unit, on brief Con Edison states that this unit was returned to service to help Con Edison meet its In-City capacity deficiency expected in the summer of 2001. Con Edison IB at 35. The company claims that the fact that this unit was not listed as an existing unit in the Gold Book was sufficient to exclude it from the ATBA. Con Edison adds that the New York State Department of Environmental Conservation only granted the Hudson Avenue No. 10 unit an air permit to operate until October 2004 – two years prior to the end of the study period for the 2001 ATBA. Ex. CE-1 at 26.

4. Staff's Position on Issue Two

165. Staff argues that the NYPA GT units were existing units reliably interconnected to the grid with paid-for SUFs that were serving New York City all *before* the NYISO had even filed its original Attachment S proposal with the Commission on August 29, 2001. Ex. KEY-26 at 5; Ex. NYI-3 at 33, 39; Tr. at 166-167, 186-187, 196. In short, Staff argues that by the time the NYISO had filed Attachment S with the Commission, the NYPA units were not a proposed project but *existing* units in service.

166. Furthermore, while the NYISO submits that Attachment S mandates that the Gold Book must be used to determine the existing Baseline system for ATBA purposes, Staff argues that the relevant provision indicates only that the Gold Book is to be used "to project system load growth and changes in load pattern." Ex. NYI-2 at First Revised Sheet No. 665 and Original Sheet No. 665A. Staff agrees with Complainant Witness Plaskon that the language of Attachment S does not indicate that the Gold Book defines the existing Baseline system for the ATBA. Tr. at 271.

167. In responding to the NYISO's contention that the NYPA GTs were only *proposed* Developer projects that under Attachment S must have been allocated, and have accepted, their SUF costs in order to become part of the Baseline system, the Staff argues that the NYPA GTs were in an exceptional position. Staff emphasizes that given that 2001 was the first year the cost allocation rules were applied, there were no Attachment S rules even in existence by which SUF costs could have been allocated to, and accepted by, the

NYPA units. According to Staff, these NYPA GT units were beyond the proposal stage and existing units in August 2001 *before* the NYISO even filed its proposed Attachment S cost allocation rules. Staff concludes that as existing units, the NYPA GT units should have been included in the ATBA as part of the existing Baseline.

168. The Hudson Avenue No. 10 unit was likewise an existing unit interconnected by pre-existing SUFs that was simply reactivated in 2001. Ex. NYI-1 at 18; Ex. CE-1 at 26; Ex. S-14 at 2; Ex. KEY-7 at 27. Staff asks that the NYISO be directed to treat both the NYPA GTs and Hudson Avenue No. 10 unit as what they were in 2001 – existing units in service, and therefore eligible to be included in the existing Baseline for the ATBA.

Discussion and Findings – Issue Two

169. Once again, the evidence establishes that the NYISO was interpreting Attachment S so that a desired result was achieved. With respect to this issue, Attachment S provides, in relevant part, as follows:

> (a) For the Annual Transmission Baseline Assessment, the NYISO staff will first develop baseline system improvement plans with each Transmission Owner. These improvement plans will use NYISO data from the annual NYISO Load and Capacity Data Book [the Gold Book] to project system load growth and changes in load patterns, including those that reflect demand side management, and will identify the System Upgrade Facilities needed year-by-year for the baseline system to reliably serve projected load in the Transmission Owner's Transmission District for a five year period. . . .
>
> (b) The Annual Transmission Baseline Assessment will identify the System Upgrade Facilities needed to reliably meet projected load growth and changes in load pattern without the interconnection of any proposed Developer projects, except for those proposed projects to which interconnection facility costs have already been allocated and accepted by the Developers of those projects in accordance with these rules. . . .

Ex. NYI-2 at First Revised Sheet Nos. 665-666.

170. The argument of the Complainants is simple: the NYPA GTs and Hudson Avenue Unit No. 10 were scheduled to come on line to meet critical reliability needs in the summer of 2001. Hudson Avenue Unit No. 10 had, at one time, been connected to the

Con Edison system, and was being reactivated (Neither Con Edison nor the NYISO presented convincing evidence that "new" or "additional" facilities were needed to reconnect this unit.). While the NYPA GTs had not accepted their SUF costs, pursuant to the process outlined in Attachment S, they had already paid for the initial costs to connect them to the Con Edison system. Complainants argue that neither the Hudson Avenue Unit No. 10 nor the NYPA GTs were "proposed", and should have been included in the Baseline Assessment.

