MULTIPLE INTERVENORS
540 Broadway · P.O. Box 22222 · Albany, New York 12201-2222 · (518) 426-4600

October 8, 2010

VIA E-MAIL AND HAND DELIVERY

Ms. Karen Antion
Chair, NYISO Board of Directors
c/o Mr. Stephen G. Whitley
President and CEO
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, New York 12144

Re: Comments of Multiple Intervenors Regarding the 2011-2014 Installed Capacity Demand Curve Reset

Dear Chair Antion:

In accordance with Section 5.14.1.2.9 of the New York Independent System Operator, Inc. ("NYISO") Market Administration and Control Area Services Tariff, Appendix B of NYISO Staff's final recommendations regarding the installed capacity ("ICAP") demand curves for the 2011/2012, 2012/2013 and 2013/2014 capability years issued September 7, 2010 ("Final Recommendations"), and Section 5.6.6 of the NYISO ICAP Manual, enclosed please find an original and two copies of the comments of Multiple Intervenors in response to the Final Recommendations. In addition, Multiple Intervenors respectfully requests the opportunity to participate in oral argument before the Reliability and Markets Committee of the NYISO Board of Directors with respect to the 2011-2014 ICAP demand curve reset.

If you have any questions regarding this matter, please feel free to contact me directly at (518) 426-4600, or via e-mail at gbissell@couchwhite.com.

Respectfully submitted,

MULTIPLE INTERVENORS

Garrett E. Bissell
Counsel for Multiple Intervenors

GEB/dap
Enclosure
cc: David Lawrence (via E-mail w/ enc.)
Gloria Kavanah, Esq. (via E-mail w/ enc.)
Diane Egan (via E-mail w/ enc.)
Will Dong (via E-mail w/ enc.)
C:\Users\dpoutre.COUCHWHITE\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\BJ2G4Z2D\MI DCR Comments Tranmittal Letter 10082010.doc

PRELIMINARY STATEMENT

Pursuant to Section 5.14.1.2.9 of the New York Independent System Operator, Inc. ("NYISO") NYISO Market Administration and Control Area Services Tariff ("Services Tariff") and Appendix B of NYISO Staff's final recommendations regarding the installed capacity ("ICAP") demand curves for the 2011/2012, 2012/2013 and 2013/2014 capability years issued September 7, 2010 ("Final Recommendations"), Multiple Intervenors hereby submits its comments to the NYISO Board of Directors ("Board") in response to the Final Recommendations.[1]

New York consumers currently pay some of the highest electricity prices in the entire country. In fact, the State's electricity consumers pay, on average, nearly 70 percent more than the national average for electricity.[2] This price disparity places an undue burden on all State consumers. Moreover, the price of electricity places New York businesses at a significant competitive disadvantage with respect to businesses in other regions and nations. This price disadvantage is especially detrimental to manufacturers and other energy-intensive businesses, many of which are struggling to maintain operations in the State when lower-cost alternative locations are readily available in this country and worldwide. Furthermore, high energy prices are a significant contributor to the mass exodus of jobs from the State. As explained by The

---

[1] Multiple Intervenors is an unincorporated association of approximately 55 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State. Through four of its members – Alcoa, Inc., IBM Corporation, Occidental Chemical Corp., and Wegmans Food Markets, Inc. – Multiple Intervenors participates actively in the NYISO's principal stakeholder committees, as well as selected subcommittees and working groups.

[2] Energy Information Administration, *Average Retail Price of Electricity to Ultimate Customers by End-Use Sector, by State*, available at http://www.eia.doe.gov/cneaf/electricity/epm/epmxlfile5_6_a.html.

Dow Chemical Company's Chairman and Chief Executive, Andrew Liveris, "even more than high labor costs, runaway energy prices are pushing manufacturing jobs overseas."[3]

Given the significant, direct influence that prices from the wholesale markets administered by the NYISO have on the electricity prices paid by consumers in New York, it is incumbent upon the NYISO to critically examine its markets and any proposed modifications thereto to ensure that such markets, consistent with the NYISO's recently-revised mission statement, deliver benefits to New York electricity consumers.[4] The ICAP demand curves have an enormous financial impact on the State's electricity consumers. Therefore, the NYISO Board must ensure that the results of this reset are consistent with the projected state of the capacity market during the 2011-2014 period, and seek to avoid the imposition of unwarranted additional costs on the State's already-overburdened electricity consumers.

