STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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December 24, 2010

SENT VIA ELECTRONIC FILING
Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 1-A209
Washington, D.C. 20426

Re: Docket No. ER11-2224-000 - New York Independent System Operator, Inc.

Dear Secretary Bose:

Attached, for filing, is the Motion to File Comments and For Intervention of the New York State Public Service Commission in the above-entitled proceeding. The parties have also been provided with a copy of this filing, as indicated in the attached Certificate of Service. Should you have any questions, please feel free to contact me at (518) 473-8178.

Very truly yours,

David G. Drexler
Assistant Counsel

Attachment
cc: Service List

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.	))	Docket No. ER11-2224-000

MOTION TO FILE COMMENTS
AND FOR INTERVENTION
OF THE NEW YORK STATE
PUBLIC SERVICE COMMISSION

INTRODUCTION

Pursuant to the New York Independent System Operator, Inc's (NYISO) Market Administration and Control Area Services Tariff (Services Tariff), the NYISO is required to conduct a review every three years to determine appropriate parameters for the Installed Capacity (ICAP) Demand Curves over the next three Capability Years.[1] The ICAP Demand Curves are based on estimates of the Cost of New Entry, net of energy and ancillary services revenues, and are used in the NYISO-administered ICAP Spot Market Auctions to establish the price of ICAP relative to the amount of supply. On November 30, 2010, the NYISO filed amendments to its Services Tariff, proposing updated ICAP Demand

[1] NYISO Services Tariff, §5.14.1(b), Sheet 157.

Curves for the three upcoming Capability Years (i.e., 2011/2012, 2012/2013, and 2013/2014).[2]

As discussed below, the New York State Public Service Commission (NYPSC) generally supports the NYISO's filing. While the NYPSC supports various aspects of the NYISO's proposed Demand Curves as a reasonable proxy for defining the net Cost of New Entry, we seek one modification to help ensure the Demand Curves are consistent with the Services Tariff. Specifically, we support the exclusion of deliverability costs and New York City property taxes from the estimated Demand Curves because these are inappropriate elements for inclusion. In addition, we agree with the NYISO's proposed escalation rate for the Demand Curves in the second and third Capability Years as consistent with current economic conditions. The NYPSC also supports the NYISO's assumed level of excess capacity since it recognizes the reliability need for new capacity when the excess falls to zero.

However, in establishing the cost of a peaking unit for the Rest-of-State market, the NYISO failed to incorporate the peaking unit that "results in the lowest fixed costs and highest variable costs among all other units' technology that are economically viable," as required under the Services Tariff.[3]

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[2] On December 3, 2010, the NYISO supplemented its filing to include a certificate of service.

[3] Services Tariff, §5.14.1.2.

The Commission should find that the peaking unit evaluated for the Long Island locality satisfies this provision of the Services Tariff, and should therefore be used in the Rest-of-State Demand Curve.

MOTION TO FILE COMMENTS AND FOR INTERVENTION

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission's (FERC or Commission) Rules of Practice and Procedure, the NYPSC respectfully submits its Motion to File Comments and For Intervention. In accordance with the Commission's Combined Notice of Filings #1, issued on November 30, 2010, and Combined Notice of Filings #2, issued on December 7, 2010, Interventions were due on or before December 21, 2010. A Combined Notice of Filings #1 was also issued on December 6, 2010, indicating a due date of December 27, 2010; due to an administrative oversight at the NYPSC, the Commission's Notice Rescinding Prior Notice (i.e., the notice issued on December 6, 2010) was not identified until the deadline for filing interventions.[4] However, given the early stage of this proceeding, and that the Commission has not issued a final determination, the NYPSC's intervention only three days after

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[4] On December 21, 2010, the NYPSC submitted a Motion for Additional Time to file comments until December 27, 2010.

the date for filing interventions will not disrupt the proceeding, prejudice the interests of other parties, or place burdens upon other parties.[5] Moreover, given the NYPSC's regulatory responsibilities to ensure the adequacy of resources,[6] the NYPSC has a unique interest in the outcome of this proceeding that no other party represents. Therefore, the NYPSC's intervention is in the public interest.[7]

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[5] See, Docket No. ER07-1233-000 et al., Midwest Independent Transmission System Operator, Inc., Order Approving License Plate Rates, 122 FERC 61,081 (issued January 31, 2008); see also, Docket No. ER07-235-000, Midwest Independent Transmission System Operator, Inc., Order Accepting Proposed Designation of Constrained Area Mitigation, 118 FERC 61,020 (issued January 18, 2007).

