

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

NEW YORK INDEPENDENT SYSTEM) Docket No. ER08-283-000
OPERATOR, INC.)

**MOTION TO INTERVENE AND COMMENTS
OF THE
NEW YORK STATE CONSUMER PROTECTION BOARD**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §§ 385.212 and 385.214, the New York State Consumer Protection Board (“NYSCPB”) files this Motion to Intervene and Comment in response to the New York Independent System Operator’s (“NYISO”) November 30, 2007 filing to establish new installed capacity (“ICAP”) Demand Curves for the 2008/2009, 2009/2010 and 2010/2011 capability years.¹

Copies of all documents and correspondence should be sent to:

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¹ *New York Independent System Operator, Inc.*, Tariff Revisions to Implement Revised ICAP Demand Curves for Capability Years 2008/2009, 2009/2010 and 2010/2011, Docket No. ER08-283-000 (“NYISO Filing”).

MOTION TO INTERVENE AND INTEREST OF THE NEW YORK STATE CONSUMER PROTECTION BOARD

The NYSCPB is an agency in the Executive Department of New York State government charged with "... representing the interests of consumers of the state before federal, state and local administrative and regulatory agencies."² No other party in this proceeding is statutorily charged with the responsibility of advocating on behalf of New York State consumers. Further, pursuant to an Executive Order, the NYSCPB is authorized to:

Act as an advocate before other state and federal entities by:

- (a) representing the interests of consumers in proceedings of federal, state and local administrative and regulatory agencies where the State Director deems the proceeding to affect the interest of consumers.³

The NYSCPB has also been designated as the "Statewide Consumer Advocate" at the NYISO, representing the interests of residential, small business and farm electricity users throughout the State.

The NYSCPB is an active participant in the electric industry on both the federal and state levels. The Agency fully participated in the NYISO's stakeholder process leading to the development of new ICAP Demand Curves for the 2008/2009, 2009/2010 and 2010/2011 capability years and approved by the NYISO Board of Directors, both at the working group level and at the Business Issues and Management Committees.

The NYISO's November 30, 2007 filing would impact electricity prices in the NYISO-administrated markets and thereby affect the interest of consumers.

² New York Executive Law § 553(2)(d)

³ New York State Executive Order No. 45, issued November 13, 1996.

Consumers represented by the NYSCPБ, have a direct interest in ensuring that ICAP prices in the NYISO's markets are just and reasonable. Further, no party other than the NYSCPБ is authorized by State law to represent the interests of New York consumers before federal regulatory agencies such as the Commission, or has been designated as the "Statewide Consumer Advocate" at the NYISO, representing residential, small business and farm electricity users throughout the State. For these reasons, the NYSCPБ's intervention would serve the public interest in this proceeding.

The NYSCPБ respectfully requests Intervener status in this proceeding and urges the Commission to approve the modifications discussed herein.

STATEMENT OF POSITION

The NYSCPB commends the NYISO for a thorough and comprehensive process in updating the ICAP Demand Curves and allowing market participants to comment and voice their concerns during its development. In particular, the NYSCPB supports the NYISO's choice of technology in developing the New York City and Long Island Demand Curves based on the LMS-100 peaking unit, as opposed to the LM6000 used in the last Demand Curve update. As the NYISO Filing noted, the LMS -100 has a lower fixed cost on a \$/kW basis as compared to the LM 6000. While some suppliers contend that the LMS-100 does not have sufficient actual operating experience, the NYISO correctly points out that the major components of the LMS-100 technology are based on GE Frame 6 and LM6000 designs that have been in actual operation for some time. For instance, the gas turbine used in the LMS-100 has over 100 million hours of operating experience in aircraft engines and other industrial applications.⁴ Moreover, the NYISO staff report indicated that 13 LMS-100 units have already been sold in North America with published reports indicating additional units planned in other locations.⁵ We also agree with the NYISO independent Market Advisor that New York City and Long Island Demand Curve reference values based on the older LM6000 technology would lead to sharp increases that would not accurately represent the proper cost of new entry, given the new technology represented by the LMS-100 technology.⁶

⁴ NYISO Filing at 5.

⁵ NYISO staff report to the NYISO Board containing the ICAP Demand Curves for the Capability Years 2008/09 through 2010/11, Submitted August 31, 2007, as amended on October 5, 2007 at 7-8 ("NYISO Report").

⁶ Attachment 3, Affidavit of David B. Patton, Ph.D. accompanying the NYISO Filing, November 30, 2007 at ¶ 11 ("Patton Affidavit").

The NYSCPB also supports the removal from the NYISO Report the risk factor that developers may only recoup 50% of required capacity revenue. As reported by Dr. Patton, this factor was premised on the risk that uneconomic entry would undermine market price signals.⁷ However, as the NYISO Filing states, Demand Curves should be developed based on the assumption that mitigation will be applied to uneconomic entry and that capacity markets will function properly. Incorporating this risk in developing Demand Curves would be speculative and contrary to the intent of mitigation.⁸ The New York State Department of Public Service (“NYDPS”) also supported the removal of this risk factor from the Demand Curve analysis.

The NYISO Report in developing the Demand Curves used excess capacity levels of 104 percent of installed capacity requirement in Long Island and New York City and 102.8 percent of installed capacity requirement for the New York Control Area (“NYCA”).⁹ Several market participants advocated for a lower excess capacity. In particular, NYDPS recommended an average excess capacity level of 1 percent for NYCA and 3 percent of New York City and Long Island. The NYISO Board reduced the assumed level of excess capacity in NYCA from 2.8 percent in the NYISO Report to 1.5 percent. This resulted in lowering the reference value for the NYCA Demand Curve from \$92.11 to \$83.01. It did not change the assumed excess capacity for New York City and Long Island and kept it at 104 percent of the installed capacity requirement. The NYSCPB commends the NYISO Board for moving in the right direction with regards to the NYCA assumed excess capacity. However, we urge the Commission to further

⁷ Id., at ¶14.