The Federal Energy Regulatory Commission ("FERC") has determined that the purpose of the ICAP demand curves is as follows: "[t]hey were intended to improve system and resource reliability by valuing the ICAP resources available above the system's required levels, and providing more effective economic signals for new investment."[5] Based on the projected substantial levels of excess capacity in the NYCA for the 2011-2014 period and lack of need for

---

[3] Associated Press, *Dow CEO Blames Energy Costs for Job Losses* (October 30, 2006), available at http://www.secureourenergy.com/natural-gas-news/Dow-CEO-Blames-Energy-Costs-for-Job-Loss.

[4] The NYISO announced at the September 29, 2010 Management Committee meeting that it recently had adopted a modification to its mission statement to expressly recognize that providing benefits to consumers is a core function of the NYISO. Given the substantial levels of capacity excess projected in the New York Control Area ("NYCA") for the 2011-2014 period, Multiple Intervenors fails to comprehend how any outcome other than a substantial reduction in the annual revenue requirement for the NYCA proxy peaking unit could be deemed consistent with the NYISO's revised mission statement.

[5] *New York Independent System Operator, Inc.*, 110 FERC ¶ 61,201 at P 7 (2005) (emphasis added).

new capacity resources from a reliability perspective during this period, to fulfill its purpose the NYCA ICAP demand curve must produce economic signals that clearly indicate this lack of need, and, thus, discourage unnecessary new investment during the 2011-2014 period.[6] Accordingly, the only reasonable and justifiable result of the 2011-2014 ICAP demand curve reset for the NYCA ICAP demand curve is a reduction in the current annual revenue requirement of the NYCA proxy peaking unit.[7]

Except for the limited modifications further described herein, Multiple Intervenors generally supports the Final Recommendations with respect to the NYCA ICAP demand curve for the 2011-2014 period, including, but not limited to, the proposal to exclude deliverability costs from the NYCA ICAP demand curve, as well as the proposed 1.7 percent escalation factor utilized in determining the NYCA ICAP demand curve parameters for the

[6] NYCA has experienced persistent, growing levels of excess capacity since the implementation of the ICAP demand curves in 2003. The 2010 Reliability Needs Assessment ("RNA"), which found no need for additional resources from a reliability perspective for at least the next 10 years, projects an average capacity excess in NYCA of more than 10 percent above the currently-effective 18 percent installed reserve margin ("IRM") during the 2011-2014 period. (NYISO, *2010 Reliability Needs Assessment – Final Report* (September 2010) at 20, 30.) This projected level of excess capacity has doubled in just the past year since the release of the 2009 RNA. (NYISO, *2009 Reliability Needs Assessment – Final Report* (January 13, 2009) at 3-12.).

[7] Significantly, during the course of this reset process, Multiple Intervenors advanced a compromise proposal in an attempt to avoid litigation on the issues relating to the parameters of the ICAP demand curves for the 2011-2014 period. Pursuant to Multiple Intervenors' proposal, the currently-effective parameters of the ICAP demand curves would have been maintained, without modification, subject to adjustment, as determined appropriate in the context of the current reset, by a trigger indicating a need for new capacity resources in the near term. Further details regarding Multiple Intervenors' proposal and the justification therefor are provided in Multiple Intervenors' May 21, 2010 presentation to the Installed Capacity Working Group, which is incorporated herein by reference Given the substantial capacity excess projected for the 2011-2014 period and the lack of need for new capacity resources during this period, Multiple Intervenors continues to believe that its proposal represents an appropriate outcome for this reset; however, to date, the proposal has not garnered sufficient market participant support to proceed. Accordingly, Multiple Intervenors is left no choice but to advance its litigation position with respect to this matter.

