

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

PUBLIC SERVICE COMMISSION

GARRY A. BROWN

Chairman

PATRICIA L. ACAMPORA

MAUREEN F. HARRIS

ROBERT E. CURRY JR.

JAMES L. LAROCCA

Commissioners



PETER MCGOWAN

General Counsel

JACLYN A. BRILLING

Secretary

February 8, 2010

New York Independent System Operator, Inc.

c/o: Peter Lemme

(Sent via E-mail: plemme@nyiso.com)

RE: NYISO Questions to Stakeholders - Demand Curve Reset
Issues

Dear Mr. Lemme:

Staff of the New York State Department of Public Service (DPS Staff) hereby provides its comments on several of the key NYISO questions presented to stakeholders regarding the upcoming Demand Curve reset. These comments may be posted so that the NYISO and stakeholders may review and consider them. DPS Staff looks forward to an open dialogue with the NYISO and market participants during the reset process.

Regarding the use of demand response to determine the Cost of New Entry (CONE), DPS Staff offers the following comments. The Services Tariff specifies that, "a 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." (Section 5.14.1(b), Sheet 157) The NYISO should investigate whether demand response (possibly involving behind-the-meter generation) could satisfy this tariff requirement. In general, the NYISO should select the resource that provides the cheapest source of capacity, while satisfying environmental and reliability rules, so that the CONE, net of energy and ancillary services revenues, is not overstated. This is especially true in NYC, due to the FERC's imposition of a minimum offer requirement on new entry, set at 75% of CONE. In its comments in support of establishing an ICAP

Demand Curve, the NYPSC argued that, in regards to setting the Demand Curve reference price based on net CONE: "A slight overstatement causes little harm since, if new entry truly is less costly than the estimate, additional new entry will add to the system's capacity and move down the demand curve to the point at which the demand curve's price equals the cost of new entry." (Docket ER03-647, April 11, 2003, Attachment I, paragraph 58) However, the new minimum offer requirement undermines this self-correcting feature, since it may establish an effective floor price equal to 75% of CONE and create a barrier to entry of lower-cost sources. As a result, the NYISO must be even more diligent in identifying the lowest-cost source of capacity for determining CONE.

Regarding New York City (NYC) tax issues, DPS Staff has serious concerns with trying to reflect the elimination of the NYC Industrial and Commercial Incentive Program (ICIP) tax abatements within the NYC Demand Curve, given that the Demand Curve would apply to both existing and new generation facilities, while existing facilities would continue to be eligible for ICIP tax abatements. As we noted in prior comments on this issue, the continuation of ICIP tax abatements for existing generators could be considered compensation for NYC property taxes (i.e., NYC is effectively covering the existing generators' incremental property taxes). Increasing the Demand Curve to reflect the elimination of the ICIP tax abatements could result in a windfall and double-compensation for existing generators (i.e., compensation under the ICIP and under the demand curve). Such a result would call into question the propriety of a single clearing price ICAP market.

DPS Staff recognizes that, in ideal markets, efficiency requires that suppliers of comparable products should be paid the same price. However, ideal markets presuppose that suppliers play by the same rules. Here, however, existing generators would continue to receive property tax abatements, while new generators might not receive the same benefits. This disparate treatment of new vs. existing generators, due to the grandfathering of ICIP tax abatements, raises important issues of economic efficiency, as well as fairness. These issues should be carefully considered when deliberating the appropriate treatment of NYC property taxes.

Finally, the NYISO must consider the potential that new facilities may be eligible for other offsetting benefits, such as NYC Industrial Development Authority funding. This is especially pertinent given the very high potential cost impacts of NYC property taxes. When this issue was first raised, the NYISO estimated that including an additional tax component in the Demand Curve to reflect the elimination of the ICIP tax

abatements could increase the net CONE by approximately 39%.
Therefore, the potential for other offsetting benefits must be
addressed in the reset process.

Very truly yours,

A handwritten signature in cursive script, appearing to read "David G. Drexler".

David G. Drexler
Assistant Counsel
(518) 473-8178

