

New York Independent System Operator, Inc
Board of Directors

Request for Comment
Concerning the repeal of real property tax abatements for “utility property” under the
New York City Industrial and Commercial Incentive Program (ICIP)
and its impact on the NYC Demand Curves

Affidavit

Of

Lee Davis

On Behalf Of

NRG

July 31, 2008

I. INTRODUCTION

1. My name is Lee Davis and I am the Vice President for New York Generation Asset Management and Development for NRG Energy, Inc. (“NRG”).
2. I have a Master of Business Administration degree from Emory University and a Bachelor of Science degree in electrical engineering from Georgia Institute of Technology.
3. My responsibilities include the management of NRG’s existing New York fleet and the development of new generation in New York. I am directly responsible for NRG’s development activities in the New York region, which include the repowering of NRG’s existing generation sites. My responsibilities include analyzing the projected costs and revenues for both NRG’s existing generation facilities within New York State, and its proposed generation projects. In conducting this evaluation, I examine the projected market revenues from the capacity, energy, and ancillary service markets in order to determine whether assets should remain in service, be repowered, or be retired.
4. I joined NRG in June, 2006. Prior to that, I was with Mirant and Southern Company for 16 years. My responsibilities at Mirant included the development of new generation opportunities and the operational oversight of Mirant’s assets in New York, Maryland, and Virginia.
5. NRG is a national wholesale power generation company with ownership of over 40 generating facilities with approximately 23,000 MW of installed capacity in the United States. NRG owns and operates generation that is located in the New

York, New England, PJM, Texas and the California regions as well as in Louisiana in the Entergy region.

6. Within New York, NRG owns five (5) generating facilities totaling approximately 4,200 MW of installed capacity. These stations include: two coal-fired facilities located upstate New York in Tonawanda (the Huntley facility) and Dunkirk (the Dunkirk facility); an oil-fired unit located in Oswego (the Oswego facility); and two facilities located in New York City that are predominately gas fired. The two New York City facilities are located in Queens (the Astoria facility) and in Staten Island (the Arthur Kill facility). These two New York City facilities (referred to as “In-City units”) were purchased from Consolidated Edison as part of its divestiture of its owned generation in 1999 and have an installed capacity of approximately 1,400 MW.

II. IMPACT OF NOT REVISING THE DEMAND CURVES ON CURRENT INVESTMENT DECISIONS FOR NEW AND EXISTING UNITS

7. The purpose of my testimony is to summarize the impact on NRG’s existing and proposed In-City projects due to the recent material change to the New York City Industrial and Commercial Incentive Program (“ICIP Exemption”) which now excludes new and reconstructed generating facilities from the property tax relief that had been available under the previous program.
8. Simply put, without a corresponding revision to the currently effective New York City Demand Curves to reflect the higher cost of new entry (“CONE”) that has resulted due to the loss of this benefit, the capacity market will not provide appropriate price signals to guide ongoing investment decisions for existing units or that will allow sufficient revenue to attract new entry or the repowering of

existing units. NRG's development projects, even though they utilize existing infrastructure within New York City, will not be able to recover their costs, and thus cannot be built based upon the suggested capacity market prices from the current demand curves that do not reflect the materially increased costs that generators will face due to the changed tax situation.

9. Even if new entry is not anticipated to occur before the next scheduled Demand Curve reset, the failure to reflect this material change in the current Demand Curves will impact the ability of future projects to secure financing as investors place the greatest weight on the accuracy and adequacy of current market signals in their projections of future prices to justify their financing decisions.
10. Generation projects involve large upfront capital investments and consequently the industry relies on a limited universe of investors who concentrate on following and understanding the energy industry. These savvy investors will undoubtedly take their cues regarding the relative risk and attractiveness of investing in the New York market from the actions or inactions of the NYISO. If the NYISO cannot be relied upon to ensure that the Demand Curves will be set in a manner that is unbiased and legitimately focused on sending the most accurate price signals possible at all times, then the necessary investment will not occur.
11. Not updating CONE to reflect the change in law will likely shift further investment away from New York or increase the perceived risk such that it will require a greater premium for such investments. Either way, over the long-run this will stifle competitive markets in New York resulting in an increase in the

costs that are ultimately born by electricity consumers and undermining the very premise upon which the New York market structure is based.