2012/2013 and 2013/2014 capability years. Specifically, Multiple Intervenors urges the NYISO Board to adopt the following modifications to the Final Recommendations: (a) reduce the zero-crossing point of the NYCA ICAP demand curve from 112 percent of the applicable minimum ICAP requirement to 110 percent thereof; and (b) reduce the assumed level of capacity excess utilized in determining the projected energy and ancillary services revenues of the NYCA proxy peaking unit to 0.5 percent over the entire nominal life of such unit.

With respect to the NYCA ICAP demand curve, adoption of the Final Recommendations would result in a nearly 7 percent reduction in the currently-effective annual revenue requirement for the NYCA proxy peaking unit for the 2011/2012 capability year. Adoption of Multiple Intervenors' recommended modifications to the Final Recommendations would provide additional annual savings for electricity consumers in the Rest of State ("ROS") region, increasing the estimated reduction in the currently-effective annual revenue requirement for the NYCA proxy peaking unit for the 2011/2012 capability year to nearly 11 percent.[8]

However, more importantly, adoption of Multiple Intervenors' recommended modifications would greatly assist in providing appropriate economic signals to the market regarding the lack of need for additional resources during the 2011-2014 period in light of the substantial levels capacity excess projected to exist during this period. As further described herein, despite the fact that New York's capacity reserve margin is expected to continue increasing over the 2011-2014 period, sustaining levels of more than 28 percent – more than 10 percent above the current 18 percent IRM, equating to an average annual capacity excess of nearly 3,500 MW – significant levels of additional excess capacity are proposed to be added in

[8] The cost impact estimates provided herein were calculating utilizing the ICAP demand curve model developed by National Economic Research Associates, Inc. ("NERA") and the peak load levels projected by the 2010 RNA for the 2011-2014 period.

New York during this period.[9] This market outcome is indicative of the fact that the current ICAP demand curves are producing artificially-high price signals. Accordingly, action is necessary to correct the inappropriate economic signals being produced by the ICAP demand curves to eliminate additional, unnecessary increases in the currently-projected levels of surplus capacity during the 2011-2014 period.

BACKGROUND

In accordance with the requirements of Services Tariff, during the third quarter of 2009, NYISO staff commenced the required triennial review of the ICAP demand curves to determine the parameters thereof for the 2011/2012, 2012/2013 and 2013/2014 capability years. To assist in this reset process, NYISO staff engaged the services of NERA and Sargent & Lundy LLC ("S&L," together with NERA referred to as the "Consultants"). The Consultants issued an initial draft report on July 1, 2010. On August 13, 2010, after review of the Consultants' initial draft report and market participant comments, NYISO staff issued its draft recommendations regarding the ICAP demand curves for the 2011-2014 period ("Draft Recommendations").

Multiple Intervenors filed comments with NYISO staff in response to the Draft Recommendations on August 27, 2010. In its comments, Multiple Intervenors expressed its general support for the Draft Recommendations, as they pertained to the NYCA ICAP demand curve, including its strong support for NYISO staff's proposal to exclude deliverability costs from the annual revenue requirement for the NYCA proxy peaking unit. In addition, Multiple

[9] In fact, more than 3,300 MW of additional excess capacity are proposed to come online in New York over the next four years from the following facilities: (a) the 635 MW Empire Generating Facility in NYISO Load Zone F; (b) the proposed 630 MW CPV Valley Energy Center project in NYISO Load Zone G; (c) the proposed 1,000 MW Cricket Valley Energy project in NYISO Load Zone G; (d) the proposed 550 MW Astoria Energy II facility in NYISO Load Zone J; and (e) the proposed 512 MW Bayonne Energy Center project in Zone J.

Intervenors urged NYISO staff to adopt the following modifications to the Draft Recommendations: (a) reduce the zero-crossing point of the NYCA ICAP demand curve from 112 percent of the applicable minimum ICAP requirement to 110 percent thereof; (b) reduce the proposed escalation factor from 2.4 percent to 1.7 percent; and (c) reduce the assumed level of excess capacity utilized in calculating the projected energy and ancillary services revenues earned by the NYCA proxy peaking unit to 0.5 percent over the entire nominal life of such unit.