171. The NYISO's arguments that the NYPA GT and Hudson Avenue No. 10 units have to be excluded because they were not listed in the 2001 Gold Book are undermined by the fact that the NYISO included two other units (Athens and Bethlehem) as existing units in the Baseline Assessment, despite the fact that these two units were also not listed as existing units in the 2001 Gold Book. In fact, Athens and Bethlehem were listed as "generator additions", the same designation given the ten NYPA GTs in the 2001 Gold Book. Tr. at 604-605. In addition to this inconsistency, the NYISO offered no response to the Commission Staff's assertion that the Gold Book is not to be used to define the existing Baseline.[43]

172. The record evidence compels me to conclude that the NYISO's exclusion of the NYPA GTs and the Hudson Avenue No. 10 unit unreasonably favors the TOs. The record establishes that the unsupported exclusion of these units operates to misstate the electrical impact of the "existing" Baseline on the electrical system which leads to an underestimate of the SUFs required to maintain system reliability, without considering "new" projects. Had some or all components of these units been added to the Baseline, the TO's SUF cost responsibility would have been increased.

173. Here, too, there is a short answer to the question posed by the Commission: the NYISO's exclusion of certain generating units from the Baseline Assessment was *not* consistent with the cost allocation rules in Attachment S. The evidence in this proceeding yet again raises a broader issue in need of the Commission's guidance: How should the NYISO deal with projects that are not yet on-line, but are so far along in the development process that they do not fit the category of "proposed" either?

174. As stated by the Commission in its October 30, 2002 Order, to begin the Baseline Assessment, the "NYISO must take a 'snapshot' or examination of the transmission system as it exists to determine what would be needed if no new projects were proposed." Hearing Order, 101 FERC at 61,366. To misstate the Baseline Assessment is to endanger the reliability of the system and allow the TOs to carry less than their fair share of SUF costs under Attachment S. What can be done to ensure that, in the future, the NYISO

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[43] Witness Disher also pointed out that Attachment S prescribes use of the Gold Book to project system load growth and changes in load pattern; however, Attachment S does not say, use *only* the Gold Book. Ex. Key-37 at 27.

properly treats those projects that are no longer "proposed" but not yet on-line? If the NYISO chooses to leave these projects out of the Gold Book (the NYISO publishes the Gold Book), and it refuses to include those projects in the Baseline Assessment, what is the Market Participant to do? What can be done to keep the NYISO from treating similarly situated projects differently, as it did in this proceeding? One alternative would be to use these projects as generic units— but the NYISO failed to do that in this proceeding as well.

175. I acknowledge that Attachment S provides a line of demarcation at the point that projects have had their costs allocated to them and accepted by the Project Developers. However, given the manipulation of the system demonstrated in this proceeding, additional guidance on this point in the cost allocation system could well strengthen transparency in the establishment of the Baseline Assessments. As stated before, transparency is needed in order to instill confidence in the process.[44]

176. Attachment S should confirm that achieving accuracy in the Baseline Assessment trumps any accounting issues. The Baseline Assessment needs to be reality-based in order to preserve the reliability of the electrical system and to fairly allocate costs between the TOs and the Project Developers. It is worth emphasizing that *nowhere* in Attachment S does it say that the Project Developers are responsible for *any* costs other than those associated with the connection of their projects to the system. Unless the cost allocation provisions of Attachment S are applied correctly, the Project Developers will be required to pay costs other than those associated with the connection of their projects.

C. ISSUE THREE: Whether the most recent PJM model available at the time the studies commenced was used to conduct the Baseline Assessment, and what effects an updated model might produce?

BACKGROUND—ISSUE THREE

177. In its October 26, 2001 Order Accepting Tariff Revisions Subject to Modification, the Commission declined to require the NYISO to address (in a compliance filing) how the NYISO intended to address "interconnections that affect a neighboring control area." October 26, 2001 Order, 97 FERC at 61,580. The Commission, focusing on issues of costs associated with developers connecting to the NYISO system, merely quoted from Duke Energy Corporation[45], confirming that "interconnected utilities must, and do, work closely together to insure that the operation of one system does not jeopardize the reliability of a neighboring system." Id.

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[44] It should be noted that Attachment S refers to acceptance of costs by developers "in accordance with these rules." But, there were no "rules" for year 2001 until the Commission issued its Order on October 26, 2001.