[6] See, N.Y. PUB. SERV. LAW §§65 and 66 (McKinney 2000) (requiring the NYPSC to ensure the adequacy of electric service). The Federal Power Act reserves jurisdiction to the States to "set and enforce compliance with standards for [the] adequacy…of electric facilities." 16 U.S.C. §824o(i)(2).

[7] The Commission previously recognized the role the NYPSC plays in developing the ICAP Demand Curves so as to ensure that this mechanism will "adequately and reliably serve customers' needs over the short and long term." Docket No. ER03-647, New York Independent System Operator, Inc., Order Conditionally Accepting for Filing Tariff Revisions (issued May 20, 2003).

Good cause also exists for the Commission to accept these comments. As demonstrated below, the NYPSC's comments will contribute to the development of a complete and accurate record, provide useful information, and assist the Commission's understanding and deliberation on this matter. The Commission has granted motions to file pleadings based on similar grounds,[8] and accordingly the Commission should incorporate these comments in the record.

DISCUSSION

The Commission Should Adopt, With One Modification, The Proposed Demand Curves For The Upcoming Capability Years

The NYPSC commends the NYISO and its consultant on their diligent efforts and responsiveness to stakeholder input in developing appropriate parameters for the ICAP Demand Curves for the three upcoming Capability Years. The NYPSC maintains that the NYISO's proposed Demand Curves represent, in general, a

[8] See, NYISO, 123 FERC ¶61,206 (2008); California Independent System Operator Corp., 123 FERC ¶61,202 (2008); and, Southwest Power Pool, Inc., 118 FERC ¶61,179 (2007).

reasonable proxy for the net Cost of New Entry for the upcoming Capability Years.[9]

In particular, we concur with the NYISO's conclusion that deliverability costs associated with the Capacity Resource Interconnection Service (CRIS) should not be included in setting the net Cost of New Entry for the Demand Curves. Pursuant to the NYISO's tariff, the costs necessary for a customer to interconnect to the system (i.e., ensure "deliverability" if seeking CRIS) are paid for by that customer, consistent with the Commission's cost causation principles.[10] The allocation of interconnection costs in this manner is designed to provide appropriate price signals for the efficient siting of resources, and to ensure that the interconnection costs that would not be incurred, "but for" the customer seeking to interconnect, are

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[9] To the extent that some parties may point to various assumptions to suggest that the Demand Curves should be higher, we note that other factors indicate the Demand Curve levels may be overstated. For instance, the amount of energy and ancillary services revenues used as an offset to the Cost of New Entry appear to be understated. As the FERC previously agreed, the "increased use of real-time pricing at the retail level may flatten the load shape in the future." FERC Order Accepting ICAP Demand Curves, Docket ER05-428, April 21, 2005, p. 13. This should increase the number of hours during which peakers can earn significant net energy revenues.

[10] NYISO Open Access Transmission Tariff, Attachment S.

paid for by that customer.[11] Including the costs associated with making a resource deliverable in the Demand Curve would interfere with these price signals, the Commission's "beneficiaries pay" principle, and inappropriately shift the costs of interconnection to consumers.

In addition, the NYPSC agrees with the NYISO that property taxes should be excluded from the net Cost of New Entry estimated for New York City, which is consistent with the New York City Economic Development Corporation (NYCEDC) tax abatement policy. The tax abatement policy recently approved by the New York City Industrial Development Authority, an agency administered by the NYCEDC, explicitly provides that peaking units installed in New York City qualify for tax abatements. Although the tax abatements must be applied for, and are not granted "as of right", it is reasonable to assume that New York City will grant requests for tax abatements in good faith, consistent with the qualifications that are clearly identified under the tax abatement policy. The NYISO has committed to

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[11] See, Docket No. ER04-449-007 et al., New York Independent System Operator, Inc., Guidance Order on Conceptual Proposal, 122 FERC ¶61,267 (issued March 21, 2008)(reviewing the NYISO's deliverability plan and recognizing "that in ISOs/RTOs with locational pricing, requiring the interconnection customer to bear the cost of all facilities and upgrades that would not have been needed but for the interconnection, in return for the potential to earn valuable transmission rights, is an acceptable form of funding").

revisiting the treatment of New York City taxes in the future as actual experience is gained under this new policy. Therefore, the New York City net Cost of New Entry should recognize the full impact of the tax abatement policy.