On September 7, 2010, after review of the market participant comments, including Multiple Intervenors, regarding the Draft Recommendations, NYISO Staff issued the Final Recommendations, together with the Consultants' final report, triggering a 30-day period for the submission of comments to the NYISO Board regarding the disposition of the 2011-2014 demand curve reset process.

ARGUMENT

POINT I

THE NYISO BOARD SHOULD ADOPT NYISO STAFF'S RECOMMENDATION TO EXCLUDE DELIVERABILITY COSTS FROM THE NYCA ICAP DEMAND CURVE

Multiple Intervenors hereby indicates its strong support for NYISO staff's recommendation to exclude deliverability costs from the annual revenue requirement for the NYCA proxy peaking unit.[10] The unwarranted inclusion of deliverability costs within such annual revenue requirement would result in enormous windfall profits for existing generators with concomitant detrimental impacts to electricity consumers. In fact, the unjustified inclusion of such costs would result in a wealth transfer, and corresponding cost increase to ROS

[10] Final Recommendations at 6-8.

electricity consumers, of more than $1 billion over the three years encompassed by this reset, compared to the currently-effective annual revenue requirement for the NYCA proxy peaking unit.

The Final Recommendations correctly acknowledge that the inclusion of deliverability costs within the annual revenue requirement for the NYCA proxy peaking unit is completely inconsistent with the fundamental purpose of imposing the deliverability requirements – *i.e.*, to require new generators seeking to sell capacity to pay the costs of transmission system upgrades necessary to make their capacity deliverable, thereby providing more effective economic signals regarding the most efficient locations for new entry.[11]

Moreover, the inclusion of deliverability costs within annual revenue requirement for the NYCA proxy peaking unit would directly contradict the cost allocation methodology approved by FERC with respect to any required deliverability upgrades. In approving the deliverability requirements, FERC clearly held that consumers would be exposed to the costs of deliverability only in very limited circumstances where the minimum feasible highway upgrade exceeds the minimum upgrade required to make the generator at issue deliverable.[12] Specifically, FERC declared:

> [w]e find that the Filing Parties' proposed approach allocates costs of transmission consistent with Commission policy and recognizes the competing interests of those involved. Entities other than interconnection customers [generators], such as LSEs [and, thus, consumers], would be exposed to upgrade costs only to the extent that the 90 percent threshold is not realized for highway facilities

[11] *New York Independent System Operator, Inc. and New York Transmission Owners*, 126 FERC ¶ 61,046 at P 8 (2009); and Final Recommendations at 6-7.

[12] *See, e.g., New York Independent System Operator, Inc. and New York Transmission Owners*, 122 FERC ¶ 61,267 at P 30-32 and 46 (2008); and *New York Independent System Operator, Inc. and New York Transmission Owners*, 126 FERC ¶ 61,046 at P 43-44 (2009).

(i.e., only if the minimum feasible upgrade is more than 90 percent of the size of the actual upgrade).[13]

To include deliverability costs within the annual revenue requirement for the NYCA proxy peaking unit would require consumers to pay for all deliverability costs in direct contravention to the cost allocation methodology approved by FERC.

Furthermore, the inclusion of deliverability costs within the annual revenue requirement for the NYCA proxy peaking unit would create an unjustified wealth transfer from consumers to existing generators. As demonstrated above, NYCA is projected to experience a substantial amount of excess capacity during the 2011-2014 period – more than 10 percent, on average, above the currently-effective 18 percent IRM.[14] Moreover, the 2010 RNA determined that no new capacity resources are needed from a reliability perspective for at least the next 10 years.[15] Accordingly, based on these factors, it is anticipated that existing generators will provide nearly all, if not all, of the State's capacity needs during the 2011-2014 period.

A condition attendant to the approval of the deliverability requirements by the NYISO's market participants was the grandfathering of all then-existing generators, thereby granting them deliverability rights at no cost. The inclusion of deliverability costs during the 2011-2014 period when no new resources are needed from a reliability perspective, therefore, would result in substantial windfall profits to the existing generators that were granted deliverability rights free of cost. In fact, the inclusion of such costs would result in more than $338 million dollars in average annual additional costs for ROS electricity consumers, or more

---

[13] *New York Independent System Operator, Inc. and New York Transmission Owners*, 122 FERC ¶ 61,267 at P 46 (2008).

