MOTION OF MULTIPLE INTERVENORS IN OPPOSITION TO THE APPEAL OF THE INDEPENDENT POWER PRODUCERS OF NEW YORK, INC.

PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of approximately 55 large commercial and industrial energy consumers with manufacturing and other facilities located throughout New York State, hereby submits to the Management Committee ("MC") of the New York Independent System Operator, Inc. ("NYISO") this Motion in Opposition to the appeal filed by the Independent Power Producers of New York, Inc. ("IPPNY"). Five members of Multiple Intervenors – Alcoa/Reynolds Metals Company, IBM Corporation, Occidental Chemical Corporation, Praxair Inc. and Xerox Corporation – are active members of the MC.

IPPNY appeals from the decision of the Business Issues Committee ("BIC") to reject Motion #2 at its December 13, 2002 meeting. Motion #2 advanced a "demand curve spot market auction proposal" to be implemented as a major modification to the NYISO's existing Installed Capacity ("ICAP") market design. The demand curve proposal failed to garner the requisite 58% of the vote at the BIC, and was rejected with only 43.58% affirmative votes. IPPNY's appeal requests the MC to reverse the BIC's decision on Motion #2 and approve the demand curve proposal. For the reasons set forth below, Multiple Intervenors urges the MC to deny IPPNY's appeal and reject the demand curve proposal that was defeated handily at the BIC.[1]

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[1] In a related matter, KeySpan Ravenswood, LLC ("KeySpan") and NRG Power Marketing, Inc. ("NRG") appeal from the BIC's approval of Motion #3 at the December 13th meeting. Motion #3, which passed with 61.30% affirmative votes, amended Motion #2 to

ARGUMENT

IPPNY'S APPEAL SHOULD BE DENIED AND THE MC SHOULD REJECT THE DEMAND CURVE PROPOSAL

In its appeal, IPPNY argues that the demand curve proposal is needed to remedy what it claims are fatal flaws in the NYISO's existing ICAP market design. (IPPNY at 4-6.) Those flaws are blamed for a steady decline in the level of ICAP market clearing prices during the past year. According to IPPNY, recent ICAP prices are not adequate to induce new entry or retain existing generation. (Id. at 1.) IPPNY also argues that the current ICAP market undervalues capacity in excess of New York's installed reserve margin, resulting in a "boom or bust" market that hinders financing efforts and the ability of parties to execute long-term contracts for ICAP. (Id. at 3-4.) For numerous reasons, IPPNY's appeal should be denied and the MC should reject the demand curve proposal.

Although Multiple Intervenors disagrees with many of IPPNY's conclusions, it does not dispute that improvements to the NYISO's existing ICAP market design should continue to be studied. Moreover, Multiple Intervenors is willing to concede that there may be modifications to that design that would be beneficial to the NYISO's markets and stakeholders, including end-use consumers. Significantly, however, the issue on appeal is not whether the existing ICAP market design is perfect, but, rather, whether the demand curve proposal presented to the BIC was demonstrated to be the optimal approach. Multiple

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provide that existing rules applicable to in-city divested generation owners would be retained. KeySpan and NRG request that the MC reverse the BIC's decision on Motion #3, and then reverse the BIC's decision on Motion #2 and approve the demand curve proposal (i.e., without retaining existing rules applicable to in-city divested generation owners). Multiple Intervenors' response to the KeySpan/NRG appeal is subsumed within this Motion in Opposition to IPPNY's appeal.

Intervenors agrees with the collective decision of the BIC that the demand curve proposal should not be implemented at this time.

