COUCH WHITE, LLP
COUNSELORS AND ATTORNEYS AT LAW

Couch White, LLP
540 Broadway
P.O. Box 22222
Albany, New York 12201
(518) 426-4600

Amanda De Vito Trinsey
Partner

Direct Dial: (518) 320-3432
Telecopier: (518) 426-0376
Email: adevito@couchwhite.com

October 9, 2020

VIA EMAIL

Mr. Daniel Hill
Chairman of the NYISO Board of Directors
c/o Mr. Richard J. Dewey
President and CEO
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, New York 12144

Re: Comments Regarding the 2021-2025 Demand Curve Reset Process

Dear Chairman Bemis:

In accordance with Section 5.14.1.2.1.9 of the New York Independent System Operator, Inc. ("NYISO") Market Administration and Control Area Services Tariff, enclosed please find the joint comments of Department of Public Service Staff, Multiple Intervenors, the City of New York ("City") and Consumer Power Advocates in response to NYISO staff's final recommendations regarding the 2021-2025 demand curve reset process issued September 17, 2020. In addition, Multiple Intervenors and the City respectfully request the opportunity to participate in oral argument before the Reliability and Markets Committee of the NYISO Board of Directors with respect to this issue.

If you have any questions regarding this matter, please feel free to contact me directly.

Very truly yours,

COUCH WHITE, LLP

Amanda De Vito Trinsey

Amanda De Vito Trinsey
Counsel for Multiple Intervenors and the City of New York

cc: Deborah Eckels (via E-mail w/attachments)
Diane L. Egan (via E-mail w/attachments)
Mark Seibert (via E-mail w/attachments)
Ryan Patterson (via E-mail w/attachments)

PRELIMINARY STATEMENT

Pursuant to Section 5.14.1.2.1.9 of the New York Independent System Operator, Inc. ("NYISO") Market Administration and Control Area Services Tariff ("Services Tariff") and page 61 of NYISO Staff's *Proposed NYISO Installed Capacity Demand Curves for the 2021-2022 Capability Year and Annual Update Methodology and Inputs for the 2022-2023, 2023-2024, 2024-2025 Capability Years* issued September 17, 2020 ("Final Recommendations"), Department of Public Service Staff, Multiple Intervenors,[1] the City of New York, and Consumer Power Advocates[2] (collectively, the "Consumer Stakeholders") hereby jointly submit these comments to the NYISO Board of Directors ("Board") in response to the Final Recommendations regarding the methodology and inputs for the proposed Installed Capacity ("ICAP") Demand Curves for Capability Years ("CY") 2021-2022, 2022-2023, 2023-2024, 2024-2025, as well as the proposed ICAP Demand Curves for CY 2021/2022. The Final Recommendations address proposals advanced in the Demand Curves Reset ("DCR") process by Analysis Group, Inc. and Burns & McDonnell (collectively, the "Consultants") in their *Independent Consultant Study to Establish New York ICAP Demand Curve Parameters for the 2021/2022 through 2024/2025 Capability Years – Final Report* ("DCR Report"), which was issued to stakeholders on September 9, 2020.

There are many aspects of the Final Recommendations wherein the Consumer Stakeholders fully support the recommendations advanced by NYISO Staff including, but not necessarily limited to: (1) use of a single, simple-cycle GE 7HA.02 (H Class Frame) unit as the statewide proxy peaking unit[3]

---

1 Multiple Intervenors is an unincorporated association of approximately 60 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State.

2 Consumer Power Advocates is an alliance of large not-for-profit institutions in the greater New York City region and some of the largest employers and energy users in New York State.

3 The Services Tariff requires use of the costs and projected net EAS revenues for a "peaking plant" in determining the values of the ICAP Demand Curves. A "peaking unit" is defined by the Services

technology and a gas-only design for peaking plants located in Load Zones C and F; (2) use of the New York Control Area ("NYCA") Load Zone with the lowest annual net cost of new entry ("CONE") (or annual reference value) as the location for the Demand Curve proxy peaking unit; (3) use of $2/MWh opportunity cost of providing reserves in Load Zones G, J and K to better reflect expected offers; and (4) the adjustment to historic energy and reserve prices to account for tariff-prescribed level of excess conditions that do not reflect the impacts of compliance plans submitted in accordance with the New York State Department of Environmental Conservation's ("NYSDEC") Peaker Rule.

As further described herein, the Consumer Stakeholders advance the following concerns and recommendations to the Board: (1) reject the inclusion of Selective Catalytic Reduction ("SCR") technology for peaking plants located in Load Zone G where such technology is not required and doing so will not impact air quality; (2) reject the inclusion of dual fuel capability for peaking plants located in Load Zone G where such capability is not required; (3) reject deviating from a 20-year amortization period for both the H Class Frame unit and the informational battery energy storage system ("BESS"); (4) modify the Demand Curves and model peaking plants located in Load Zone C using different gas trading hubs; (5) modify the proposed financial parameters downward; and (6) modify the Demand Curve parameters for calculating anticipated net energy and ancillary services ("EAS") revenues to account for the anomalous impacts of the COVID-19 global health pandemic.

Tariff as "the unit with technology that results in the lowest fixed costs and highest variable costs among all other units' technology that are economically viable." The Services Tariff defines a "peaking plant" to mean "the number of units (whether one or more) that constitute the scale identified in the periodic review."

ARGUMENT

POINT I

THE BOARD SHOULD REJECT THE INCLUSION OF SCR TECHNOLOGY FOR PEAKING PLANTS LOCATED IN LOAD ZONES WHERE SUCH CAPABILITY IS NOT REQUIRED AND AIR QUALITY IS NOT IMPACTED

The NYISO Services Tariff Section 5.14.12 requires that the proxy peaking unit be a technology with the "lowest fixed costs and highest variable costs among all other units' technology that are economically viable ...." The Consultants recommended and NYISO Staff concurred with the use of the H Class Frame unit as the peaking plant technology for all Load Zones. This unit represents the highest variable cost, lowest fixed cost peaking plant that is economically viable under the NYISO's Services Tariff. In the last DCR proceeding, the Consumer Stakeholders advocated for studying the H Class Frame generator, which the NYISO agreed to do for informational purposes only due to the fact that no such units were operational in the United States at that time. Since the last reset process, however, multiple H Class Frame generators have since entered service and the costs associated with such technology deem it the most economic choice pursuant to the Services Tariff. As a threshold matter, the Consumer Stakeholders support the use of this technology as the proxy peaking unit for this DCR process.

