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VIA E-MAIL

Mr. Ray Stalter
Business Issues Committee Liaison
New York Independent System Operator, Inc.
290 Washington Avenue Extension
Albany, New York 12210

Re: Incorporation of Actual Summer-Winter Differential Data into ROS ICAP
Demand Curves - Responsive Comments

Dear Ray:

In accordance with the request of the Staff of the New York Independent System Operator, Inc. (“NYISO Staff”) during the May 23, 2005 Installed Capacity Working Group meeting and in its May 23, 2005 e-mail notice, AES Eastern Energy, L.P. and the Mirant Companies¹ (“New York Suppliers”) hereby submit limited responsive comments concerning whether the NYISO should conform the ICAP Demand Curves for the Rest of State (“ROS”) region to reflect the actual summer-winter differential data of 2100 MW produced by required test results and available to the NYISO before the record was closed (“Actual Summer-Winter Differential”). Specifically, the New York Suppliers wish to respond to statements contained in the Initial Comments filed by the New York Consumer Protection Board and the Initial Comments filed by a group of Market Participants principally transmission owners (“CPB Filing” and “TO Filing,” respectively).

In the CPB Filing, CPB forthrightly states, “We agree that the latest and most accurate data must be used to set demand curves.” (CPB Filing at 7.) The New York Suppliers also agree with this most basic premise underlying the development of demand curves in New York. However, CPB then glosses over the actual facts underlying this situation, stating, “Six weeks after FERC approved the demand curves, some market participants are concerned that data for one small element of demand curves is stale.” (CPB Filing at 6.) Indeed, both the CBP Filing and the TO Filing seek to characterize the

¹ The Mirant Companies are comprised of Mirant Bowline, LLC, Mirant Lovett, LLC, Mirant NY-Gen, LLC and Mirant Americas Energy Marketing, L.P.

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information concerning the Actual Summer-Winter Differential as new information. This is simply not accurate.

ISO Staff had the Actual Summer-Winter Differential available to it well before the March 21, 2005 Technical Conference in Washington, D.C. ("Technical Conference"), at which all parties specifically were requested to supplement the record with pertinent information. As reflected in the Joint Affidavit of John Charlton and Belinda Thornton which was produced at the Technical Conference, one of the key driving factors underlying the NYISO's calculation of the winter revenue benefit adjustment was the value assigned to the expected future summer-winter differential. Due to an inadvertent oversight, ISO Staff used an approximated value of 1700 MW rather than the Actual Summer-Winter Differential information that was available to it at that time. Their inadvertent failure to use this information does not now make the information "new." Rather, it was – and remains -- the best available, objective, most accurate information that could be obtained while the record to set the Rest of State Demand Curves for the next three years remained open.

Moreover, in the TO Filing, the TO Group claims that no party raised issue with the summer-winter differential levels used by the ISO. (TO Filing at 4-5.) This also is not accurate. Market Participants were not made aware that the winter revenue benefit adjustment would even be a component of the Rest of State Demand Curve until the ISO issued its proposed curves on September 22, 2004. From that time forward, as recognized by Dr. Patton, all aspects of the winter revenue benefit adjustment, including the summer-winter differential levels that were used to calculate it, were a significant area of controversy. (Patton October 1, 2004 Letter.)

Finally, the TO Group misconstrue the importance of failing to incorporate this information to set the Rest of State Curves. The TO Group claims that, given the limited amount of additional capacity that has been sold in the past in the winter as compared to the summer, the \$4 per kW/year winter revenue benefit adjustment is appropriate. However, in doing so, the TO Group wholly ignore the fact that all components of the Rest of State Demand Curves were set to reflect expectations under equilibrium conditions. As reflected in Dr. David Patton's most recent annual report, the Rest of State market currently reflects conditions that are not at equilibrium, and thus, the amount of capacity historically procured in the winter is not instructive.

Indeed, the position taken by the TO Group is inconsistent with the recommendations advanced by Dr. Patton both before the NYISO Board of Directors and during the FERC Technical Conference. As confirmed by Dr. Patton, the winter revenue benefit adjustment can only be justified if it is based on fundamental factors that would continue to occur over the long run, *i.e.*, under equilibrium conditions. The Summer and Winter DMNC levels represent the amount of capacity that generators are qualified to sell into the NYISO ICAP markets. Neither the TO Group nor any other party during the entirety of this proceeding has presented any evidence that generators will not sell capacity up to these full levels under equilibrium conditions.

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Accordingly, based on the foregoing, the Mirant Companies hereby renew their request that the NYISO expeditiously make a filing with the Federal Energy Regulatory Commission ("FERC") to conform the ROS ICAP Demand Curves to reflect the Actual Summer-Winter Differential on a prospective basis.

Very truly yours,

GREENBERG TRAURIG, LLP

Doreen U. Saia

DUS/sgb

cc: Mr. James Mayhew (via e-mail)

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