

COMMENTS OF MULTIPLE INTERVENORS
ON DEMAND CURVE ISSUES

PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of approximately 55 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits to the New York Independent System Operator, Inc. (“NYISO”) its Comments as to whether the Installed Capacity (“ICAP”) Demand Curves adopted recently by the Federal Energy Regulatory Commission (“FERC”) for the 2005/2006, 2006/2007 and 2007/2008 Capability Years should be modified upward to reflect certain newly-available data. These Comments were solicited by NYISO Staff at the May 23, 2005 meeting of the ICAP Working Group. For the reasons set forth below, the recently-adopted Demand Curves should not be modified, and the NYISO should oppose actively all arguments advanced to FERC seeking such relief.

BACKGROUND

During 2004, the NYISO and interested stakeholders engaged in a lengthy and often contentious process to update the Demand Curves for the 2005/2006, 2006/2007 and 2007/2008 Capability Years. The requirement that the Demand Curves be updated for a three-year period was mandated by the NYISO’s ISO Market Administration and Control Area Services Tariff (“Services Tariff”) and ICAP Manual.¹ One of the primary justifications proffered for a triennial update cycle for the Demand Curves was a desire, on

¹ See Services Tariff at § 5.14.1(b), ICAP Manual at § 5.6. The relevant provisions of the NYISO’s Services Tariff and ICAP Manual are discussed, *infra*, in Point I of these Comments.

the part of many market participants, for some certainty with respect to future Demand Curve levels.

To facilitate the updating of the Demand Curves, the NYISO retained the services of an independent consultant, Levitan & Associates (“Levitan”), to prepare recommendations on the appropriate levels of the Demand Curves. Levitan completed that analysis in September 2004, relying on the data that was available at that time, including the NYISO’s 2004 ‘Load and Capacity Data Report’ (commonly referred to as the “Gold Book”).² Levitan’s recommendations included material increases to the then-existing Demand Curves.³

Based on Levitan’s analysis, NYISO Staff issued its recommended Demand Curves, also in September 2004.⁴ NYISO Staff’s recommendations relied extensively on the analysis prepared by Levitan.⁵ For the Rest of State (“ROS”) region, NYISO Staff based its recommended Demand Curve on a reference value of \$67/kW-year, comprised of a peaker cost of \$87/kW-year, offset by projected net energy and ancillary services revenues of

² Levitan, Independent Study to Establish Parameters of the ICAP Demand Curves for the New York Independent System Operator (dated August 16, 2004) (“Levitan August 16th Study”); Letter, dated September 1, 2004, from Levitan (Seth Parker) to the NYISO (John W. Charlton, P.E.) (supplementing the Levitan August 16th Study).

³ See id.

⁴ Proposed NYISO Installed Capacity Demand Curves for Capability Years 2005/2006, 2006/2007 and 2007/2008 (issued September 22, 2004) (“September 22nd Staff Recommendation”); Clarification of Proposed ICAP Demand Curves as Issued on September 22, 2004 (issued September 30, 2004) (“September 30th Clarification”).

⁵ See id.

\$15/kW-year and a Winter Revenue Benefit of \$5/kW-year.⁶ Thereafter, interested stakeholders were accorded the opportunity to submit written comments and engage in oral argument on the appropriate level of the Demand Curves to the NYISO Board of Directors (“Board”). Upon information and belief, not a single party advocated during the stakeholder process that the Demand Curves adopted by the Board and filed with FERC be updated to reflect 2005 data.

Following its deliberations, on December 30, 2004, the Board elected to adopt the Demand Curves recommended by NYISO Staff.⁷ Thereafter, on January 7, 2005, the NYISO filed with FERC its proposed Demand Curves and supporting materials (“January 7th Filing”). Rather than asserting to FERC that each element underlying the proposed Demand Curves was completely accurate, the NYISO instead relied on the general reasonableness of the proposed Demand Curves in their entirety: “Different interested parties have advocated higher or lower curves that would favor their interests, but as the Board found, the proposed curves generally are set at a middle ground between these competing interests, and seek a reasonable accommodation between the offsetting considerations implicated in establishing ICAP Demand Curves.”⁸

⁶ The Winter Revenue Benefit was derived based, in part, on data from the 2004 Gold Book. Significantly, however, such data only was one factor used by the NYISO in establishing and calculating the Winter Revenue Benefit. See September 30th Clarification at 2-3.

⁷ NYISO Board of Directors, Decision on Review of Proposed ICAP Demand Curves for 2005/2006, 2006/2007, and 2007/2008 Capability Years (issued December 30, 2004) (“December 30th Board Decision”).