[14] NYISO, *2010 Reliability Needs Assessment – Final Report* (September 2010) at 20.

[15] *Id.* at 30.

than $1 billion during the 2011-2014 period, compared to the currently-effective annual revenue requirement for the NYCA proxy peaking unit – such enormous additional costs would be paid to existing generators that incurred absolutely no deliverability costs. Such an inequitable outcome is wholly unjustifiable. Accordingly, to avoid such a result and ensure that deliverability costs are allocated consistent with FERC's directives, the NYISO Board should adopt NYISO staff's recommendation to exclude deliverability costs from the annual revenue requirement for the NYCA proxy peaking unit.

POINT II

THE NYISO BOARD SHOULD ADOPT NYISO STAFF'S PROPOSED ESCALATION FACTOR

Multiple Intervenors urges the NYISO Board to adopt the 1.7 percent escalation factor proposed in the Final Recommendations.[16] It is important to recognize that the selection of an appropriate escalation factor is critical to achieving reasonable results with respect to the parameters of the NYCA ICAP demand curve for the 2012/2013 and 2013/2014 capability years. After determination of the parameters of the NYCA ICAP demand curve for the 2011/2012 capability year, such parameters are merely grossed-up by the escalation factor to determine the parameters for the remaining two years encompassed by the reset. Accordingly, the utilization of an artificially-high escalation factor would result in unwarranted additional costs for electricity consumers.

In its Draft Recommendations, NYISO staff proposed to utilize a 2.4 percent escalation factor. NYISO staff's initial proposed escalation factor was based on the average forecasted inflation rate for the 2010-2019 from a single data source – the Survey of Professional

[16] Final Recommendations at 15-16.

Forecasters published by the Federal Reserve Bank of Philadelphia. However, NYISO staff failed to provide any credible justification regarding the relevance of projected levels of inflation in 2015-2019 to the current reset process covering only the 2011-2014 period.

In its comments in response to the Draft Recommendations, Multiple Intervenors urged NYISO staff to adopt a more representative forecast of inflation for the period encompassed by this reset equal to 1.7 percent.[17] This recommended escalation factor was derived from the average forecasted inflation rates during the 2010-2014 from three publicly-available forecasts, including recently updated forecasts from the data source relied upon by NYISO staff.[18]

The Final Recommendations adopted this recommendation, thereby reducing NYISO Staff's initially-proposed escalation factor from 2.4 percent to 1.7 percent. The utilization of an average forecast of inflation for the period encompassed by this reset derived from three representative, publicly-available data sources is a reasonable and justified approach to determining an appropriate escalation factor. Moreover, the utilization of such a reasonable escalation factor provides meaningful savings to ROS electricity consumers, compared to the

[17] The City of New York recommended the same modification to NYISO staff's proposed 2.4 percent escalation factor.

[18] Federal Reserve Bank of Philadelphia, *Third Quarter 2010 Survey of Professional Forecasters* (August 13, 2010) at Table Seven, available at http://www.phil.frb.org/research-and-data/real-time-center/survey-of-professional-forecasters/2010/spfq310.pdf (hereinafter, "SPF"); U.S. Office of Management and Budget, *Mid-Session Review: Budget of the U.S. Government – Fiscal Year 2011* (July 23, 2010) at 9, available at http://www.whitehouse.gov/sites/default/files/omb/assets/fy2011_msr/11msr.pdf (hereinafter, "OMB"); and U.S. Congressional Budget Office, *The Budget and Economic Outlook: An Update* (August 2010) at 78, available at http://www.cbo.gov/ftpdocs/117xx/doc11705/08-18-Update.pdf (hereinafter, "CBO"). The average inflation rate forecasted by SPF, OMB and CBO for the 2010-2014 period were 1.9 percent, 1.7 percent and 1.5 percent, respectively, with a resulting average forecasted inflation rate of 1.7 percent for the 2010-2014 period across all three data sources.

artificially-high escalation factor proposed initially by NYISO staff in its Draft Recommendations. In fact, adoption of the escalation factor proposed by the Final Recommendations would result in more than $31 million in savings for ROS electricity consumers over the 2012/2013 and 2013/2014 capability years, compared to NYISO staff's initial 2.4 percent escalation factor. Based on the foregoing, the NYISO Board should adopt the 1.7 percent escalation factor proposed by NYISO staff.