There is no legal requirement for a generating unit located in Load Zones C or F, or Load Zone G (Dutchess County), to include a SCR. NYISO Staff has acknowledged this point, but nevertheless concurred with the DCR Report in its Final Recommendations that the Zone G (Dutchess) proxy peaking unit should include SCR technology despite air quality not being impacted.

Initially, the Consultants recommended that the Load Zone G (Dutchess) proxy unit not include SCR emissions controls because the unit could maintain the necessary emissions requirements and not

impact air quality by synthetically limiting the potential to emit, becoming a "synthetic minor source" requiring a less strict permitting analysis.[4] The Consultants' Initial Draft Report concluded that:

> with a synthetic minor that may limit run hours, the installation of SCR emissions controls may ultimately be an economic decision by the plant developer, which trades off significant up-front capital costs and additional operating costs against loosened runtime restrictions. If the unit would not be expected to run for the number of hours that would require SCR emissions controls in many years, then it may not be economic for a new plant to install SCR emissions controls. Considering the balance of costs and risks discussed above, it is AGI's and BMCD's opinion that the developer of a new plant in Load Zones C, F, and G (Dutchess) in New York would not seek to include SCR emissions control technology at the time of construction due to economic considerations. Instead, for these locations, it is assumed that the developer would accept and adhere to the applicable annual operating hours limit necessary to become a synthetic minor source.[5]

However, in the final DCR Report, the Consultants reversed this recommendation, citing two reasons for doing so, neither of which involve potential impacts to air quality as a result of excluding SCR technology.[6] "*First*, SCR emission controls provides optionality to operate above the synthetic minor operating limit, which could be financially valuable in the future. [The Consultants'] three-year analysis does not fully capture value of this optionality. Future net EAS revenues may be greater than net revenues in the historical years evaluated given the potential increases in demand for operation from the peaking plant from increased levels of renewables and potential retirements of gas turbines downstate due to the NYDEC 'peaker rule.'"[7]

---

4 Analysis Group, Inc. and Burns & McDonnell, *Independent Consultant Study to Establish New York ICAP Demand Curve Parameters for the 2021/2022 through 2024/25 Capability Years—Initial Draft Report* ("Consultant Initial Draft Report") at 29-30.

5 *Id.*

6 Analysis Group, Inc. and Burns & McDonnell, *Independent Consultant Study to Establish New York ICAP Demand Curve Parameters for the 2021/2022 through 2024/25 Capability Years—Final Report* ("DCR Report") at 30.

7 *Id.*

The DCR process occurs every four years in order to stay current with market rules and technological developments. Therefore, the Consultants and the NYISO have generally disfavored including speculative future market inputs in the model (*e.g.*, anticipated future revenues from reserve products). The Consumer Stakeholders disagree with the Consultants' justification for reversing course on SCR (which NYISO Staff adopted in their Final Recommendations), as it calls for speculation about future market conditions that *may* affect EAS revenues and does not take into account all potential contributing factors.

For example, it is expected that there will be increased levels of BESS and transmission added to the State's electric system in the coming years. The State has established a goal to have 3,000 MWs of energy storage installed by 2030. Additionally, the T027 (Segment A of the AC Transmission need) and T019 (Segment B of the AC Transmission need) Public Policy Transmission projects are anticipated to be completed by December 2023, which will increase the electric energy import capability into Zone G by increasing the UPNY-SENY electric transmission interface limit by at least 900 MW.[8] Thus, it is very likely that there will be reliance on energy storage resources and the additional 900 MW of import capability will be dispatched before requiring the Zone G (Dutchess) peaking unit to operate for more hours, thus triggering the need for SCR technology.

Neither the Consultants nor NYISO Staff has demonstrated that the increased net EAS revenue received by the Zone G (Dutchess) peaking unit due to the installation of SCR is sufficient to financially justify the increased up-front SCR installation cost. The up-front SCR installation cost is significant. The Consultants estimated that including SCR technology would cause the Gross CONE for the H Class Frame unit in Load Zone G (Dutchess) for CY 2021-22 to increase by $11.39/kW-year (from

[8] *See* NYISO Board of Directors' Decision on Approval of AC Transmission Public Policy Transmission Planning Report and Selection of Public Policy Transmission Projects dated April 8, 2019 at 1-2.

$133.93/kW-year to $145.32/kW-year).[9] However, the Consultants calculated that including SCR would cause the net EAS revenue to increase only by $0.17/kW-year from $27.79/kW-year to $27.96/kW-year).[10] Rational generation developers are unlikely to incur the significant upfront cost of adding SCR for such a meager increase in EAS revenue.

When a quantitative comparison is performed, in order to offset the cost of including SCR, the impact of SCR on future net EAS revenues would have to be more than sixty times the impact that SCR had on net EAS revenue during the three-year historical period. No analysis has been performed that demonstrates that inclusion of SCR technology on the Load Zone G (Dutchess) proxy peaking unit would have such an impact on increasing future net EAS revenue as compared to historical impact. Furthermore, if the rationale for including SCR technology in Load Zone G (Dutchess) is additional future revenue opportunities, then an attempt should be made to quantify that additional revenue for the proxy unit. This type of analysis is imperative to supporting the Consultants' and NYISO Staff's speculative conclusion that developers will voluntarily incur the cost of including SCR technology despite it not being economic.

The second rationale provided by the Consultants for reversing course on exclusion of SCR technology in Load Zone G (Dutchess) is that "the installation of SCR emissions control could mitigate potential permitting and siting risk associated with building a new dual fuel unit in the lower Hudson Valley . . . without back-end emissions control technology. Within this context, a potentially relevant consideration is that the lower Hudson Valley also contains severe non-attainment areas and that

---

9 *See* cells AF87 and AE38 in the "Multiple Scenario Output" tab of the consultants' demand curve model. *See also* Final Recommendations at 52, Table 18.

10 *See* cells X87 and X38 in the "Multiple Scenario Output" tab of the Consultants' demand curve model.

selecting a plant without SCR emissions controls would not accommodate potential new plants throughout the region."[11] This rationale conflates several steps of the NYISO's DCR process.

