STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE CONSUMER PROTECTION BOARD

George E. Pataki
Governor

Teresa A. Santiago
Chairperson and Executive Director

June 3, 2005

Mr. Ray Stalter
NY Independent System Operator
3890 Carman Road
Schenectady, New York 12303

Re: The New York State Consumer Protection Board's ("CPB") comments on the revising FERC approved installed capacity ("ICAP") demand curves for the 2005-2006, 2006-2007 and 2007-2008 capability periods.

The CPB is extremely concerned with the possibility that the demand curves for the 2005-2006, 2006-2007 and 2007-2008 capability periods approved barely six weeks ago by the Federal Energy Regulatory Commission ("FERC") may be revised upwards.[1] While we completely agree that the most updated and accurate data should be used for setting demand curves, selectively revising some information and leaving other information unchanged may do more harm than good. The process to arrive at the demand curves approved by FERC, although tedious and at times contentious, was fair, open and gave all interested parties plenty of opportunity to present their arguments and provide additional information. To selectively change the results of that procedure so soon after its approval would undermine the entire

[1] Federal Energy Regulatory Commission, Order accepting ICAP demand curves, as modified, removing refund condition, and dismissing motion and request for rehearing, issued April 21, 2005.

5 Empire State Plaza, Suite 2101, Albany, New York 12223-1556
Tel: (800) NYS-1220 or (518) 474-3514▪ Fax: (518) 474-2474 ▪http://www.consumer.state.ny.us

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process. We recommend that the demand curves approved by

FERC not be changed and that the NYISO incorporate in its revisions to the Services Tariff ordered by FERC, procedures that will ensure that legitimate grievances raised by market participants are fully addressed.[2]

On May 10, 2005, the NYISO advised FERC[3] that in early March 2005 it had posted on its web site a preliminary NYISO's 2005 "Load and Capacity Data Report" commonly referred as the "Gold Book."[4] The NYISO also pointed out that since the preliminary 2005 Gold Book was available prior to FERC's March 21, 2005 technical conference, some market participants expressed concerns as to why the latest data was not used in establishing the demand curves. In particular, these market participants questioned the use of data from the 2004 Gold Book to establish the winter revenue benefit adjustment. In estimating this adjustment, the NYISO used the 2004 Gold Book summer/winter differential of 1,400 MW and increased that to 1,700 MW to recognize expected capacity additions in New York. However, the 2005 Gold Book reported a summer/winter differential of 2,100 MW. To address the concern of some market participants, that the higher 2005 Gold Book data should have been used to set the demand curves approved by FERC, the NYISO has established a stakeholder process to give all interested market participants an opportunity to be heard on this issue.

We commend the NYISO for taking this issue through the stakeholder process. The NYISO will be in a better position to take action, if needed, and decision makers will be better informed once everyone has been heard. The CPB recommends that the demand curves for the 2005-2006, 2006-2007 and 2007-2008 capability periods not be changed.

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2 Id, p. 26.

3 Letter to Ms. Anna Cochrane, Director FERC, Division of Tariffs and Market Development – East, May 10, 2005.

4 The NYISO's 2005 Gold Book was finalized and published on April 15, 2005.

Although, we appreciate the desire of some market participants to reflect the latest data in estimating demand curves there are several compelling reasons for not disturbing the results of a fair and open process.

First, as pointed out by the NYISO in its May 10, 2005 letter to FERC, "The summer/winter differential is one of the many factors considered in establishing the ICAP Demand Curves, and many of these factors change overtime."[5] If the $4 per kW/yr. winter revenue benefit approved by FERC is reduced or eliminated because the summer/winter differential is updated based on the 2005 Gold Book, why should other data used in deriving the demand curves not be updated? In fact, there is no logical reason not to update all the data that went into the estimation of the demand curves since almost all the data underlying the demand curve estimates must have changed. In regulatory proceedings, settlements agreements routinely set rates and other parameters several years into the future. All of this is based on the best information available at the time. Everything is locked-in for the duration of the settlement agreement, unless specifically identified. The basic premise all participants take into consideration is that over the term of the settlement, some factors change in your favor while others change against you. On balance, things in your favor tend to cancel those going against you and generally you are no better or worse off. The idea of permitting some changes that favor some participants and not others completely undercuts the foundation of the settlement process. The process to estimate demand curves is based on a similar process. Data was collected for the numerous estimates that went into the estimation of capital and fixed operating costs of combustion turbines and energy offsets for New York City, Long Island and the Rest of the State ("ROS"). To the best of our knowledge, the NYISO and its consultants attempted to get the latest and best information available. When information was

[5] May 10, 2005 letter to FERC, p. 1.

supplied from market participants, it was independently verified. To now change the winter revenue benefit that is only one small piece of the demand curves approved by FERC will undermine the entire process. If the winter revenue benefit is reduced or eliminated, as may be advocated by suppliers, the demand curves will go up and that will be unfair to loads since other factors that may reduce the demand curve may also have changed.

Second, the process to estimate the demand curves for the 2005-2006, 2006-2007 and 2007-2008 capability periods was fair and unbiased. It gave plenty of opportunity for all market participants to present their points of view and also to provide data and information to the NYISO and its consultants. There were numerous occasions when suppliers provided information particularly when they thought the NYISO and/or its consultants had stale data or the data was unrepresentative of New York. For example, downstate suppliers gave the NYISO tax related data that they felt was more accurate then data the NYISO consultant had acquired and were intending to use. The preliminary results of the NYISO consultants were thoroughly reviewed and market participants were given abundant opportunities to present evidence and challenge those initial findings. Furthermore, after the NYISO staff presented its demand curves, the NYISO Board agreed to oral arguments, hence giving an additional opportunity for market participants to present their case. Finally, FERC agreed to a technical conference and reviewed all aspects of the demand curve computations. Market participants and their consultant were given one more opportunity to make their case and present evidence directly to FERC if they disagreed with the NYISO's findings. To now selectively change one element of the demand curves after a lengthy process that afforded market participants an opportunity to present evidence every step of the way, will seriously undermine the process.

Third, the demand curve process sets the curves for the next three years. The demand curves were estimated for the initial 2005-2006 capability years and then escalated by approximately 3 percent for 2006-2007 and 2007-2008 capability periods. Six weeks after FERC approved the demand curves, some market participants are concerned that data for one small element of demand curves is stale. However, it should be kept in mind that there is no process to update the demand curves after the first year or the second year. If it is so important to make this correction six weeks after FERC approval, there is no reason why the demand curves should not be updated for the second (2006-2007) and third (2007-2008) capability periods. However, suppliers will be the first ones to object to frequent changes in the demand curves since markets like certainty and frequent changes will undercut that objective.

Finally, some market participants will contend that the NYISO had the 2005 Gold Book before the March 21 technical conference and hence latest summer/winter differential must be used to compute the winter revenue benefit. We believe that the NYISO made the right decision not to use the 2005 Gold Book since the report posted on its web site was preliminary and it was finalized and published on April 15, 2005 after the FERC technical conference.

Conclusion

The CPB recommends that the demand curves approved by FERC for the 2005-2006, 2006-2007 and 2007-2008 capability periods not be changed. We agree that the latest and most accurate data must be used to set demand curves. However, selectively changing one small aspect of the demand curve estimate barely six weeks after their approval will do more harm than good. We also recommend that the NYISO incorporate in revised tariffs procedures that will ensure that the latest and most accurate data is used for future resets of demand curves.

Sincerely,

Tariq N. Niazi
Chief Economist

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