[45] 94 FERC ¶61,187 at 61,658 (2001).

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178. In this proceeding, the NYISO stands in the shoes of an interconnected utility for its control area. Thus, it is the responsibility of the NYISO, not only under Attachment S, but also under Commission precedent, to take the necessary steps to ensure that the reliability of the NYISO system is not adversely impacted by load growth and/or changes in load pattern in neighboring systems. Based on the record before me, now is the time for the NYISO to be given some specific guidance in this area, insofar as the application of Attachment S is concerned.

179. As detailed below, for year 2001, the NYISO chose to accept information given to it by Con Edison, without having the information independently verified or analyzed. For a number of reasons, this turned out to be a bad choice for the NYISO. Because there were minimal margins in a large number of Con Edison's breakers, the accuracy of the short-circuit analysis was crucial, and a matter of great concern to the Market Participants.[46]

1. Complainants' Position on Issue Three

180. Complainants argue that the NYISO failed to use the most recent PJM model available at the time the NYISO short-circuit studies commenced. Complainants add that the NYISO continues to rely upon a PJM model that fails to account for the short-circuit impacts from some existing and projected new generation in PJM during the 2002-2006 study period of the 2001 NYISO ATBA.

181. With regard to what effects an updated model might produce, Complainants assert that this depends upon (1) the type of updated PJM model that is used and (2) how the updated PJM model accounts for new generation projects and associated transmission facilities projected to come online in PJM during the 2002-2006 ATBA study period. They argue that SUFs needed to mitigate the fault current impacts on Con Edison's transmission system caused by neighboring control areas are "anyway" costs which are unrelated to the interconnection of New York Developers' projects, and therefore the cost responsibility of TOs. Ex. NYI-1 at 9; Tr. at 510 (Corey); Ex. NYI-2 at Original Sheet No. 653A.

182. Complainants oppose the NYISO's contention that the ATBA should only consider the short circuit impacts of PJM units that have accepted their interconnection costs by executing an ISA. They reject the NYISO's assertion that the PJM model to be used in determining the NYISO ATBA "must match as closely as possible the baseline [used] for the New York system" (Ex. NYI-1 at 42) and characterize the NYISO's effort

[46] For one discussion of this issue at the hearing, see Tr. at 286-288.

to match the New York ATBA and the PJM short-circuit model as comparing apples and oranges.[47]

183. Complainants note that the NYISO's January 13, 2003 study that used an updated PJM model included 3,700 MW of new PJM generation, using the May 1, 2001 cut-off date for entering into an ISA. Ex. KEY-25 at 15. The study filed by the NYISO on January 29, 2003 employed a December 31, 2001 cut-off date for entering into an ISA, with an updated PJM model that included 7,500 MW of new PJM generation. Id.; Ex. KEY-10. Complainants allege that many projects do not sign ISAs until late in the PJM development process, or even after becoming operational. Ex. KEY-25 at 12. This is another reason Complainants claim that even the NYISO's updated PJM model is not a reasonable representation of, but instead understates, the amount of new capacity that would be expected to be in commercial operation in PJM by 2006 or the amount of new capacity that the transmission system would have to accommodate. Id.

184. Complainants propose using the PJM model based upon the June 2001 PJM RTEP. They propose including the proposed projects in PJM interconnection queue "A" that had signed FSAs as of the June 2001 RTEP as a proxy for what they characterize as approximately 15,000 – 17,000 MW of new generation projected to come on-line in PJM through 2006. Ex. KEY-25 at 15-17; Tr. at 811, 815 (Sheehan). Such units collectively amount to 15,288 MW of proposed new generation. Ex. KEY-25 at 15. Complainants are concerned that failure to include an accurate projection of PJM units will unfairly shift SUF costs to Project Developers.

2. NYISO'S Position on Issue Three

185. The NYISO admits that it did not use the most recent PJM model available at the time it commenced its short circuit studies for the cost allocation process. Ex. NYI-1 at 41; Tr. at 104 (December 20, 2002 Technical Conference), 707, 709-710 (Corey). NYISO Witness Corey conceded that a more recent PJM model was available at the time the 2001 cost allocation studies commenced. Tr. at 707.