⁸ January 7th Filing at 9-10.

On March 2, 2005, FERC issued an order accepting the NYISO's proposed Demand Curves for filing and made them effective March 9, 2005, subject to refund, pending further proceedings.⁹ FERC also directed that a technical conference be convened to receive additional information on Demand Curve issues.¹⁰

In early March 2005, some of the "preliminary data that went into the 2005 Gold Book was posted on the NYISO's website ... in response to a request from a market participant."¹¹ Neither the NYISO, nor any other stakeholder, relied upon this preliminary data in submissions made at the FERC technical conference conducted on March 21, 2005.

The 2005 Gold Book was published on April 15, 2005. No party sought leave from FERC to have the data contained therein considered as part of the record on the proposed Demand Curves. Similarly, no party sought leave to update any other 2004 data that was relied upon in justifying the proposed Demand Curves or modifications thereto.

On April 21, 2005, FERC issued an order adopting the Demand Curves proposed by the NYISO with minor modifications.¹² One such modification was a reduction

⁹ Docket No. ER05-428-000, New York Independent System Operator, Inc., Order Accepting and Suspending Proposed Tariff Revisions to Implement Revised Installed Capacity Demand Curves and Establishing Staff Technical Conference (issued March 2, 2005) ("March 2nd Order").

¹⁰ March 2nd Order at ¶¶ 28-29. That technical conference subsequently was scheduled to take place on March 21, 2005.

¹¹ See Letter, dated May 10, 2005, from the NYISO (Belinda Thornton) to FERC (Anne Cochrane) at 2 ("May 10th Letter").

¹² Docket Nos. ER05-428-000 and ER05-428-001, New York Independent System Operator, Inc., Order Accepting ICAP Demand Curves, As Modified, Removing Refund Condition, and Dismissing Motion and Request For Rehearing (issued April 21, 2005) ("April 21st Order").

in the proposed Winter Revenue Benefit for the ROS region from \$5/kW-year to \$4/kW-year.¹³ Contrary to assertions made by some market participants at the May 23rd ICAP Working Group meeting, FERC's decision on the Winter Revenue Benefit issues was based only in part on data derived from the 2004 Gold Book.¹⁴

On May 10, 2005, the NYISO wrote to FERC advising it that the NYISO "is aware of ... concerns arising from the Gold Book data, and of the NYISO's plans to address them."¹⁵ Specifically, the NYISO commented that:

The apparent magnitude of the difference between the 2004 and 2005 Gold Book data has led some market participants to question whether the Demand Curves should be adjusted again to reflect the 2005 Gold Book data, since preliminary data was available prior to closure of the Demand Curve Docket. Because of these concerns, the NYISO will establish a process to discuss with market participants the causes and significance of the new Gold Book winter/summer differential data, and whether and to what extent the new information reported in the 2005 Gold Book may affect the Demand Curves recently approved by the Commission. This dialogue will take into account the established procedures for determining the Demand Curves prior to the publication of the 2005 Gold Book, the numerous other factors that are balanced in the Demand Curve determination and the value of certainty once Demand Curves have been established for a three-year period.¹⁶

Pursuant to the process established by the NYISO: (a) issues related to the Winter Revenue Benefit were discussed at the May 23rd ICAP Working Group meeting; and (b) initial and

¹³ April 21st Order at ¶¶ 63-71.

¹⁴ See id.

¹⁵ May 10th Letter at 1.

¹⁶ May 10th Letter at 2.

reply comments on such issues were solicited by NYISO Staff by no later than noon on June 3 and 9, 2005, respectively.

ARGUMENT

POINT I

THE NYISO'S TARIFF AND ICAP MANUAL DO NOT PROVIDE FOR ANY "UPDATING" OF THE DEMAND CURVES TO ACCOUNT FOR 2005 GOLD BOOK DATA

Initially, any proposal to update or modify the Demand Curves adopted recently by FERC for the 2005/2006, 2006/2007 and 2007/2008 Capability Years is inconsistent with the NYISO's Services Tariff and ICAP Manual.

The process for adjusting the Demand Curves is set forth in the Services Tariff, which provides that "the ICAP Demand Curves will be defined by the results of the independent review conducted pursuant to this Section."¹⁷ The Services Tariff provides further that the review of the Demand Curves will take place every three years, and that the subject review "will be concluded by December 31, 2004."¹⁸ Thus, there never was any intent that 2005 Gold Book data be incorporated into the Demand Curves that were adopted recently by FERC for the next three Capability Years. In fact, but for FERC's decision to convene a technical conference, the new Demand Curves probably would have been adopted prior to the issuance of the 2005 Gold Book.