⁸ NYISO Filing at 10.

⁹ Id., at 12.

reduce the excess capacity to 1 percent as recommended by the NYDPS. We further request that the Commission also reduce the 104 percent excess capacity level assumed for New York City and Long Island to 103 percent as recommended by the NYDPS.

The NYISO has estimated expected energy and ancillary services revenues of \$9.36/kW-year for the NYCA. This is approximately \$11 lower than as compared to the last Demand Curve update.¹⁰ In developing this estimate, the NYISO's consultants used historic data from May 1, 2003 through December 31, 2005 to benchmark the operation of the NYISO system. We agree with the New York Transmission Owners, Multiple Intervenors, the New York Municipal Power Agency and NYDPS that the net revenue offsets for NYCA are underestimated for several reasons.

First, the NYISO relied on a historical period when substantial excess capacity existed and prices were too low to support investment in new gas fired peakers. However, those historic prices are not the proper basis for estimating what peakers are expected to earn in a tight market. The NYSCPB agrees with the NYDPS that when the upstate market is tight, the net energy and ancillary services revenues for an upstate peaker should be closer to the New York City net energy and ancillary services revenues for comparable plants. Second, we agree with the Transmission Owners that the proposed ICAP Demand Curves should be based on estimated energy and ancillary revenues for the three year period covered by the update and not rely on projected energy and ancillary services revenues from outside of that period. The result of NYISO's use of data over the 30-year expected life of the proxy plant is to reduce the revenues that a new entrant is assumed to earn from energy and ancillary services,

¹⁰ NYISO Filing at 16.

thus increasing the Demand Curves and consumer prices. Third, the NYISO's use of an econometric model to estimate energy and ancillary service revenues assumes a linear relationship between capacity levels and energy prices when such relationship does not exist. Finally, the NYSCPБ agrees with Multiple Intervenors that the return on equity ("ROE") should be calculated using the Commission's Discounted Cash Flow ("DCF") methodology rather than the Capital Asset Pricing Model ("CAPM") used by the NYISO.

The NYISO Filing used an annual inflation adjustment factor of 7.8% to adjust the Demand Curve in the second and third year of the reset period.¹¹ The 7.8% escalation factor is based on a 5.1% projected average rate of change in the deflated Handy-Whitman Index for power plant construction over the last two years adjusted for the overall inflation rate of 2.7%. The annual adjustment used by the NYISO assumes that recent short-term increases in cost of power plant construction over the past two years will continue into the future. However, Transmission Owners and National Grid have shown based on longer-term data that the inflation-adjusted cost of power plant construction has remained relatively constant. Further the NYISO has failed to provide evidence that the inflation-adjusted cost of power plant construction will continue to rise at rates experienced over the past two years. The NYISO's escalation factor of 7.8% based on data over the last two years is unreasonable, and should not be relied upon by the Commission. We recommend instead the approach advocated by the NYDPS of using the average annual growth rate for the Handy-Whitman Index over the last 33

¹¹ NYISO Filing at 19-21.

years of .2% and adding to it general inflation factor of 2.7% for an overall escalation rate of 2.9 percent.¹²

Similarly, the NYISO Report recommends that the LMS-100 equipment cost used to calculate the New York City and Long Island Demand Curves be updated through May 2008, which is the beginning of the Capability Period for the proposed ICAP Demand Curves.¹³ This assumes that the cost of the LMS-100 will continue to increase at the rapid rate indicated by recent short-term data, while other factors will remain constant. The capital cost of the LMS100 peaking technology was updated on October 5, 2007 to reflect the most recent capital cost estimates from the manufacturer. However, no other updates that impact reference values for the ICAP Demand Curve were reflected in the calculation. For instance, the Federal Reserve has reduced short-term interest rates several times over the past few months and this would have an impact on the cost of equity used by the NYISO. Updating some inputs while ignoring others is unfair and it provides for an incomplete and inconsistent set of data. The NYSCPB recommends that the Commission reject the NYISO's proposal to update the LMS-100 plant costs through May 2008.

We support the NYISO for making the right technology choice for New York City and Long Island and in dropping the risk factor based on the assumption that generators might only recoup 50 percent of targeted capacity revenues. Further, the NYISO has moved in the right direction by reducing the level of assumed excess capacity for NYCA. However, we urge the Commission to further reduce the assumed excess capacity for NYCA to 1 percent and for New York City and Long Island from

¹² Comments of the NYDPS to the NYISO Board, October 1, 2007 at 15.

¹³ NYISO Filing at 11.

104% to 103% as recommended by the NYDPS. We also recommend that the Commission substantially revise upwards the net energy and ancillary services revenues estimated by the NYISO for NYCA. Further the Commission should reject the NYISO's 7.8 percent escalation factor for years two and three of the ICAP Demand Curve reset and instead use an escalation factor of 2.9 percent as discussed above. Finally, the NYSCPB recommends that the Commission reject the NYISO's recommendation to use projected cost increases through May 2008 for the LMS-100 equipment cost used to calculate the New York City and Long Island Demand Curves.

CONCLUSION

The New York State Consumer Protection Board requests that the Commission permit it to intervene in this proceeding. Further, it recommends that modifications be made to the ICAP Demand Curves as proposed herein.

Respectfully submitted,

/s/

Mindy A. Bockstein
Chairperson and Executive Director

Douglas W. Elfner
Director of Utility Intervention

Tariq N. Niazi
Chief Economist

Dated: December 31, 2007
Albany, New York