Preliminarily, it is important to establish that there is no statutory or regulatory requirement to install SCR technology for generators built in areas of attainment, especially where air quality is not impacted. The demand curve process analyzes the cost to build a Load Zone G proxy unit in both Dutchess and Rockland County, as each Zone G geographic location provides different characteristics from a permitting perspective, primarily due to air emissions requirements. Therefore, the NYISO has deemed it important to the demand curve process to assess both regions, as this is the analysis that a developer would undergo in reviewing the most economic location to site a peaking unit.

The Consultants' speculative conclusion that exclusion of SCR would limit potential new units throughout the region is troubling. There are five counties located outside of the severe non-attainment area in Load Zone G: Dutchess, Greene, Ulster, Orange and Putnam County. In fact, there is only one county in Zone G – Rockland County – that is located within a severe non-attainment area thus requiring the use of SCR. Accordingly, there are ample locations across Load Zone G to locate a peaking unit that are outside of a non-attainment area, which easily would allow a developer to maintain air quality standards while also avoiding the need to install expensive SCR technology.

Consistent with the review of two geographic locations within Load Zone G, it is a reasonable conclusion that if there are development cost advantages (*e.g.*, permitting, capital expenditures) significant enough to outweigh building a peaking unit within a severe non-attainment area within Load Zone G, then a developer would exercise such options due to greater profitability and locate the unit in an attainment area (five other counties). This is precisely why the NYISO's demand curve reset process analyzes two regions within Load Zone G. If the NYISO Staff artificially attaches inapplicable

[11] DCR Report at 30.

permitting and siting requirements – emissions limits of a severe non-attainment area – to regions that are not subject to such requirements, then this defeats the purpose of studying two Load Zone G locations, and does not result in an accurate net CONE value. From an air quality perspective, both scenarios (with or without SCR) would have the same positive air quality outcome. The question is one of economics and capital cost. Choosing an inaccurate and inflated cost would overstate net CONE for the proxy unit and burden consumers with unnecessary capacity costs for years to come, while rewarding existing generators with revenues for a technology capability that they do not have in place.

The NYISO Draft Recommendations also state:

> Even within the portions of the lower Hudson Valley subject to the less restrictive 100 tons/year NOx emissions limit, such as Load Zone G (Dutchess County), the allowable hours of operation could be as low as only 300 hours annually depending on the number of hours a dual-fuel design may be required to operate on [ultra-low sulfur diesel]. As a result, reliance on a 'synthetic minor source' approach for a dual-fuel plant design in Load Zone G (Dutchess County) is likewise not practical for a resource needed to maintain reliability."[12]

There is no evidence in the Consultants' DCR Report or the NYISO Staff's Final Recommendations that supports this position, or the number of hours a new resource would need to run to maintain reliability. In fact, the 300-hour synthetic limitation is a conservative approach, and a proxy unit without SCR technology indeed may be able to run for more than 300 hours without impacting air quality, especially if it is a gas-only unit and not running on oil for any of those hours.

In response to other stakeholder assertions that peaking plants located in Load Zones C, F, and G, which do not have a requirement to install SCR technology, *may* be required to install SCR technology in the future, such argument is speculative and ignores the current state of the law and the more-beneficial project economics associated with not including SCR, while at the same time preserving air quality.

---

[12] NYISO Final Recommendations at 13-14 (footnote omitted).

Importantly, the Federal Energy Regulatory Commission ("FERC") supported the continued use of a federally-enforceable limitation on annual operating hours in lieu of installing SCR emissions controls to achieve compliance with applicable emissions requirements in the last NYISO DCR proceeding. In its 2017 DCR Order, FERC held that SCR emissions controls are not required for peaking plants located in Load Zones C and F in the NYCA.[13] FERC also acknowledged that the Article 10 permitting and certification process does not require SCR.[14]

In its 2017 DCR Order, the FERC cited approvingly from its 2014 DCR Order, which held that, "[w]hile there is always a risk that regulations will change in the future, we cannot base the finding of viability on speculation that the [U.S. Environmental Protection Agency] or New York State regulators will act at some point in the future;" rather, the ICAP DCR process takes place every four years "so that changed circumstances, such as new regulations, can be taken into account."[15]

The FERC 2017 DCR Order also found to be compelling the NYSDEC letter to the NYISO Board of Directors indicating that the State has issued air permits and Article 10 certificates for electric generators without SCR emissions controls.[16] There has been no NYSDEC issuance to the contrary since the 2017 DCR Order was issued. Thus, an H Class Frame unit without SCR technology is economically viable in Load Zone G and has lower fixed costs than the same unit with SCR technology and can operate without impacting air quality. As such the NYISO Services Tariff requires it to be the proxy peaking unit used to set the demand curves as consistent with the requirements of the Services Tariff.

---

13 *N.Y. Indep. Sys. Operator, Inc.,* 158 FERC ¶ 61,028 (2017) at P 60 (hereinafter "2017 DCR Order").

14 *Id.* at P 61.

15 *Id. citing N.Y. Indep. Sys. Operator, Inc.,* 146 FERC ¶ 61,043 (2014) at P 74.

16 *Id.* at P 62.

For these reasons cited above, the Consumer Stakeholders submit that the Board should reverse the NYISO Staff's recommendation and adopt the Consultants' initial recommendation that the H Class Frame unit not require SCR technology in Load Zone G Dutchess County.

POINT II

THE BOARD SHOULD REJECT THE INCLUSION OF DUAL FUEL CAPABILITY FOR PEAKING PLANTS LOCATED IN LOAD ZONE G WHERE SUCH CAPABILITY IS NOT REQUIRED

Section 5.14.1.2.1 of the Services Tariff requires that the peaking unit be a technology with the "lowest fixed costs and highest variable costs among all other units' technology that are economically viable . . . ." The NYISO concurs with the positions set forth in the DCR Report and recommends that peaking plants located in Load Zone G include material incremental capital costs to achieve dual fuel capability, notwithstanding the fact that such capability is neither required by law or regulation, nor justified by the incremental revenues attributable to the incremental investment. The Consumer Stakeholders submit that mandating such capital expenditures for dual fuel capability absent law or regulation, is inappropriate because it does not result in the lowest fixed costs, and constitutes a violation of the NYISO's Services Tariff.