The NYISO's Services Tariff contains no provision for updating FERC-adopted Demand Curves to account for more recent data. Had the NYISO and stakeholders

¹⁷ Services Tariff at § 5.14.1(b).

¹⁸ Id.

intended the Demand Curves to be subject to update in any respect (i.e., before the next, scheduled triennial update), such provisions would have been incorporated into the Services Tariff. Accordingly, to seek to incorporate data issued by the NYISO on April 15, 2005, into the review process that, pursuant to the Services Tariff, was to be concluded by December 31, 2004, clearly would be inappropriate (particularly where, as is the case here, the proposed updating pertains only to a single input into the Demand Curves).¹⁹

The NYISO's ICAP Manual supports Multiple Intervenors' interpretation of the Services Tariff. The ICAP Manual calls for "a periodic independent review of the ICAP Demand Curves [to] be performed every three (3) years to determine whether the parameters of the ICAP Demand Curves should be adjusted."²⁰ The ICAP Manual further provides that: "Each periodic independent review ... will be completed by November 1 for the subsequent Capability Year, except the first periodic independent review, which will be concluded by December 31, 2004."²¹ Significantly, the ICAP Manual also provides that:

After considering the proposed ICAP Demand Curves and any comments related thereto, the NYISO Board shall issue three (3) final ICAP Demand Curves and shall file them for approval at FERC. Once the ICAP Demand Curves have been approved by FERC, they shall remain binding for the 3-year period until the next review, absent exigent circumstances.²²

No exigent circumstances have been demonstrated. Rather, as part of its general responsibilities, the NYISO has updated the 2004 Gold Book and some market participants

¹⁹ The inequity of such a selective updating of the Demand Curves should be patently obvious and is addressed, infra, in Point II of these Comments.

²⁰ ICAP Manual at § 5.6.

²¹ Id.

²² Id. (emphasis added).

have seized on what possibly represents a favorable change in only one of the Demand Curve inputs to advocate a change in the recently-adopted Demand Curves. This is inconsistent with the Services Tariff and the ICAP Manual. The Demand Curves adopted by FERC are supposed to “remain binding for the 3-year period.”²³

For the foregoing reasons, proposals that the Demand Curves adopted recently by FERC be updated to reflect data contained in the 2005 Gold Book are inconsistent with the NYISO’s Services Tariff and ICAP Manual and should be opposed actively by the NYISO.

POINT II

IT WOULD BE INAPPROPRIATE TO UPDATE ONE INPUT INTO THE DEMAND CURVES WITHOUT ALSO UPDATING OTHER INPUTS

Some parties are advocating that the Demand Curves adopted recently by FERC be updated (i.e., increased) to reflect a different or non-existent Winter Revenue Benefit based on data from the 2005 Gold Book issued by the NYISO on April 15, 2005. As demonstrated in Point I, supra, such an updating was not intended by the NYISO or stakeholders, and would conflict with the NYISO’s Services Tariff and ICAP Manual, both of which make clear that the process for updating the prior Demand Curves was intended to conclude by December 31, 2004, with the FERC-adopted Demand Curves remaining in effect, without modification, for a three-year period. In addition, for the reasons set forth

²³ Of course, the NYISO’s Services Tariff and ICAP Manual could be revised, prospectively, to provide for more frequent updating of the Demand Curves, or to eliminate the Demand Curves altogether. Significantly, however, the proponents of updating the Demand Curves adopted recently by FERC are not seeking a tariff change but, rather, are advocating that the Demand Curves remain in effect and not be updated for a three-year period with the exception of this single component.

below, it would be inappropriate – and inequitable – to update selectively a single input into the Demand Curves without also updating other inputs.

As detailed, supra, the NYISO retained Levitan to analyze and recommend new Demand Curves for use by the NYISO. Levitan completed all or most of its analysis in the summer of 2004. Thus, the data relied upon by Levitan with respect to, inter alia, the capital costs associated with a new peaker unit, projected energy and ancillary services revenues, the Winter Revenue Benefit, and the appropriate zero-crossing point were of a mid-2004 vintage (or earlier).²⁴ There was no proposal or recommendation from any party that the Winter Revenue Benefit be singled out for future adjustment upon the NYISO's issuance of the 2005 Gold Book. Even if permissible under the NYISO's Services Tariff and ICAP Manual, there is no justification for modifying the FERC-adopted Demand Curves based on the selective updating of a single data point while, at the same time, disregarding changes that have occurred since mid-2004 with respect to all of the other data points relied upon by Levitan, NYISO Staff, the Board and FERC in setting the current Demand Curves.