POINT III

THE NYISO BOARD SHOULD REDUCE THE ZERO-CROSSING POINT OF THE NYCA ICAP DEMAND CURVE TO 110 PERCENT OF THE APPLICABLE MINIMUM ICAP REQUIREMENT

Throughout this reset process, Multiple Intervenors continually has raised concerns regarding the growing level of excess capacity in New York, the costs associated therewith to consumers, and whether consumers continue to derive tangible benefits from such excess capacity. In fact, as demonstrated above, in just the year that has lapsed between the development of the 2009 RNA and 2010 RNA, the projected level of capacity excess during the 2011-2014 period has more than doubled.

Furthermore, despite such projected significant excess, substantial amounts of additional new capacity are proposed to commence operation in the ROS region during the next four years.[19] These factors indicate that the NYCA ICAP demand curve likely is sending artificially-high price signals regarding the value of excess capacity. Accordingly, action must

[19] For example, as noted above, more than 2,200 MW of additional excess capacity are proposed to commence operation during the next four years within the ROS region. This substantial amount of proposed new capacity additions is equal to more than 14 percent of the average projected peak load in ROS during the 2011-2014 period.

be taken by the NYISO to address this problem and eliminate additional growth in current level of excess capacity. Such additional excess, which consumers would be funding to remain on the system, provides, at best, marginal benefits. Therefore, Multiple Intervenors recommends that the NYISO Board reduce the zero-crossing point of the NYCA ICAP demand curve to 110 percent of the applicable minimum ICAP requirement to aid in sending more effective economic signals to investors that additional capacity excess above the currently-projected levels of excess for the 2011-2014 period does not provide additional benefits and, thus, has no corresponding value warranting compensation. Absent this modification, the NYCA ICAP demand curve will perpetuate the existence of substantial levels of capacity excess by providing artificially-high price signals regarding the value of such excess.

The rationale provided by NYISO staff for rejecting this recommended modification is unacceptable and inconsistent with the requirements of the Services Tariff. As demonstrated by the Final Recommendations, according to NYISO staff, the zero-crossing point of the ICAP demand curves purportedly should not be modified during a period of excess capacity because such a modification would have adverse impacts on the revenue expectations of existing supply resources.[20] Rather, NYISO staff alleges that such a change should only be considered during periods at which the capacity market is at or near equilibrium to ensure that adverse impacts to expected generator revenues do not result.[21]

Multiple Intervenors is concerned that NYISO staff's myopic preoccupation with preserving generator revenues, even if dependent upon unnecessary, additional costs to consumers, is preventing the true consideration, and an adequate evaluation, of the optimal zero-

[20] Final Recommendations at 14.

[21] *Id.* at 15.

crossing point for the NYCA ICAP demand curve. Rather, focusing, more appropriately, on the potential impacts to consumers of an adjustment to the zero-crossing point reveals that this reset presents an ideal opportunity to adjust the zero-crossing point to a level that more reasonably reflects the value of excess capacity to consumers. Reducing the zero-crossing point places significant upward pressure on the annual revenue requirement for the NYCA proxy peaking unit because it results in a steepening of the slope of the NYCA ICAP demand curve. However, in consideration of the overall decrease to such annual revenue requirement proposed by the Final Recommendations, the potential increase in costs related to reducing the zero-crossing point would be absorbed by the decrease in costs attributable to the reduction in the annual revenue requirement, thereby allowing the adjustment to the zero-crossing point to be implemented without any net additional costs to consumers.[22]

Moreover, Section 5.14.1.2 of the Services Tariff expressly requires that the "appropriate shape and slope of the ICAP Demand Curves, and the associated point at which the dollar value of the ICAP Demand Curves should decline to zero" be one of the four mandatory factors that must be considered during each triennial reset process. Thus, the Service Tariff provides all market participants with clear notice that the zero-crossing point of the ICAP demand curves is a factor subject to evaluation and potential modification during each triennial review process.

