

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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July 31, 2008

NYISO Board of Directors
c/o: Diane Egan, Secretary NYISO Board
(Sent via E-mail: degan@nyiso.com)

RE: New York City (NYC) Industrial and Commercial
Incentive Program/NYC ICAP Demand Curve

Dear NYISO Board:

On July 22, 2008, the NYISO Board of Directors (NYISO Board) issued a request for "comments on the nature and extent of concerns raised by recent New York State legislation repealing real property tax abatements for 'utility property' under the New York City Industrial and Commercial Incentive Program (ICIP) and the extent to which the legislation supports a finding of 'exigent circumstances' such that the NYC demand curves should be re-examined prior to the next demand curve re-set."¹ Staff of the New York State Department of Public Service (DPS Staff) anticipates that various generation owners will argue that the NYC demand curves should be increased prior to the next re-set of the demand curve in 2011, in order to reflect the elimination of the ICIP tax abatement program and to provide what they contend are appropriate price signals for new generation units. DPS Staff hereby provides its initial comments for consideration by the NYISO Board.

¹ The NYISO Board may submit proposed tariff amendments directly to FERC if it "certifies that (1) the proposed amendment is necessary to address exigent circumstances related to the reliability of the NYS Power System or to address exigent circumstances related to an ISO Administered Market; and (2) the urgency of the situation justifies a deviation from the normal ISO governance procedures." NYISO Agreement §19.01.

As an initial matter, DPS Staff has serious concerns with trying to reflect the elimination of the ICIP tax abatements within the NYC demand curve, given that the curve would apply to both existing and new generation facilities, while existing facilities would continue to be eligible for ICIP tax abatements.² 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. The appropriate treatment of property taxes under NYC's unique programs should be addressed in the next update of the demand curves.

Another significant concern with increasing the current NYC demand curve is the likely impact it would have on ratepayers. The NYISO estimates that including an additional tax component in the demand curve to reflect the elimination of the ICIP tax abatements could increase the net Cost-of-New-Entry by approximately 39%. As a result, market-clearing prices would be expected to increase by about the same amount. DPS Staff estimates that the potential windfall to existing generators could be nearly \$100 million for 2008 and 2009, and over \$300 million beginning in 2010.

Moreover, generation owners' anticipated arguments should be rejected because it is extremely unlikely that significant new generation will be compensated under the existing demand curve. Due to construction lead-times, it is expected that no new large generation facilities will be coming on-line before the NYC demand curve is re-set in 2011. Therefore, there is no need for an exigent circumstances filing that would short-circuit the normal demand curve re-set process. The adequacy of ICAP price signals, and the appropriateness of reflecting the

² It appears that existing generation units will be grandfathered under the new legislation, and only new facilities will be ineligible for ICIP benefits. However, new facilities may be eligible for other offsetting benefits, such as NYC Industrial Development Authority funding.

elimination of ICIP tax abatements, should and will be addressed during the next update of the demand curves.

For all of these reasons, the NYISO Board should reject the arguments that the NYC demand curve must be increased prior to the next re-set in 2011.

Very truly yours,

David G. Drexler
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