The Consultants' rationale for including dual fuel for Zone G remains the same as it did in the last demand curve reset proceeding: "based on the consideration of a number of tradeoffs a developer would consider when deciding whether or not to include dual fuel capability in a development project in New York state and whether, on balance, a developer would more likely than not decide to include dual fuel capability based on such considerations."[17] More specifically, the Consultants point to the economic benefits to operating on alternate fuel oil when the price of oil is lower or when natural gas supply may be constrained during the winter months; greater siting flexibility; and the State's reliance on natural gas

[17] Consultant DCR Report at 35.

for power generation into the future.[18] The Consultants' recommendation creates the assumption that any new generating facility built in Load Zone G would have dual fuel capability and, therefore, should be compensated for the incremental cost of such capability.

As a threshold matter, dual fuel capability in Load Zone G is not required by law, regulation or New York State reliability rule. The Consultants assume that the proxy peaking plant would interconnect with a Local Distribution Company ("LDC") system and be subject to utility tariffs that require generators to have an alternate fuel. However, we know that a generation facility can interconnect directly into an interstate gas pipeline, thus avoiding LDC backup fuel requirements and transportation charges. In fact, all else being equal, it is more economic for generation facilities to interconnect with an interstate gas pipeline as opposed to an LDC.

Following the 2016 demand curve proceeding, the NYISO instituted a project wherein the Analysis Group performed a forward-looking assessment of the fuel and energy security of the New York electric grid during winter operations. The report is called *Fuel and Energy Security in New York State: An Assessment of Winter Operational Risks for a Power System in Transition (November 2019)* ("Fuel Security Study"). The Fuel Security Study analyzed the availability of natural gas under a number of system scenarios. Importantly, the study did not recommend or result in a statewide dual fuel capability mandate. The outcome of the Fuel Security Study is important, as it was performed as a result of these very questions during the 2016 DCR process. More weight should have been accorded to the outcome of the Fuel Security Study.

While the Consumer Stakeholders support maintaining system reliability, the relevant exercise remains one of identifying the most economic peaking plant that can be developed and it is not evident that there is a nexus between requiring dual fuel capability and improved system reliability. Requiring

[18] *Id.*

a peaking plant to include dual fuel capability at this time, when not required by rule or law, would have the effect of increasing capacity costs to consumers and having consumers pay for a benefit that may not be realized. For example, Cricket Valley Energy Center, LLC chose to build their 1,020 MW electric generating facility with only natural gas fuel burning capability.[19] Accordingly, because the current Demand Curves include capital costs associated with constructing a dual fuel proxy peaking unit for Load Zone G, Cricket Valley receives a capacity payment inclusive of a cost component that it did not act upon when building its generating facility.

The Consultants' DCR Report illustrates that there was no oil-fired generation in the September 2016 to August 2017 and September 2018 August 2019 timeframes. The Consultants' data shows that in the past three years, a dual fuel Load Zone G (Dutchess) unit without SCR ran only five less hours than a unit with SCR.[20] It appears that the Consultants assumed that a dual fuel unit in Load Zone G (Dutchess) would receive more EAS revenue from oil-burn than recent history actually indicates. Given this historical context, the Consumer Stakeholders submit that this further underscores the position advanced above that a developer would forgo the significant cost associated with installing SCR controls for a Zone G (Dutchess) unit because the investment is not worth the speculative possibility of modest additional revenue.

The insignificant number of hours that a Load Zone G (Dutchess) unit has historically chosen to run on oil also supports the argument that this unit should not be required to have dual fuel capability. If the peaking unit proves economic and does not inhibit air quality standards by having dual fuel capability with no SCR technology, the need for dual fuel is obviated and the unit should be able to run for even more hours as a gas-only synthetic minor source. Thus, the inclusion of dual fuel capability in

---

19 *See* NYISO 2020 Gold Book, Table III-2: Existing Generating Facilities.

20 *See* Consultant DCR Report, Appendix D.

Load Zone G in the Final Recommendations is inconsistent with (1) recent history (*i.e.*, Cricket Valley Energy Center); (2) the NYISO's own Fuel Study; (3) historical data showing nearly equal operating hours for units without SCR as compared to units with SCR; and (4) the clear tariff requirement that the lowest fixed cost viable unit be chosen as the proxy peaking unit for DCR purposes.

POINT III

THE BOARD SHOULD REJECT DEVIATING FROM A 20-YEAR AMORTIZATION PERIOD FOR BOTH THE H CLASS FRAME UNIT AND THE INFORMATIONAL BESS

The Consumer Stakeholders oppose NYISO Staff's acceptance of the Consultants' recommendation that it is necessary to reduce the amortization period for fossil-fueled plant technologies from 20 years to 17 years due to the Climate Leadership and Community Protection Act ("CLCPA"). The DCR Report acknowledges the fact that despite the CLCPA, newly-constructed fossil units would not necessarily need to retire in 2039, and instead could implement plant modifications to continue operations. Notwithstanding such acknowledgement, however, there has been no assessment of the technology options that would obviate the need for a reduction in the amortization period, such as flexible fuel or fully hydrogen combustion turbines. Such technologies exist in the market today and are already in use around the world. Reducing the amortization period has significant impacts on the total cost of capacity to consumers, and the Consultants and NYISO Staff failed to explore reasonable – if not likely – options that might avoid such impacts.

It is well established that because a fossil-fueled plant may not operate in its current configuration past a certain date does not mean it necessarily must retire. Consider the extensive history of fossil-fueled power plants not retiring and instead electing to retrofit with new technologies including water injection, SCRs, and other emissions control technologies to reduce carbon, SOx, NOx, and other pollutants. A fossil-fueled generation plant has numerous options to continue operation past the

proposed 2039 cut-off date by utilizing zero-carbon-fuel-capable technology, including retrofits to hydrogen capability that already exist today (and which likely will be more advanced and less costly by that cut-off date).

If a facility deems it appropriate and in its economic interests to retrofit in the future, such a cost would only be borne by the unit owner once. Since the retrofit need not occur until 18 years (or more) into the future, it is quite possible that the impact of such a retrofit on total costs today could result in a lower-cost option overall as compared to the proposal by the Consultants to reduce the amortization period length, which assumes a complete retirement of the proxy unit. The very fact that this option could result in a lower total cost requires the NYISO, by its own tariff, to have the Consultants evaluate the retrofit as an option for the "least-cost facility." Yet, no such analysis was performed, despite repeated requests from stakeholders.

