

**U.S. POWER GENERATING COMPANY'S COMMENTS
ON NYISO STAFF'S SEPTEMBER 7, 2010 FINAL
DEMAND CURVE RESET PROCESS REPORT**

In accordance with the September 7, 2010 revised Final Timeline and the New York Independent System Operator, Inc.'s ("NYISO's") October 6, 2010 e-mail notice to Market Participants, U.S. Power Generating Company ("USPG"), a member of the NYISO Management Committee, hereby submits its comments on the NYISO Staff's September 7, 2010 Final Demand Curve Reset Process Report ("NYISO Staff Report"). USPG has been actively engaged in this reset process and hereby requests the opportunity to provide oral argument at the October 18, 2010 NYISO Board of Directors session.

USPG owns and operates over 2,000 MW of generating facilities in New York City, NYISO Zone J. In addition, USPG actively is pursuing the development of a 100 MW LMS 100 generating facility, known as the South Pier Improvement Project, at its Gowanus site.

In the interests of efficiency, USPG will not repeat all of the arguments contained in the Comments of the Independent Power Producers of New York, Inc. ("IPPNY") being contemporaneously filed herewith. USPG endorses IPPNY's Comments and incorporates them herein in their entirety.

In its role as a merchant generator that has invested more than one billion dollars to own and operate generating facilities in New York City, USPG wishes to highlight one of the subject matters addressed at length in IPPNY's Comments, specifically, the issue of whether property taxes could properly be excluded from the Net CONE calculation for the NYC proxy unit. USPG actively participated in the last demand curve reset process and supported assigning property tax abatement for the NYC proxy unit because -- at least as of that time based upon USPG's best knowledge -- the Industrial and Commercial Incentive Program ("ICIP") provided new generating facilities with a full property tax exemption through year eleven phasing out such exemption at 20% per year through year sixteen as a matter of right.

When the ICIP legislation was not renewed just a few months into our current reset period, USPG joined with other New York City suppliers (including both generators and demand response providers) in pleadings before this Board to seek to revise the NYC Demand Curves to incorporate these costs. USPG's actions were driven by the fact that the lack of an as of right property tax abatement program indisputably meant that the NYC Demand Curves -- literally overnight -- were rendered deficient by nearly 40%.

The NYISO Board's position on this issue then was, inter alia, the issue of how to properly address property taxes would be "made on the basis of a thorough evaluation of

the available facts, including those relating to any tax or other benefits available to generation projects” in the next demand curve reset process.¹ That time has now come. Notwithstanding the fact that today there continues to be no as of right property tax exemption program available to new generating facilities in New York City, NYISO Staff inexplicably has determined that full property tax abatement continues to be warranted. While USPG acknowledges that New York City very recently announced its new Third Amended and Restated Uniform Tax Exemption Policy (“Policy”), as IPPNY demonstrates in great detail in its Comments, this Policy only provides for discretionary tax relief. The determination as to whether a new generating facility will be granted such tax relief turns on both objective and, quite problematically, subjective criteria. No party disputes that fact nor could they.

During ICAPWG meeting discussions, some parties raised concerns that new generating facilities would be able to “double-dip” and score a major windfall -- to wit, property taxes would be incorporated into the demand curves AND an individual unit would subsequently also obtain full property tax relief through application to the New York City Industrial Development Authority (“NYCIDA”). By tariff, the NYISO is required to determine the current localized levelized embedded cost of a peaking unit in New York City. USPG submits -- and believes that the NYISO itself would forthrightly acknowledge -- that the NYISO cannot control the actions of the NYCIDA. Because it cannot ensure that the NYCIDA will award each new generating facility full property tax abatement, the NYISO cannot assume it in the NYC proxy unit Net CONE. Yet, on the other hand, the NYCIDA is a NYISO Market Participant that has actively been involved in the reset process. Indeed, it has weighed in extensively on this issue, and thus, is in a position to know full well how the NYISO determines to address this issue. It, unlike the NYISO, can control whether a so-called “double dip” will occur by taking actions and making discretionary rulings in light of the NYISO’s determinations.

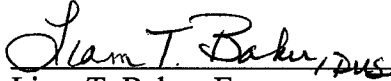
Given its scope and magnitude, the property tax issue is one of the most critical issues that the NYISO Board must ensure is calculated properly and correctly to meet its tariff mandate. The question comes to can the NYISO Board be ensured -- not hope, not expect, not anticipate but be ensured -- that new generators will secure full property tax abatements. If not, these costs -- like all other costs faced by new entrants -- must be incorporated into Net CONE for the NYC proxy unit.

¹ See “NYISO Board of Directors Decision on Whether Repeal of The ICIP Requires Resetting The NYC ICAP Demand Curve” (dated August 27, 2008) at 5.

The NYISO Board's charge in this process is to adopt Demand Curves that are sufficient to sustain the long term reliability of the New York City system. In this regard, it stands in a unique and critical role. Simply put, if not you, then who.

Dated: October 8, 2010
 Albany, New York

Respectfully submitted,


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