Furthermore, it is important to recognize that since the implementation of the ICAP demand curves, the market has experienced a persistent level of excess capacity – as noted

[22] In fact, reducing the zero-crossing point of the NYCA ICAP demand curve, as recommended herein, would still produce an overall reduction in the currently-effective annual revenue requirement for the NYCA proxy peaking unit for the 2011/2012 capability year (*i.e.* slightly more than a 4 percent reduction), albeit smaller than the reduction produced by the Final Recommendations absent such modification (*i.e.* approximately 7 percent).

above, this excess has continued to increase significantly over the past several years and is projected to continue increasing during the 2011-2014 period. Therefore, NYISO staff's assertion that adjustments to the zero-crossing point only are appropriate during periods at or near equilibrium essentially renders this tariff-mandated factor for review meaningless because, absent modification of the existing price signals, the market is unlikely to be at or near equilibrium at any time during the foreseeable future. Accordingly, based on the foregoing and consistent with the requirements of the Services Tariff, Multiple Intervenors recommends that the NYISO Board reduce the zero-crossing point for the NYCA ICAP demand curve from 112 percent of the applicable minimum ICAP requirement to 110 percent thereof.

POINT IV

THE NYISO BOARD SHOULD ADOPT AN ASSUMED LEVEL OF EXCESS CAPACITY EQUAL TO 0.5 PERCENT FOR THE ENTIRE NOMINAL LIFE OF THE NYCA PROXY PEAKING UNIT

The assumed level of excess capacity utilized in determining the projected energy and ancillary services revenues to be earned by the NYCA proxy peaking unit as a result of participation in the NYISO-administered markets directly effects the ability of the NYCA ICAP demand curve to fulfill its purpose of providing effective economic signals to incent investment in new capacity resources when needed for reliability. Specifically, the level of assumed excess capacity has a direct impact on the annual revenue requirement for the NYCA proxy peaking unit – the greater the level of assumed excess capacity, the lower the projected energy and ancillary services revenues earned by the NYCA proxy peaking unit, thereby placing additional upward pressure on the annual revenue requirement for such unit. The Final Recommendations' proposal to utilize an assumed level of excess capacity equal to 0.5 percent during the first three

years of the nominal life of the NYCA proxy peaking unit and 1.0 percent during the remaining 27 years of such nominal life is, as further described below, inconsistent with the requirements of the Services Tariff, and contrary to NYISO staff's own findings regarding the longer-term anticipated level of excess capacity.[23] Multiple Intervenors supports NYISO staff's proposal to utilize an assumed level of excess capacity equal to 0.5 percent during the first three years of the nominal life of the NYCA proxy peaking unit, but opposes the proposal to utilize an assumed level of excess capacity equal to 1.0 percent during years 4 through 30 of the nominal life of such unit. Multiple Intervenors contends that an assumed level of excess capacity equal to 0.5 percent should be utilized for the entire nominal life of the NYCA proxy peaking unit.

As noted by NYISO staff in the Final Recommendations, the use of an assumed level of capacity excess capacity equal to 0.5 percent comports with the requirements of Section 5.14.1.2 of the Services Tariff that energy and ancillary service revenues be estimated "under conditions in which the available capacity would equal or slightly exceed the minimum Installed Capacity requirement."[24] However, Multiple Intervenors disagrees with NYISO staff's claim that this tariff requirement applies only to the three-year period covered by the ICAP demand curve reset, and, thus, the tariff is silent regarding the assumptions that apply to the remaining 27 years of the nominal life of the NYCA proxy peaking unit. In fact, contrary to NYISO staff's assertion, FERC expressly has determined that the conditions imposed by Section 5.14.1.2 of the Services Tariff apply equally to the entire nominal life of such unit.[25] Accordingly, because the same tariff requirements apply to both periods and NYISO staff acknowledges that the

---

[23] Final Recommendations at 13.