The Final Recommendations provide that "[a]t this time, the NYISO believes that there is not sufficient clarity as to which alternative fuels or other operational modifications would qualify as "zero-emission" under the CLCPA, the cost of procuring those fuels for use in generating electricity, and the potential capital costs associate with retrofitting an existing plant to permit continued operation beyond December 31, 2039."[21]

The Consumer Stakeholders support the points raised by the Independent Market Monitoring Unit, Potomac Economics ("MMU"), in its comments in response the Consultants' Interim Draft Report. During the stakeholder meetings, the Consultants were asked to perform the model analysis under a scenario as described in MMU's comments: in place of a 17-year amortization period, keep the amortization at 20 years and instead eliminate energy revenues for the last three years of the projects'

[21] NYISO Draft Recommendations at 25.

life and retain only reserve revenues during those years.[22] No such analysis was performed by the Consultants.

Notwithstanding the Consultants' and NYISO Staff's persistence in assuming that there will be no fuel switching as a result of future adherence with the CLCPA, the Consumer Stakeholders submit that there have been options presented, in both comments and during the stakeholder working group meetings, that set forth potential alternatives to simply reducing the peaking unit's amortization period that were discarded without proper consideration. The Consumer Stakeholders request that the Board reconsider these requests and have the Consultants perform the analysis as described by the MMU.

As the Consumer Stakeholders have asserted numerous times in stakeholder working group meetings, there is ample information, both through the NYISO's own planning studies as well as independent projections by generation developers (inside and outside of New York), that there will be fuel switching in the future and not all existing dispatch sources will retire. Reducing the amortization period makes an assumption about the future topology of the electric system that is not supported.

Moreover, NYISO Staff's approach to reducing the amortization period is unsustainable. In the span of two DCR proceedings, this method would result in the amortization period dropping below ten years, leading to dramatic increases in cost for these units under evaluation, and to consumers. The NYISO Staff's recommendation is also inconsistent with the amortization assumptions that other regional transmission organizations use in setting demand curves. For example, both PJM and ISO-NE use a 20-year amortization period. The states within these regions (*e.g.*, Connecticut, Massachusetts) also have emissions reductions requirements similar to New York, yet 20 years continues to be used as the appropriate amortization parameter.

---

[22] Potomac Economics, *MMU Comments on Initial DCR Report* (August 5, 2020) at 5-7.

The NYISO Staff are also proposing to reduce the amortization period for BESS (battery energy storage systems). At the beginning of this DCR process, the Consultants recommended a 20-year amortization for the BESS being studied for informational purposes. Surprisingly, in the Consultants' last presentation on this issue before release of the Draft Report, they reduced the amortization period of storage facilities to 15 years. No compelling reasons for this change in amortization period have emerged since the Consultants' initial proposal. Indeed, all justifications presented by the Consultants were demonstrated to be inaccurate and/or inappropriate by stakeholders.

Furthermore, no analysis has been presented that quantifies the impact of this change on the total cost of storage technologies under consideration. Stakeholders were told verbally that this decision would not change the final results of the proxy unit decision, but no supporting data was provided confirming such statement. The change in amortization is significant – it increases costs associated with storage by up to 25%.

There is ample data available that indicates the BESS amortization period should remain at 20 years. All state-sponsored storage facilities, which constitute the vast majority of the near-term deployment of storage technologies in the NYCA (including resources contracted under the Large-Scale Renewable Program, Bulk Storage Incentive Program, and utility solicitations), have a contracted lifetime of 20 years, precisely the same length of time as the Consultants' initial amortization recommendation.

The Consumer Stakeholders are also concerned that using a 15-year amortization period for BESS would create an inaccurate precedent for the next DCR process. Accordingly, the Consumer Stakeholders oppose the unsubstantiated amortization period assumptions used by the Consultants and NYISO Staff for the proxy peaking unit and the informational BESS and request that such assumptions be modified by the Board to a 20-year amortization period.

POINT IV

THE BOARD SHOULD MODIFY THE DEMAND CURVES AND MODEL PEAKING PLANTS LOCATED IN LOAD ZONE C USING DIFFERENT GAS TRADING HUBS THAN THOSE RECOMMENDED BY NYISO STAFF

The NYISO Staff recommends a different gas trading hub selection for determining net EAS revenues for a peaking plant in Load Zone C than was utilized by the Consultants in the DCR Report. Instead, NYISO Staff recommends the use of TGP Zone 4 (200L) for Load Zone C for non-winter months (*i.e.*, April through November) and Niagara for the winter season (*i.e.*, December through March) instead of solely relying on TGP Zone 4 (200L) for all months of the year.[23] Shifting to relying on Niagara during the winter months results in increased cost impacts to consumers. As demonstrated below, a developer could procure gas at a lower cost than the gas hubs selected by NYISO Staff using the same rationale set forth in the Final Recommendations. Procuring cheaper gas than the marginal gas price that sets electric prices would ensure maximum profits for a new plant, and is a strategy that a peaking plant developer would likely pursue.

The Consultants used the following selection criteria to support its gas trading hub determination for peaking plants: (1) market dynamics (*e.g.*, the gas index should reflect gas prices consistent with locational based marginal prices ("LBMPs")); (2) liquidity (*e.g.*, the natural gas index should have historical trading data available); (3) geography (*e.g.*, the natural gas index should represent trades across lines that have an appropriate geographic relationship to potential peaking plant locations); and (4) precedent/continuity (*e.g.*, the natural gas index selected should reflect and be supported by information collected from multiple sources and used for similar NYISO planning and market evaluation purposes).[24]

---

[23] NYISO Final Recommendations at 4.

[24] DCR Report at 91.

The Consumer Stakeholders also believe that the geography criterion is the most important of these four criteria (the MMU and the New York Transmission Owners[25] ("TOs") also share this view). The DCR Report provided that the geography criterion indicates whether a pipeline has "an appropriate geographic relationship to potential peaking plant locations going forward, or otherwise ha[s] a logical nexus to prices at relevant delivery points."[26] The Services Tariff requires the NYISO to calculate "the likely projected annual Energy and Ancillary Services revenues of the peaking plant for the first Capability Year covered by the periodic review, net of the costs of producing such Energy and Ancillary Services."[27] Using a natural gas price index that does not provide that information goes against the Services Tariff requirements.

As previously advanced in stakeholder meetings, the Consumer Stakeholders supported using the Dominion North price index for a Zone C proxy peaking plant, as it satisfied the geography criteria and was a reasonable option for Zone C. However, the Consultants ultimately recommended the TGP Zone 4 (200L) price indices (plus a transportation adder) which the Consumer Stakeholders also viewed as reasonable. However, in its Final Recommendations, without discussion of the Niagara gas trading hub during stakeholder meetings or prior drafts, NYISO Staff adopted a proposal advanced by the MMU to use the Niagara price index in the CY winter months (December through March), while continuing to use TGP Zone 4 (200L) index for the remaining eight months of the year.

