



David A. Paterson
Governor

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
CONSUMER PROTECTION BOARD

Mindy A. Bockstein
Chairperson and Executive Director

June 23, 2010

VIA HAND DELIVERY & E-MAIL

Ms. Karen Antion
Chair of the Board
C/o Mr. Stephen G. Whitley
President & Chief Executive Officer
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, New York 12144

Re: CPB's Response to the Appeal Filed by the Indicated New York
Transmission Owners Regarding Buyer-Side Mitigation

Dear Chair Antion:

Please accept this letter as the response of the New York State Consumer Protection Board ("NYSCPB") supporting the appeal filed by the Indicated New York Transmission Owners ("TOs") pertaining to the failure of the Management Committee ("MC"), on August 25, 2010, to approve, by just one percentage point, a motion to reduce the minimum duration for buyer-side mitigation in the New York City capacity market from six capability periods to two capability periods. Three copies of the NYSCPB's response are enclosed. The NYSCPB does not seek oral argument on this appeal.

As the TOs state in their appeal, the overarching purpose of buyer-side mitigation is to deter uneconomic capacity from entering the New York City capacity market, resulting in improperly low capacity prices, while at the same time not deterring economic entry. Unfortunately, the motion approved by the MC deters both uneconomic and economic entry. The motion, if approved by the Board, will require a new generator, whose capacity has been determined (before construction has begun on this facility) to be uneconomic, to bid at a designated above-market high level (known as the offer floor). Through the use of the offer floor, a new generator is prevented from selling capacity at the market-clearing price for three years (*i.e.*, six capability periods) even though its capacity may become economic during the first year (*i.e.*, two capability



periods), thereby unnecessarily deterring new entry and resulting in unjust and unreasonable rates for consumers.

No opponent of the motion presented a cogent explanation of why one year would not adequately deter uneconomic entry and protect existing generators. Nor did any opponent explain why three years (rather than two or four) is the appropriate minimum length of time for mitigation even though the new generator's capacity may become economic during year one.

The TOs also point out that a three-year minimum duration period harms end-use consumers by raising the cost of capacity in two ways. First, the clearing price will be needlessly higher because the lower-priced, new capacity must, in effect, sit out the auction. That is, less capacity offered in the market yields higher prices due to the operation of the demand curve. Second, because capacity that does not clear the market cannot be considered part of the total amount of capacity needed to satisfy a load's reserve margin, the load must not only buy capacity on the market but also must purchase additional capacity to satisfy its contractual obligations to the new generator.

Accordingly, the NYSCPБ urges the Board to choose a proper balance between protecting existing generators from uneconomic competition and protecting end-use consumers from unjust and unreasonable prices by adopting a one-year mitigation period.

Respectfully submitted,

Mindy A. Bockstein

Mindy A. Bockstein
Chairperson and Executive Director

Tariq N. Niazi
Director, Utility Intervention

Saul A. Rigberg
Utility Intervenor Attorney

cc: Deborah Eckles (deckles@nyiso.com)
Leigh Bullock (lbullock@nyiso.com)