Further, we support the NYISO's recommended escalation rate of 1.7% for increasing the Demand Curves for the second and third upcoming Capability Years. This level appears consistent with near-term economic conditions, including the on-going economic recovery.

The NYPSC also concurs with the NYISO's proposal that the assumed level of excess capacity should equal half the size of the estimated peaking unit. Because new entry is only necessary to ensure reliability when the level of excess capacity falls to zero, the NYISO appropriately recognizes that, in a steady state, the average level of excess capacity would be 0.5 times the Megawatt size of the peaking unit.

During the NYISO stakeholder process, some parties argued that the net Cost of New Entry should reflect higher levels of capacity because actual levels of excess have tended to be above the minimum levels, and that actual capacity prices have tended to be correspondingly lower than the Demand Curve reference prices. However, it is important to recognize that this excess capacity may be attributable to the fact that new entry is not limited to peaking units. For example, new combined cycle plants may enter the market based on their larger net energy revenues. Moreover, while the Services Tariff requires setting the Demand Curves based on the costs of a peaking unit, it is possible that combined cycle plants have a lower net CONE, and thus may be a cheaper source of new capacity.

Finally, it should be recognized that many of the "peaking" units currently providing service are not new gas turbines, but rather older plants that once operated more frequently. Due to technological progress, newer plants have tended to have lower heat rates (as well as lower emissions) and have thus relegated older plants to operating as "peaking units." If new base-load entry continues, capacity prices may more appropriately reflect the cost of keeping older units available for peaking duty, rather than the cost of building new peaking units.

While the NYPSC supports the above aspects of the NYISO's proposal, the NYISO failed to incorporate the proper peaking unit in the Demand Curve estimate for the "Rest-of-State". The Services Tariff requires the NYISO assess the "cost of a peaking unit in each [New York Control Area (NYCA)] Locality [(i.e., Long Island and New York City)] and the Rest-of-State to meet minimum capacity requirements."[12] The "peaking unit" is defined as "the unit with technology that results in the lowest fixed costs and highest variable costs among all other units' technology that are economically viable."[13]

The NYISO incorrectly interprets the Services Tariff to require that the peaking unit be physically located in a particular locality in order to serve as the proxy unit.[14] However, the Services Tariff places no such requirement on a peaking unit. While the NYISO is correct to point out that it is required to assess the costs of a peaking unit in each NYCA Locality and Rest of State, the Services Tariff places no limits on including the peaking unit with the lowest net Cost of New Entry in a Demand Curve for a different location, except that the unit must be "economically viable." In fact, the Services Tariff's definition of a peaking unit supports the inclusion of the peaking unit with the lowest net Cost of New Entry in any Demand Curve, regardless of location, assuming it is viable.

As part of the NYISO's required periodic review, it was determined that the peaking unit with the lowest net Cost of

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[12] Services Tariff, §5.14.1.2.

[13] Id.

[14] The NYISO incorrectly argues that the "Services Tariff and the ICAP Manual do not allow the NYCA peaking unit to be situated on [Long Island]." NYISO November 30, 2010 Filing, fn 25.

New Entry is on Long Island, due to its relatively high energy revenues. Since generation on Long Island is also considered part of the Rest-of-State market, this location should be used to set the Rest-of-State Market's Cost of New Entry. This determination is consistent with historical trends, where, due to consistent energy flows into the major load centers of Southeast New York, most peaking units within New York have been built on Long Island or in New York City. This indicates that Long Island is a rational place to build peaking units, and should therefore be used in establishing the Cost of New Entry for the Demand Curve used in the Rest-of-State market.

CONCLUSION

For the reasons noted above, the Commission should grant the NYPSC's Motion to File Comments and for Intervention, and direct the NYISO to modify its proposal so that the peaking unit evaluated for Long Island is used in the Demand Curves for the Rest of State market.

Respectfully submitted,

Peter McGowan
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Public Service Commission
of the State of New York

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Dated: December 24, 2010
Albany, New York

CERTIFICATE OF SERVICE

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

Dated: Albany, New York
December 24, 2010

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