The use of the Niagara gas trading hub is concerning for several reasons. First, in performing its backcast analysis, it appears that the MMU did not use the Niagara price index in its backcast

---

[25] The TOs consist of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., Power Supply Long Island, and Rochester Gas and Electric Corporation.

[26] DCR Report at 91.

[27] Services Tariff, Section 5.14.1.2.2.

simulations. This is problematic as the backcast is meant to reflect actual natural gas costs. Second, there appears to be a lack of liquidity, which is one of the Consultants' four criteria for selecting the appropriate gas trading hub for the proxy peaking unit. Third, there does not appear to be sufficient publication of prices for Niagara, which raises issues with the trading hub's reliability. The TOs have performed a detailed analysis for each of these three issues, which the Consumer Stakeholders fully adopt and incorporate herein. In the interest of efficiency, the Consumer Stakeholders will not restate the analysis in these comments, and instead direct the Board to the TOs' comments to the Board.

The justifications offered by the NYISO Staff for incorporating the Niagara gas trading hub are similar justifications that the NYISO Staff used to argue against using the Dominion North price index, which would have resulted in a lower cost of gas to consumers. The Consumer Stakeholders urge the Board to modify the gas trading hub for Zone C to be consistent with the recommendations of the Consultants – TGP Zone 4 (200L). Or alternatively, adopt the Dominion North gas trading hub as it provides the lowest cost option for consumers.

POINT V

THE BOARD SHOULD MODIFY THE PROPOSED FINANCIAL PARAMETERS DOWNWARD

The Final Recommendations support the DCR Report, which recommends overstated and unsupported financial parameters. The Consumer Stakeholders recommend that the Board modify these parameters consistent with the lower cost of debt and cost of equity recommendations of 5.65% and 10.5%, respectively.

A. Cost of Debt

The Consultants' DCR Report recommends a 6.7% cost of debt for the proxy unit, which NYISO Staff accepted. This recommendation is partly based on data from four power companies (Calpine Corporation, NRG Energy Inc., Talen Energy Supply LLC and Vista Energy Corporation) from January

2017 until the present, "B" rated debt and current financial market conditions.[28] The DCR Report correctly notes that the outbreak of the novel coronavirus COVID-19 initially resulted in a higher cost of debt for "BB" and "B" rated securities. "BB" rated debt has fallen from just below 9% in the second half of March to 4.43% for July 2020, while "B" rated debt has experienced a similar decline from above 12% to 6.18% for July 2020. Additionally, NYISO Staff's 6.7% cost of debt recommendation reflects rates for "B" rated debt, even though only 28% of issuances were at the Bloomberg Composite Rate of "B" or lower. Therefore, it is appropriate to consider "BB" generic debt rates in determining the overall debt costs, especially since each of the four companies the Consultants cite to issued debt at ratings above "B" in 2019.

The Consumer Stakeholders also reviewed the three-year average spread between "BBB+" utility rated debt (4.13%) and "BB" corporate debt (4.75%), which was approximately 60 basis points. We recognize not all independent power producers will be rated "BB" and some will be rated lower. As a result, the Consumer Stakeholders recommend that adding 1.5x the spread between "BBB+" utility rated debt and "BB" corporate debt of 90 basis points to the average "BB" yield of 4.75%. This results in a debt rate of 5.65%, which is still below the recommended Consultants' 6.7% debt cost rate. Accordingly, the NYISO should adopt a lower cost of debt consistent with a rate of 5.65%. Without question, a 6.7% debt cost rate is excessive.

B. Cost of Equity

The nationwide average awarded return on equity ("ROE") for predominately regulated electric utilities is approximately 9.5% as reported by Regulatory Research Associates for 2020. Based upon the previously explained yield requirements of investors, the Consumer Stakeholders submit that a spread above the average authorized ROE for regulated electric utilities of 100 basis points (10.5%) would

[28] DCR Report at 64, fn. 37.

adequately compensate equity investors for the additional risks faced by a power producer. The recommended 13.0% ROE is excessive in light of objective market data. Accordingly, the Consumer Stakeholders urge the NYISO to lower the ROE consistent with a rate of 10.5%.

POINT VI

THE BOARD SHOULD ACCOUNT FOR THE ANOMALOUS IMPACTS OF THE COVID-19 PANDEMIC IN THIS DCR PROCESS

The Consultants utilized the previously-established approach of using the most recent three-year historic period of EAS prices to estimate projected EAS revenues for the proxy peaking unit. The Consultants presented the preliminary reference point prices in its Initial Draft Report based on forecasting revenues utilizing the period of September 2016 through August 2019. Due to the anomalous impact of the COVID-19 pandemic on energy demand in 2020, the Consumer Stakeholders submit that the NYISO should ask FERC for a one-time exception (or waiver) from its tariff-prescribed methodology for calculating the proxy unit net EAS revenues, and adopt the period of September 2016 through August 2019 as the final estimates for Capability Year 2021/2022 ICAP demand curves instead of the period September 2017 to August 2020.

The COVID-19 pandemic has had an unprecedented impact on a number of industries and behaviors, including energy usage and energy prices. Due to the closing of many businesses and the temporary elimination or decrease of a material portion of energy demand, the most recent data is anomalous. Attached to these comments as Appendix A are charts from the most recent NYISO Monthly Report that demonstrate the impact on load that the global pandemic has had in New York State. In some hours, the NYISO estimated that the actual load was nearly 14% lower than expected.

Importantly, the estimated impact of COVID-19 was evident for nearly half of the most recent year. The month of May 2020 had the largest impact on energy load and prices, however the impact

continued into the summer. While the NYISO data appears to show that the prices and loads have returned to normal levels, energy prices this year have been anomalous to anything we have seen in the past. As projected revenues in the DCR process for the proxy peaking unit are partly based on these prices, using anomalous prices could lead to forecasted revenues for the proxy unit that are much lower than would actually be expected over the life of the unit. Potentially even more troubling, if included, these anomalous prices would continue to remain in the calculations for the majority of the four-year demand curve period.