12. Equally important is that the failure to reflect the change in law in the current Demand Curves will impact investment decisions that are continually being made on existing units which could result in inefficient retirement decisions. A cost benefit for additional capital investment relies heavily on expectations of near-term revenues impacts due to a relatively short payback window coupled with already high hurdle rates due to regulatory and market uncertainty in New York State. If the incorrect Demand Curves are allowed to stand, they have the potential to trigger a retirement when it would have otherwise been an efficient decision to continue investment in the unit and keep it in-service versus the true cost of new entry post-ICIP Exemptions. The irony is that while the lower curves might signal a retirement in favor of new entry, the new entry won't occur because developers will know that the Demand Curves won't yield revenues that reflect the real cost of entry with the actual property taxes that a project will face.
13. As such, these circumstances will lead to a greater likelihood of triggering the reliability backstop process and a potential need for out-of-market actions such as a gap solution available under that process.
14. Rational investors would not invest in this market on a merchant basis based upon the known market discrepancy that will result by not revising the Demand Curves. Simply put, the NYISO should recognize that prudent investors evaluate opportunities in New York against many other major markets including California, New England, Texas, PJM, as well as in non-RTO states and

internationally. Projects from across the country compete for limited investment capital, and the NYISO market will not attract such capital if the markets cannot be relied upon to fairly and accurately represent the cost and value of that new investment.

III. IMPACT ON NRG'S IN-CITY GENERATION DEVELOPMENT PLANS

15. The concerns regarding the immediate negative impact of not revising the New York City Demand Curves are real and directly impact NRG's plans for existing and proposed repowering projects.
16. At its Astoria facility, NRG has had plans to add approximately 520 MW of new efficient peaking units. Six kerosene-fired simple cycle combustion turbines units of a 1970-71 vintage located at this facility, approximately 120 MW, will be retired as part of this repowering initiative, resulting in an overall increase of approximately 400 MW of net capacity at the Astoria site.
17. Given their declining reliability, high operation and maintenance costs, relative inefficiency, and environmental emissions compliance, NRG has also informed the NYISO that the same six units could be retired in the near future, depending upon, among other things, the market revenues, even if the repowering effort does not proceed. The viability of making additional expenditures depends on NRG's ability to recover its capital and operating costs and a failure to revise the demand curves to reflect the actual CONE will only increase the risk to NRG's shareholder of recovery of their capital.
18. The NYISO, in its recent 2008 CRPP study, has shown the need for an additional generation within the City and has already taken extraordinary measures to delay

until 2010 the mandated retirement of NYPA's existing Charles A. Poletti unit, with a capacity 891 MW.

19. Additionally, the City of New York has called for the development of 2,000 to 3,000 MW of new generation in its PlaNYC with respect to infrastructure improvements. This amount is incremental to existing generation and does not consider additional retirements. Notably, New York City is looking to replace existing generation with cleaner and more efficient generation projects including repowering at existing sites.
20. Because of the change in law related to the ICIP program, the ability for NRG to receive an adequate return for its Astoria repowering project would be materially affected. To that point, the project would need to collect an additional \$3.25/kW-month in revenue over a 20-year period to offset the property tax impact of losing ICIP benefits. This amounts to a loss of over \$405 million over the 20-year period.
21. With an artificially low CONE reflected in the current Demand Curves, the capacity market will not result in efficient new entry, and of equal concern, the market will not send the correct price signal for bilateral contracts.

The foregoing is true and accurate to the best of my knowledge, information, and belief.



Lee Davis
Vice President for New York Generation Asset Management and Development
NRG Energy, Inc.

STATE OF NEW JERSEY)

COUNTY OF MERCER)

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SUBSCRIBED AND SWORN TO BEFORE ME this 31st day of July, 2008

Lisa A. Calcagno

Notary Public in and for the State of New Jersey

LISA A. CALCAGNO
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 8/19/2012