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[47] On brief, Complainants claim that the purpose of the updated PJM model is to allow the NYISO to analyze projected electrical impact of fault current flows from PJM on the Con Edison transmission system through 2006 that are expected to occur "anyway." Complainants IB at 42. Complainants add that the purpose of the ATBA is to establish an existing baseline against which to measure the incremental cost of SUFs needed to interconnect the Class Year projects. Id. According to Complainants then, the PJM model serves an entirely different purpose than the baseline system improvement plan prepared as part of the NYISO ATBA. Id.; see Ex. NYI-2 at First Revised Sheet No. 665.

186. With regard to what effects an updated model might produce, the NYISO prepared two impact studies using variations of updated PJM data. Ex. NYI-14 (January 13, 2003 Impact Report); Ex. NYI-15 (January 29, 2003 Impact Report). The NYISO asserts that the PJM model used for the ATBA "must match as closely as possible the baseline [used] for the New York system." Ex. NYI-1 at 42. The NYISO proposes to include only those PJM units that have reached a stage of development comparable to the criteria used by the NYISO to include proposed New York projects in its Baseline— that is, PJM units that have accepted their interconnection costs. Id.; Ex. NYI-16 at 16; Ex. NYI-25 at 5-1. The NYISO submits that the comparable objective milestone in the PJM queue process is execution by the PJM Developer of an ISA. Ex. NYI-22 at 16; see Tr. at 430-431 (Disher). Including proposed PJM projects that have not yet accepted their cost allocation by executing an ISA would, according to Mr. Corey, be inconsistent "with Attachment S and would overstate the impact of the PJM system." Ex. NYI-1 at 43. The NYISO contends that the Complainants' proposed milestone— including proposed PJM projects that have signed FSAs— still produces inflated estimates of PJM's future capacity that would result in higher SUF costs being unreasonably allocated to TOs.

187. The NYISO's January 13, 2003 Impact Report includes proposed PJM projects that had executed an ISA with PJM on or before May 1, 2001. Ex. NYI-14; Ex. KEY-9 at 1-2. The NYISO's January 29, 2003 Impact Report includes proposed PJM projects that had executed an ISA with PJM on or before December 1, 2001. Ex. NYI-15. Both reports produced higher fault levels on the Con Edison system. The NYISO notes that the January 13, 2003 Impact Report resulted in a $30,000 increase in the total cost of SUFs allocated to Con Edison in the NYISO's 2001 cost allocation while the January 29, 2003 Impact Report produced a $60,000 increase in SUF costs allocable to Con Edison, due to the fact that additional PJM projects had signed an ISA by December 1, 2001. Ex. NYI-14; Ex. NYI-15.

3. Con Edison's Position on Issue Three

188. Con Edison states in its initial brief that "[i]t is obvious from the record that the most recent PJM database was not used." Con Edison IB at 6. Con Edison goes on to assert that updated PJM data would have little impact on the ATBA. Id. at 36. The company submits that if all three ISO region (NYISO, PJM, and ISO New England) databases were updated, with certain adjustments, there would be no impact on the cost allocation results.[48] Ex. CE-1 at 30-31, 33-34. As Mr. Turkin testified, "[i]t is important that updated data be used for all three ISO regions because there are offsetting impacts that come into play when the data from all three systems is looked at on a consistent 'apples to apples' basis." Id. at 30.

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[48] Con Edison submitted a revised cost allocation analysis. The study results are shown in Exs. CE-13 – CE-16.

189. While the Complainants most recent proposal recommends using approximately 15,000 MW of projected PJM projects to conduct the ATBA, Con Edison notes that Complainant Witness Sheehan affirmed that a "little over 5000 [MW] since June 2000" have been withdrawn from Queue A. Tr. at 838.

190. Because SRIS costs and factors are only contained in the ATRA, Con Edison asserts that SUF costs associated with Developers in neighboring ISOs are the responsibility of Project Developers, not the TOs. Con Edison IB at 44. Con Edison maintains that nothing in Attachment S requires it to pay for transmission facilities related to Developers' projects in neighboring control areas, nor can a TO recover costs associated with such projects. Id.

4. Staff's Position on Issue Three

191. Staff explains that the significance of the PJM short-circuit data stems from the fact that any generators coming on-line in northern New Jersey will affect the fault current levels in the adjacent portions of the NYISO control area. Ex. S-11 at 11-12; Ex. KEY-23 at 24. Staff adds that the parties disagree as to which prospective PJM generation projects in the PJM control area should be modeled in the short-circuit studies done for the NYISO's 2001 ATBA. Compare Ex. NYI-1 at 43, and Ex. NYI-16 at 16, with Ex. KEY-7 at 35, and Ex. KEY-25 at 15. Staff Witness Khu explains that the greater the number of projected generators in electrical proximity to the southeastern portion of the New York control area, the higher the fault current impact to the NYISO system. Ex. S-11 at 11-12. The TOs are responsible for the SUF costs related to mitigating the fault current impacts.