[24] *Id.* at 12.

[25] *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,064 at P 31 (2008).

assumption of 0.5 percent excess comports with the tariff requirements, this assumed level of capacity excess should apply to the entire nominal life of the NYCA proxy peaking unit.[26]

Moreover, NYISO staff has failed to provide any compelling justification for the need to assume a greater level of excess during the remaining 27 years of the nominal life of the NYCA proxy peaking unit than that assumed during the first three years. In fact, NYISO staff's own analysis supports Multiple Intervenors' recommendation. In the Final Recommendations, NYISO staff acknowledged that, over time, the addition of a new peaking unit will result in an average level of excess capacity equal to 0.5 multiplied by the MW rating of such peaking unit.[27] With respect to the NYCA proxy peaking unit, this results in an average level of excess capacity equal to approximately 207 MW.[28] Based on an average projected peak load in NYCA of 33,421 MW during the 2011-2014 period, this level of excess is equal to 0.6 percent.[29] After accounting for the currently-effective 18 percent IRM, this projected average peak load translates into an average minimum ICAP requirement equal to approximately 39,437 MW for NYCA during the 2011-2014 period, with a resulting anticipated level of longer-term excess capacity equal to 0.5 percent. Faced with the reality of its own analysis, NYISO simply ignores this result, attempting to support its proposal to utilize an assumed level of capacity excess equal to 1.0 percent during the final 27 years of the nominal life of the NYCA proxy peaking unit based on its

[26] Multiple Intervenors is unaware of any market participant contending that an assumed level of excess capacity equal to 0.5 percent is inconsistent with the requirements of Section 5.14.1.2 of the Services Tariff.

[27] Final Recommendations at 12-13.

[28] *Id.* at 13.

[29] NYISO, *2010 Reliability Needs Assessment – Final Report* (September 2010) at 20.

unsubstantiated opinion that "[t]he NYISO believes it is unrealistic to assume that, over time, an average level of excess below 1% is reasonable."[30]

The unjustified assumption of additional excess places significant upward pressure on the annual revenue requirement for the NYCA proxy peaking unit, thereby artificially increasing costs to consumers. In fact, adoption of NYISO staff's unjustified recommendation regarding the assumed level of excess capacity results in nearly $80 million in additional average annual costs for ROS electricity consumers, compared to utilizing a more reasonable assumption of 0.5 percent throughout the entire nominal life of the NYCA proxy peaking unit. In total, adoption of NYISO staff's unwarranted assumption would result in nearly $240 million in additional unnecessary costs for ROS electricity consumers during the three-year period covered by this reset. Moreover, adoption of NYISO staff's unjustified assumption would merely exacerbate the issues associated with the existing ICAP demand curves' perpetuation of a continued existence of an unreasonable level of excess capacity at substantial additional costs to consumers. Accordingly, Multiple Intervenors recommends that the NYISO Board adopt an assumed level of excess capacity equal to 0.5 percent applicable to the entire nominal life of the NYCA proxy peaking unit.

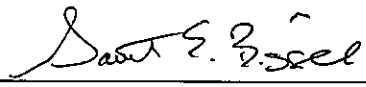
[30] Final Recommendations at 13.

CONCLUSION

For all the foregoing reasons, Multiple Intervenors urges the NYISO Board to adopt the Final Recommendations as they relate to the NYCA ICAP demand curve for the 2011-2014 period, subject to the following modifications: (a) reducing the zero-crossing point of the NYCA ICAP demand curve to 110 percent of the applicable minimum ICAP requirement; and (b) adopting a uniform assumed level of excess capacity equal to 0.5 percent over the entire nominal life of the NYCA proxy peaking unit.

Dated: October 8, 2010
Albany, New York

Respectfully submitted,



Garrett E. Bissell, Esq.
Counsel for Multiple Intervenors
540 Broadway, P.O. Box 22222
Albany, New York 12201-2222
Tel: (518) 426-4600
E-mail: gbissell@couchwhite.com

C:\Users\dpoutre.COUCHWHITE\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\BJ2G4Z2D\MI Demand Curve Reset Comments.docx