The issue of the zero-crossing point raises an interesting analogy. Many parties contended that the analysis as to whether the original zero-crossing points were optimal was not as extensive as it could and should have been. Indeed, the NYISO acknowledged at the March 21st technical conference that while the original zero-crossing points were examined and judged to be reasonable, there was little if any detailed analysis as to whether alternative zero-crossing points were more appropriate. Consequently, some

²⁴ This list of data assembled by Levitan is far from exhaustive. For instance, the capital costs associated with a new peaker unit were derived from numerous inputs including, but not limited to, projected turbine costs, labor costs, property costs, taxes, financing costs and fuel prices. See generally Levitan August 16th Study.

parties advocated that such an analysis take place expeditiously, and that the NYISO and FERC entertain future proposals to modify the zero-crossing points for the second and third years (i.e., the 2006/2007 and 2007/2008 Capability Years). The NYISO and a number of other parties opposed such positions, based largely (albeit not exclusively) on the goal of promoting certainty with respect to the Demand Curves for the full three-year update period. While the parties seeking mid-stream updates to the zero-crossing points have accepted FERC's decision on that issue, parties dissatisfied with the resolution of Winter Revenue Benefit issues now seek an updating of that Demand Curve component based on the availability of more recent data. For the NYISO to support or sanction such a position would be inappropriate. Indeed, it is incumbent on the NYISO to oppose all such proposals.

If, arguendo, the NYISO elects to support the updating of the Demand Curves to reflect more recent Gold Book data, then all of the other inputs into the Demand Curves also should be subject to update based on more recent data. While the proposed mixing of 2005 Gold Book data with older data may (or may not) result in higher Demand Curves, the updating of other data related to peaker costs and energy and ancillary services revenues might cause the existing Demand Curves to be adjusted downward. There is no justification for selecting one input into the Demand Curves for updating while all the other data used to set the Demand Curves at issue here is not updated. Thus, if one component of the Demand Curves is to be subject to update notwithstanding FERC's adoption of the Demand Curves for a three-year period, then all of the components should be subject to update.

Multiple Intervenors does not advocate here that the FERC-adopted Demand Curves should be updated now to reflect 2005 Gold Book data, or any other data. If the Demand Curves are to be subject to periodic update more frequently than the three-year

period envisioned in the NYISO's Services Tariff and ICAP Manual, then: (a) the goal of certainty will be frustrated; and (b) the process will become much more difficult to administer because shortly after one input is updated, new data concerning another input is likely to become available, leading to constant update cycles. While frequent and administratively-burdensome updates is not an attractive solution, at least it is fair and more equitable than updating the Demand Curves selectively to achieve a goal targeted by a subset of market participants.

For the foregoing reasons, it would be inappropriate to update one input into the FERC-adopted Demand Curves without updating other inputs as well. Accordingly, the NYISO should oppose actively any proposal advancing the concept of selective updates.

POINT III

UPDATING ONE COMPONENT OF THE DEMAND CURVES IGNORES THE NYISO'S EFFORTS TO BALANCE COMPETING INTERESTS

The reference point for the ROS Demand Curve adopted by the Board and proposed to FERC was \$67/kW-year. Although that reference point was based on a peaker cost of \$87/kW-year, offset by projected net energy and ancillary services revenues of \$15/kW-year and a Winter Revenue Benefit of \$5/kW-year, it was, upon information and belief, the total ROS Demand Curve that was evaluated by the Board and found to be reasonable.²⁵ For instance, as detailed, supra, the Board found in adopting the Demand Curves recommended by NYISO Staff that they "generally are set at a middle ground between ... competing interests, and seek a reasonable accommodation between the

²⁵ See generally December 30th Board Decision; see also September 30th Clarification, September 22nd Staff Recommendation.

offsetting considerations implicated in establishing ICAP Demand Curves.²⁶ To now update a single component of the Demand Curves, without making the other Demand Curve components also subject to update, ignores the NYISO's efforts to balance competing interests.