192. Staff emphasizes that the impact of using more current PJM short-circuit data is to increase the SUF costs to the TOs. This is the common result running through all the updated PJM short-circuit model variations submitted by the parties. While the NYISO proposes to include only proposed PJM projects that have executed an ISA with PJM, Complainants contend that any proposed PJM project that has executed an FSA with PJM should be included in the updated PJM model. Compare Ex. NYI-16 at 16, and Ex. NYI-1 at 43 with Ex. KEY-25 at 13-14, and Tr. at 815. The FSA occurs earlier in the PJM interconnection process than the ISA. Ex. KEY-25 at 13, Table 3; Ex. NYI-25 at 3-6 (PJM Manual).

193. Staff argues that the FSA estimates in good faith the interconnection cost responsibility for developers. Ex. NYI-25 at 3-6. Moreover, the FSA captures projects which are under construction in the PJM control area even though the developers and owners have not executed an ISA. Ex. KEY-25 at 14; Tr. at 818. Staff notes that the PJM Manual clearly contemplates that a developer and the affected interconnection TO may go forward with construction in the absence of an executed ISA. Ex. NYI-25 at 5-2.

194. According to Staff, the determining standard to apply is what a reasonable TO would do to ensure that it meets minimal reliability standards in its control area. Ex. NYI-2 at First Revised Sheet No. 667; Ex. S-11 at 12. Staff agrees with Complainants that the realities of project development in PJM are markedly different from project development in the NYISO. Ex. KEY-25 at 14; Tr. at 818. Staff asserts that ignoring the fault current impacts of projects actually in construction in 2001 because they had not yet executed an ISA would be unrealistic, and perhaps imprudent. Staff reasons that because reliably serving future load growth is paramount under the ATBA (Ex. NYI-2 at First Revised Sheet No. 667), the NYISO should have included those proposed PJM projects that had signed a FSA. Staff agrees with Complainants that the capacity for projects that had signed FSAs totals approximately 15,288 MW. Ex. KEY-25 at 15.

Discussion and Findings – Issue Three

195. The record conclusively establishes that the NYISO failed to use the most recent PJM model available to perform its short circuit analyses. Ex. NYI-1 at 41; Tr. at 707, 709-710 (Corey). Con Edison also concedes that the PJM model used by the NYISO was most likely five-years old at the time of the study. Ex. KEY-18; Tr. at 1081 (Turkin). The evidence shows that NYISO Staff members knew, at least by May 23, 2002, that the PJM data in the NYISO's 2001 ATBA was approximately five-years old and that the inclusion of updated PJM models had the potential for producing higher fault levels around the Con Edison system.[49] Ex. KEY-18. Furthermore, Mr. Corey admitted that GE Power Systems, the NYISO's expert consultant retained to review Con Edison's short circuit analysis, "did not review the PJM data to see if it was a current, up-to-date, accurate representation of the PJM system." Tr. at 657.

196. The argument by the NYISO that the PJM data must match the Baseline data used for the New York System does not have any basis of authority in Attachment S, nor was any other compelling authority cited by the NYISO in support of this argument. It appears, once again, that the NYISO is simply arguing in favor of a procedure that will favor the TOs. More precisely, if the signing of an ISA is used as the prerequisite for including a project on the PJM system in the short circuit analysis, fewer projects will be included than if the signing of a FSA was used as the prerequisite. Including fewer projects results in less electrical impact on the system, which means less SUF costs for the TOs on the NYISO system.

197. Staff endorses the use of signed FSAs as the prerequisite for inclusion in the short circuit analysis, as do the Complainants. On the evidence before me, this appears to be

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[49] A May 23, 2002 internal NYISO memo concludes that "the PJM 2000 case *generally* produces higher fault levels around the Con Edison system than the current Con Ed PJM rep" and "The PJM 2001 case produces much higher fault levels around Con Edison…." Ex. KEY-18.

the more reliable and realistic option available. Again, it seems that this exercise (the short circuit analysis) should reflect reality as much as possible.