While using three years of historic prices to estimate revenues somewhat lessens the impact of this anomaly, including the anomalous September 2019 to August 2020 period of revenues would result in the proxy peaking plant receiving higher capacity prices than appropriate for the entirety of the four-year DCR period. New York State consumers have already suffered economically because of the pandemic in ways that cannot be controlled or quantified fully. Inflating capacity costs, and exposing consumers to additional, unwarranted costs is an outcome that should be avoided.

For these reasons, the Consumer Stakeholders strongly recommend that the Board adopt the preliminary forecasted revenues as final, and that the NYISO seek a one-time waiver from FERC to exclude the anomalous EAS revenues from the demand curves for Capability Year 2021/2022, the first year of the new 4-year DCR period. Under this period, during 2022/2023 Capability Year, the September 2016 to August 2017 period revenues would "roll off" and the September 2020 through August 2021 period revenues would "roll on."

CONCLUSION

For all the foregoing reasons, the Consumer Stakeholders urge the Board to: (1) reject the inclusion of SCR technology for peaking plants located in Load Zone G where such capability is not required and doing so does not have any impact on air quality; (2) reject the inclusion of dual fuel

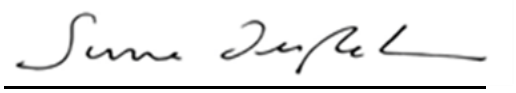
capability for peaking plants located in Load Zone G where such capability is not required; (3) reject deviating from a 20-year amortization period for both the H Class Frame unit and the informational battery energy storage system ("BESS"); (4) modify the Demand Curves and model peaking plants located in Load Zone C using different gas trading hubs; (5) modify the proposed financial parameters downward; and (6) modify the Demand Curve parameters for calculating net EAS revenues to account for the anomalous impacts of the COVID-19 global health pandemic.

Dated: October 9, 2020

Respectfully submitted,

/s/ Amanda De Vito Trinsey

Amanda De Vito Trinsey, Esq.
Michael B. Mager, Esq.
Couch White, LLP
Counsel for Multiple Intervenors
and the City of New York
540 Broadway, P.O. Box 22222
Albany, New York 12201-2222
Telephone: 518-426-4600
Facsimile: 518-426-0376
E-mail: adevito@couchwhite.com
mmager@couchwhite.com



Susanne DesRoches
Deputy Director, Infrastructure Policy
NYC Mayor's Office of
Recovery and Resiliency
Mayor's Office of Sustainability
253 Broadway, 14th Floor
New York, New York 10007
Tel: (212) 788-7554
E-mail:sdesroches@cityhall.nyc.gov

/s/ Bridget M. Woebbe

Bridget M. Woebbe
Assistant Counsel
N.Y. STATE
DEPARTMENT OF PUBLIC SERVICE
Three Empire State Plaza
Albany, NY 12223
Telephone: 518-473-6176
Email: Bridget.Woebbe@dps.ny.gov

/s/ Sean Ewart

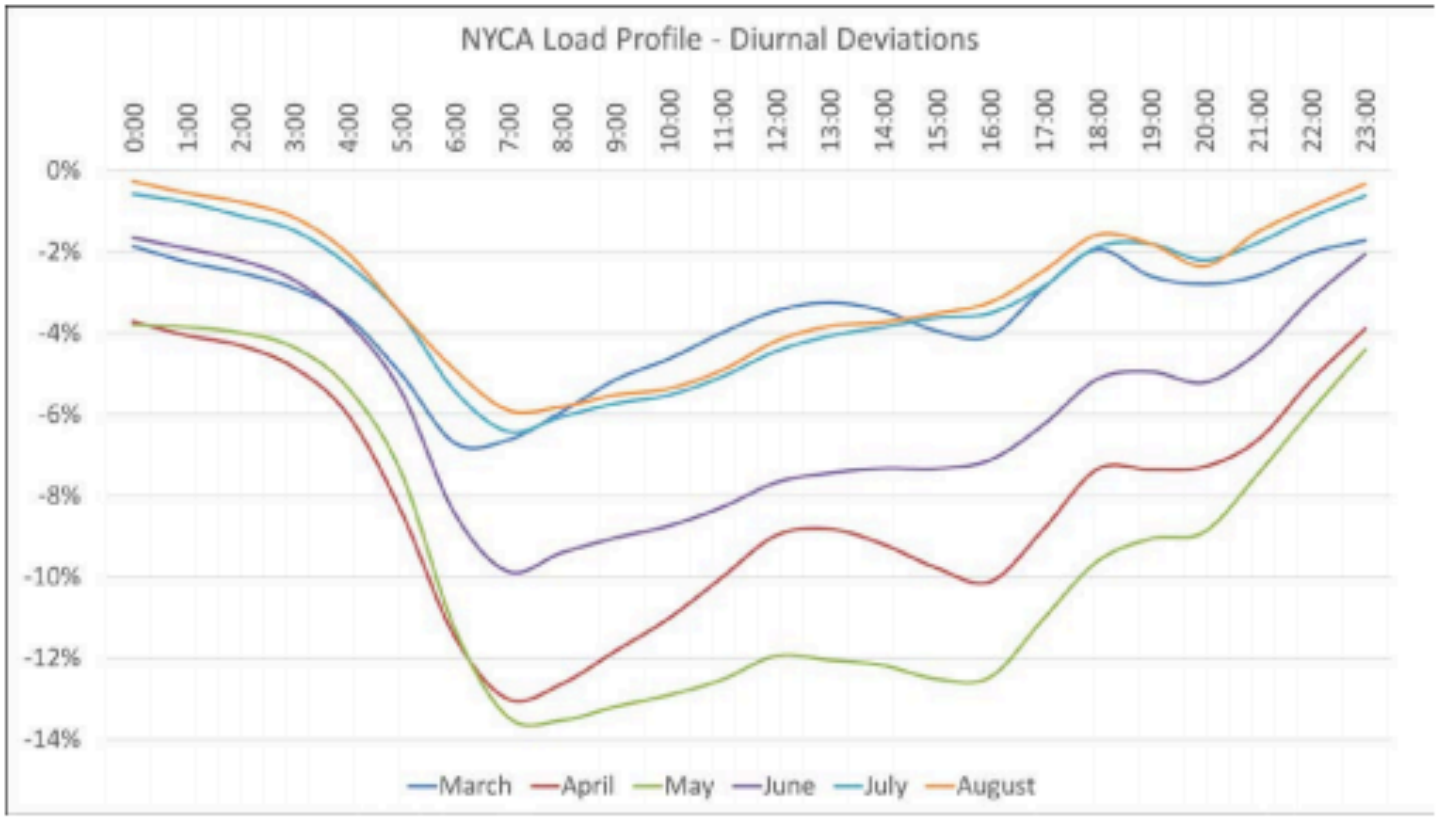
Sean Ewart
Director of Regulatory Affairs
Consumer Power Advocates
535 Main Street
Allenhurst, New Jersey 07711
Telephone: 518-728-5781
E-mail: sean.ewart@luthin.com