The components of the ROS Demand Curve adopted by the Board and filed with FERC were the same as those recommended by NYISO Staff. In advancing those recommendations, NYISO Staff evaluated not only the individual components of the ROS Demand Curve, but also the reasonableness of the Demand Curves in their entirety:

[T]he new Demand Curve parameters proposed in the attachments hereto by the NYISO are intended to reflect a reasonable determination of the typical costs and revenues that balances the objectives of providing appropriate compensation to generators while providing reliable service to energy consumers at a reasonable cost.²⁷

Similarly, in the September 30th Clarification, NYISO Staff justified its recommended Demand Curve for the ROS region based on an alternative analysis:

An alternative analysis of the NYISO's proposal is to recognize that the target revenue requirement is \$87/kW-year. Also recognize that the NYCA Demand Curve will be set to generate \$67 of revenue annually from the ICAP market at the point where summer ICAP supplies just equal the minimum IRM capacity requirement. Suppliers can expect to earn between \$12 and \$18 in the Energy and Ancillary Services markets, and from \$0 to \$12 of additional ICAP revenue in the winter period, conditioned upon the amount of capacity in excess of the IRM requirement that actually participates in the winter Capability Period markets.²⁸

²⁶ January 7th Filing at 9-10.

²⁷ September 22nd Staff Recommendation at 4.

²⁸ September 30th Clarification at 4.

Thus, NYISO Staff believed its recommended ROS Demand Curve to be reasonable “as a whole,” and not dependent solely upon the long-term validity of the 2004 Gold Book data.

In deciding the Demand Curves to adopt and file with FERC, the Board emphasized the overall reasonableness of NYISO Staff’s recommendations, finding that the “new ICAP Demand Curve parameters are both reasonable and consistent with the underlying objectives for which Demand Curves were originally implemented.”²⁹ In so finding, the NYISO rejected arguments advanced by proponents of both higher and lower Demand Curves.³⁰ Similarly, in the NYISO’s filing to FERC, it relied on the analysis of its independent market advisor, Dr. David Patton, who concluded that:

In my opinion, the NYISO’s proposed new ICAP Demand Curve parameters are both reasonable and consistent with the underlying objectives for which Demand Curves were originally implemented. In particular, the NYISO has proposed an offset value of \$15 per MWh, which is lower than my historical estimate of \$18 per MWh and consistent with my recommendations.

In addition, the NYISO has applied an adjustment of \$5 per MWh to the proposed reference values for the New York Control Area to reflect forecasted reductions in capacity offers during the winter capability period from external areas. I have not studied the causes of such reductions to determine whether they will continue over the long-term. However, to the extent that such reductions can be reasonably forecasted to occur in the future when the system achieves a long-run equilibrium, this adjustment is reasonable.³¹

Thus, the NYISO Staff and the Board, as well as the NYISO’s independent market advisor, found that the Demand Curves proposed to FERC, including the ROS

²⁹ December 30th Board Decision at 2.

³⁰ Id.

³¹ January 7th Filing, Attachment V at 1.

Demand Curve, were reasonable in their entirety. Significantly, if the Board was aware that, subsequent to FERC's adoption of the Demand Curves, a single component of the ROS Demand Curve (i.e., the Winter Revenue Benefit) would be subject to modification and possible elimination based on data made available many months after all of the other data relied upon to calculate the Demand Curves was assembled, it may have ruled differently. For instance, numerous arguments were advanced that the recommended \$87/kW-year peaker cost was too high and the \$15/kW-year projection of energy and ancillary services was too low (as detailed above, Dr. Patton recommended \$18/kW-year for that offset). Had the Board thought that the Winter Revenue Benefit would be reduced or eliminated subsequent to FERC's ruling, it may have reduced the peaker cost and/or increased the revenue offsets to compensate for such a possibility, thereby resulting in the same ROS Demand Curve as that proposed to FERC and ultimately adopted with only minor modifications. While it was perfectly reasonable for parties to advocate modifications to all or part of the NYISO's proposed Demand Curves while those Demand Curves were being evaluated in their entirety, it would be highly inappropriate to treat certain components of the Demand Curves as fixed, while attempting to establish some sort of automatic update to a single component following FERC's April 21st Order.

CONCLUSION

For all the foregoing reasons, the Demand Curves adopted recently by FERC should not be subject to adjustment or update on a selective basis prior to the next triennial update process. To the extent proposals to engage in such updating are advanced, they are in conflict with the NYISO's Services Tariff and ICAP Manual, and also are inappropriate

because they are based only on a single input into the Demand Curves and disregard the NYISO's efforts to balance competing interests. Accordingly, the NYISO should oppose actively all proposals to update the Winter Revenue Benefit component of the current ROS Demand Curve.

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Respectfully submitted,

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