198. With regard to its Revised Cost Allocation Analyses (see Exs. CE-13 – CE-16), Con Edison acknowledged that it made certain adjustments to the New York and PJM system representations in an attempt to reflect accurate generating conditions. Ex. CE-1 at 31. These analyses were created using assumptions consistent with the company's litigation position. Con Edison's Revised Cost Allocation Analyses can not be held to be determinative of the impact updated PJM data would have on the cost allocation process because the record does not support the accuracy of these assumptions.[50]

199. While it is true that the number of megawatts of proposed new generation on the PJM System is considerably greater under the Complainants' and Staff's theory than under the NYISO's theory, it must be remembered that NYISO was working with numbers that were at least five years old.

200. As for the exact impact of using updated data, the definitive answer may not be in the record of this proceeding. I imagine that all of the parties would have liked to have had a little more time to work these numbers up. My recommendation would be that the Commission approve the use of the theory proposed by the Complainants (include the proposed projects in PJM interconnection queue "A" that had signed FSAs as of the June 2001 RTEP).

201. If the Commission orders the NYISO to perform the short circuit analysis using updated data, the Commission should be mindful of the lack of expertise at the NYISO in this area (as detailed in the record and cited in this decision). This is another area where lack of transparency is an issue for the future.

202. I feel compelled to mention to the Commission that this proceeding could have proceeded slightly faster and more simply if the NYISO had been completely candid with the Commission. In its Answer to the Complaint, filed September 24, 2002, the NYISO maintained the fiction that they had used the most up-to-date PJM data. This and the other arguments that the NYISO made with respect to this issue (as detailed by the Commission in Paragraph 33 of its October 30, 2002 Order) have all proven to be disingenuous. Unfortunately, this lack of candor with the Commission only adds to the

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[50] Con Edison also argues that updated data must be obtained from the ISO New England if the NYISO is required to use updated data from PJM. While this does not sound unreasonable, the issue of data from ISO New England is outside the scope of the Hearing Order in this proceeding, and there is no evidence in the record concerning the ISO New England data.

already tarnished reputation of the NYISO. Market Participants in the NYISO's jurisdiction deserve to have the Commission act so as to discourage this type of duplicity.

CLOSING RECOMMENDATIONS AND FINDINGS

203. This proceeding has, in several material respects, taken on an appearance that could not wholly be anticipated by the Commission at the time of its October 30, 2002 Hearing Order. Based on the record before me, I have sought to go beyond the specific directives of the Hearing Order so that I might provide relevant suggestions to the Commission concerning the three basic issues for which the Commission requested development of a factual record.

204. Based on the record before me, it appears necessary for the Commission to clearly define for the NYISO whether it can operate in a world of hypothetical "fantasy" plans, or whether its processes and decisions must be reality-based. Throughout the proceeding (both in filed testimony and hearing testimony), the NYISO (and Con Edison) complained that it was not possible for the NYISO to do what the Complainants and Staff contemplated. The NYISO cited lack of expertise and lack of time to do the types of analyses and investigations called for by the Complainants and Staff. They cite these same factors when defending against allegations that they failed to comply with "Good Utility Practice"[51].

205. My conclusions, based on the record before me, are that the claims of the NYISO on both of these points are baseless. Either for expediency or in order to propagate their bias for TOs, the NYISO failed to explore options available to them where they could have balanced their duties under Attachment S with the time available to them. Clearly the NYISO had an obligation to undertake their implementation of Attachment S while using judgment in conformity with "Good Utility Practice." This Decision is rife with examples of their failure to do so.

206. As for the excuse that they did not have the time or expertise to do the type of "in depth" analysis suggested by the Complainants, there clearly was a middle ground that they could have chosen, but did not. As so succinctly explained by Witness Disher, the NYISO should have sought to "balance the accuracy of data with the potential to overwhelm the planning process with an unproductive pursuit of detail." Ex. Key-7 at 15. Instead, the record in this proceeding reveals that the NYISO took the easy way out on every step of the cost allocation process. This conduct should not be encouraged for the future.

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[51] The term "Good Utility Practice" is defined in the NYISO OATT, Section 1.14, as referenced in filed testimony. See Key-7 at 10-11.

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ORDER

207. Briefs on Exceptions to this Initial Decision are due on or before May 22, 2003. Briefs opposing Exceptions are due on or before May 29, 2003.

Jeffie J. Massey
Presiding Administrative Law Judge