APPENDIX A

COVID-19: Estimated Load Impacts

Consumer Stakeholders
Appendix A

NYCA Hourly Impacts versus Expected*



* Includes Weekdays and Weekends

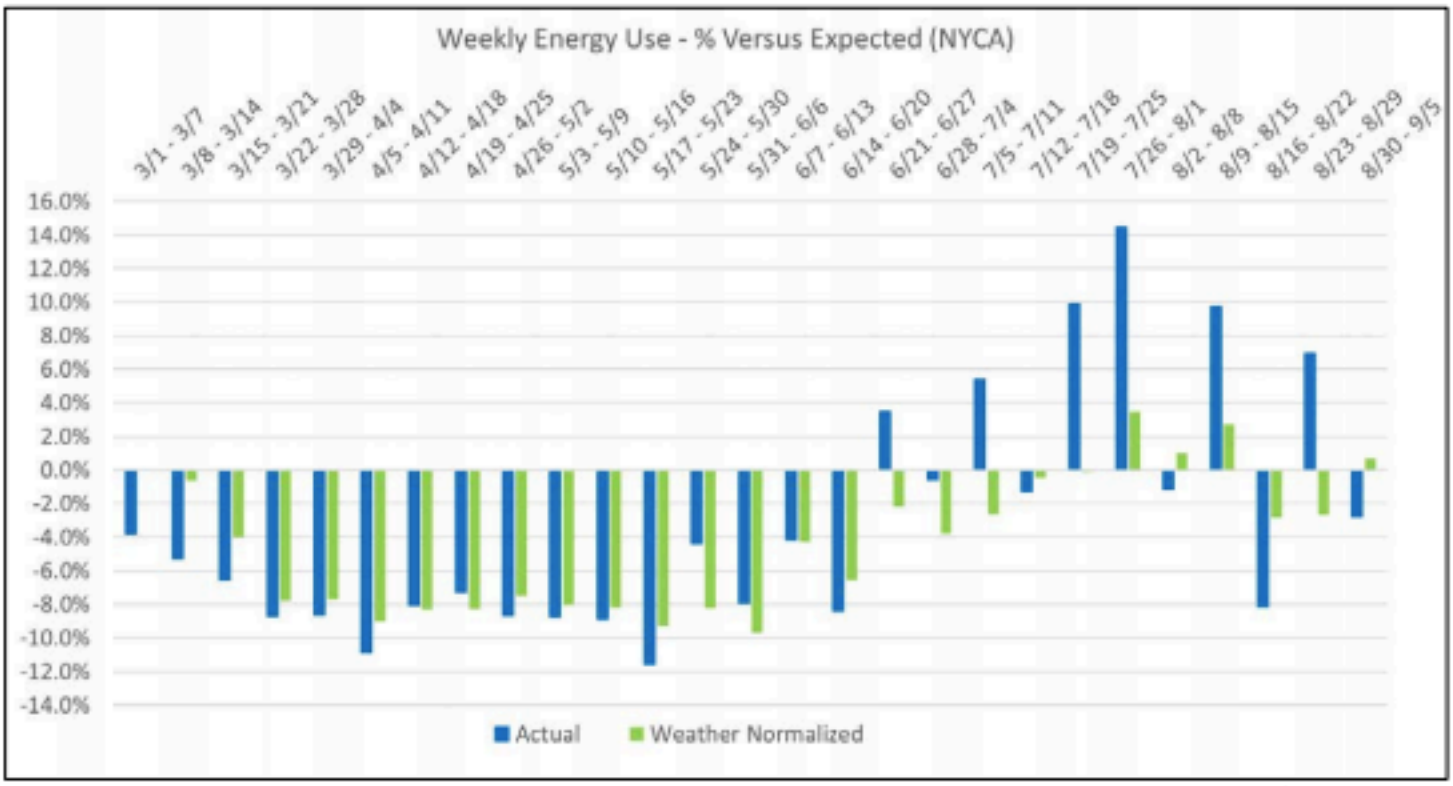
Percent Deviations

Hour	March	April	May	June	July	August
0:00	-2%	-4%	-4%	-2%	-1%	0%
1:00	-2%	-4%	-4%	-2%	-1%	-1%
2:00	-3%	-4%	-4%	-2%	-1%	-1%
3:00	-3%	-5%	-4%	-3%	-1%	-1%
4:00	-4%	-6%	-5%	-4%	-2%	-2%
5:00	-5%	-8%	-7%	-5%	-4%	-4%
6:00	-7%	-11%	-11%	-8%	-5%	-5%
7:00	-7%	-13%	-13%	-10%	-6%	-6%
8:00	-6%	-13%	-14%	-9%	-6%	-6%
9:00	-5%	-12%	-13%	-9%	-6%	-6%
10:00	-5%	-11%	-13%	-9%	-6%	-5%
11:00	-4%	-10%	-13%	-8%	-5%	-5%
12:00	-3%	-9%	-12%	-8%	-4%	-4%
13:00	-3%	-9%	-12%	-7%	-4%	-4%
14:00	-3%	-9%	-12%	-7%	-4%	-4%
15:00	-4%	-10%	-13%	-7%	-4%	-4%
16:00	-4%	-10%	-12%	-7%	-4%	-3%
17:00	-3%	-9%	-11%	-6%	-3%	-2%
18:00	-2%	-7%	-10%	-5%	-2%	-2%
19:00	-3%	-7%	-9%	-5%	-2%	-2%
20:00	-3%	-7%	-9%	-5%	-2%	-2%
21:00	-3%	-7%	-7%	-4%	-2%	-2%
22:00	-2%	-5%	-6%	-3%	-1%	-1%
23:00	-2%	-4%	-4%	-2%	-1%	0%

Peak Hour

COVID-19: Estimated Load Impacts

NYCA Weekly Energy Impacts versus Expected*



*** Green bars indicate COVID-19 impact**

Regional Energy Impacts