Initially, the demand curve proposal is a dramatic remedy that would increase significantly the cost of ICAP in New York and, thus, the total cost of electricity to end-use consumers.[2] These possible price impacts on end-use consumers must not be overlooked. New York consumers currently pay some of the highest – if not the highest – retail electricity prices in the United States. Additionally, the State's economy, particularly Upstate, is far from robust, and there are real questions as to the ability of large commercial and industrial energy consumers to bear significant increases in the cost of capacity. The demand curve proposal does not address these concerns in any meaningful way.[3]

Importantly, absent from IPPNY's appeal is any demonstration that the NYISO's capacity prices are inaccurate or understated compared to neighboring control areas. Indeed, based upon figures reviewed previously by Multiple Intervenors, it appears that capacity prices in the markets administered by ISO-New England Inc. ("ISO-NE") and PJM Interconnection, L.L.C. ("PJM") are comparable to the NYISO's capacity prices. If that is the case, then current prices either are appropriate or the market design flaws identified by

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[2] At pages 4-5 of its appeal, IPPNY notes that the NYISO currently has an approximate 23 percent reserve margin in the Summer Capability period, and speculates that if suppliers offered all of that capacity, the demand curve proposal likely would increase ICAP prices for the Rest of State market from $1.46/kW/month (i.e., the ICAP clearing price for the February 2002 through January 2003 period) to approximately $4.58/kW/month, an immediate tripling of ICAP prices. Because no analyses of the impacts of the proposal have been conducted, even that substantial price impact may be understated.

[3] In fact, the demand curve proposal rejected by the BIC was one of the "highest" curves considered by the ICAP Working Group and lacked any phase-in to mitigate price impact concerns.

IPPNY extend throughout the capacity markets of the Northeast. In either event, implementing a New York-only "solution" such as the demand curve proposal is very problematic.[4]

Multiple Intervenors also is concerned that the demand curve proposal will not achieve its stated goal of stabilizing the generation sector in New York. In evaluating the demand curve proposal and the dramatic price impacts associated therewith, it is important to note the absence of any requirement or guarantee that the higher capacity payments would be used for the addition of new generation and/or the retention of existing generation within New York. Absent compelling evidence that higher ICAP prices would in fact lead to new generation being constructed and/or existing generation being retained in New York, the demand curve proposal leaves all or most of IPPNY's arguments to be accepted on face value alone, something that Multiple Intervenors and other market participants are not willing to do.

Finally, although ICAP prices have trended lower over the past year, Multiple Intervenors is not convinced that the current ICAP market, which is dependent upon bidding, should be "gutted" and replaced with a "market" dependent upon an administratively-

[4] It is Multiple Intervenors' understanding that the NYISO, ISO-NE, PJM and stakeholders from all three control areas have been working collaboratively on resource adequacy issues, including issues related to capacity markets. The demand curve proposal, advanced prior to the culmination of that effort, could undermine the effort and actually create new "seams" issues requiring resolution. Additionally, while Multiple Intervenors does not favor the approach to resource adequacy advanced by the Federal Energy Regulatory Commission ("FERC") in its Standard Market Design Notice of Proposed Rulemaking, it notes that the demand curve proposal differs markedly from the approach to this issue under consideration by FERC.

established demand curve to set prices.[5] There is no dispute that the NYISO's existing markets have certain "administrative" or "regulatory" characteristics which differ from what one may term a "free" market. However, the demand curve proposal clearly constitutes a rather large step away from free markets and back toward regulation. This is particularly true where, as is the case here, there is no evidence of inappropriate market conduct.

[5] By their very nature, market prices change and it would be a mistake to attempt to increase ICAP prices without recognizing the revenue impacts of the NYISO's other markets. For instance, while ICAP prices have declined, energy prices have risen considerably since July 2002. According to the NYISO, the average total prices (energy and ancillary services) for September, October and November 2002 were much higher than for the comparable months in 2001. In fact, the average total price on a year-to-date basis increased from $39.06 per MWh through June 2002 to $49.05 per MWh through November 2002. And, recent changes in the energy markets to reflect scarcity pricing are likely to yield higher energy revenues in 2003.

CONCLUSION

For the reasons set forth in this Motion in Opposition, Multiple Intervenors urges the MC to deny IPPNY's appeal and reject the demand curve proposal that was defeated handily at the December 13th BIC meeting. While further evaluation of the NYISO's ICAP markets and possible modifications thereto are warranted, the demand curve proposal should not be implemented at this time.

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Respectfully submitted,

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