136 FERC ¶ 61,192
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

New York Independent System Operator, Inc. Docket No. ER11-2224-004
ER11-2224-005
ER11-2224-009

ORDER ON COMPLIANCE FILINGS

(Issued September 15, 2011)

1. On March 29, 2011, in Docket No. ER11-2224-004, as supplemented on March 30, 2011, and corrected in an errata filing in Docket No. ER11-2224-005, the New York Independent System Operator, Inc. (NYISO) submitted its filing to comply with the Commission's January 28, 2011 order[1] on NYISO's proposed Installed Capacity (ICAP) demand curves for capability years 2011/2012, 2012/2013, and 2013/2014. On June 20, 2011, in Docket No. ER11-2224-009, NYISO submitted its filing to comply with the May 19, 2011 order on rehearing of the January 28, 2011 Order.[2] The filings contain both further support for certain proposals as well as revisions to section 5.14.1.2 of the NYISO Market Administration and Control Area Services Tariff (Services Tariff) to reflect revised ICAP Demand Curve rates and tariff provisions to comply with the Commission directives in this proceeding.

2. In this order, the Commission accepts NYISO's June 20, 2011 tariff record filing in Docket No. ER11-2224-009, to be effective the date of this order subject to condition and directs a further compliance filing within 10 days of the date of this order. In addition, the Commission rejects the March 29, 2011 tariff records filed in Docket Nos. ER11-2224-004 and 005, respectively, as superseded and moot.

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[1] *New York Indep. Sys. Operator, Inc.*, 134 FERC ¶ 61,058 (2011) (January 28, 2011 Order).

[2] *New York Indep. Sys. Operator, Inc.*, 135 FERC ¶ 61,170 (2011) (May 19, 2011 Order), *reh'g pending*.

I. Background

3. NYISO administers the ICAP monthly spot market auction, which uses NYISO-determined annual demand curves for each of the three NYISO ICAP zones: the New York Control Area (NYCA or rest-of-state), New York City (NYC), and Long Island (LI). Section 5.14.1.2 of the Services Tariff reflects parameters that, together, define the demand curves for each capacity zone that, in turn, are used to establish the ICAP rate in each such auction. Section 5.14.1.2 of the Services Tariff requires that NYISO hire a consultant (Consultant) and perform a triennial review to determine whether the parameters of the ICAP demand curves should be adjusted and to file revised ICAP demand curve rates with the Commission. Among the parameters determined by this process is the cost of new entry (CONE) which the tariff defines as the estimated localized levelized cost per kW-month to install a new proxy peaking unit, net of energy and ancillary services revenues (net CONE). Net CONE is used as an input in establishing the demand curve's reference point, i.e., the price at 100 percent of the minimum ICAP requirement.

4. On November 30, 2010, NYISO filed proposed revisions to its Services Tariff to implement revised ICAP demand curves for capability years 2011/2012, 2012/2013, and 2013/2014.[3] NYISO proposed to revise certain cost components and parameters of CONE to establish the revised ICAP demand curve prices. In the January 28, 2011 Order, the Commission conditionally accepted the proposed revised rates and suspended their effectiveness to become effective the earlier of June 28, 2011, or a date set by a subsequent Commission order in this proceeding. The Commission directed NYISO to include System Deliverability Upgrade costs (deliverability costs) in the calculation of net CONE, to provide additional support for its assumption of interconnection costs for the proxy peaking unit in NYC, to remove its assumption of property tax abatement in the calculation of the NYC CONE, to either support proposed levels of excess capacity or provide support for an alternate proposal, and to revise other components of the analysis to use the level of excess capacity consistently. On March 9, 2011, the Commission denied rehearing of the January 28, 2011 Order on the issue of the suspension of the proposed demand curve rates.[4] The Commission found the language in the January 28, 2011 Order to be clear and unambiguous and upheld the suspension period provided in

[3] NYISO's capability year consists of the summer capability period and the winter capability period that run from May 1 through October 31 and November 1 through April 30.

[4] *New York Indep. Sys. Operator*, Inc., 134 FERC ¶ 61,178 (2011) (March 9, 2011 Order).

the January 28, 2011 Order, The Commission reiterated that the currently effective demand curves would remain in effect until superseded.

5. On April 4, 2011, in light of the facts that the proposed demand curve prices for the 2011/2012 period were suspended and the tariff provided that the existing 2010/2011 demand curve prices terminate on May 1, 2011, the Commission granted waiver and accepted NYISO's March 28, 2011 tariff record filing to establish that the then-effective 2010/2011 ICAP demand curves would remain in effect on and after May 1, 2011, until a date set by Commission order.[5] In the May 19, 2011 Order, the Commission granted in part and denied in part rehearing of the January 28, 2011 Order, including granting rehearing to require NYISO to reflect the NYC property tax abatement in the calculation of net CONE for the NYC ICAP zone. The May 19, 2011 Order also denied clarification and rehearing of the March 9, 2011 Order.

II. NYISO's Compliance Filings

A. Notice of Filing and Responsive Pleadings

6. Notice of NYISO's March 29, 2011 filing, as supplemented on March 30, 2011, was published in the *Federal Register*, 76 Fed. Reg. 19,339 (2011), with comments due on or before April, 20, 2011.

7. New York City Suppliers[6] and Independent Power Producers of New York, Inc. (IPPNY)[7] filed protests. Multiple Intervenors,[8] the City of New York, and the Utility Intervention Unit of the New York State Department of State's Division of Consumer Protection (collectively, Consumer Parties) filed comments.

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[5] *New York Indep. Sys. Operator*, Inc., 135 FERC ¶ 61,002 (2011) (April 4, 2011 Order).

[6] For purposes of this proceeding, the New York City Suppliers are: Astoria Generating Company, L.P., the NRG Companies, and TC Ravenswood, LLC.

[7] IPPNY is a not-for-profit trade association with more than 100 members involved in the development and operation of electric generating facilities and the marketing and sale of electric power in New York.

[8] 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, primarily in the rest-of-state capacity region.

8. NYISO, New York Transmission Owners (NYTOs)[9] and the City of New York each filed an answer to the protests. IPPNY filed an answer to the NYTOs' answer.

9. Notice of NYISO's June 20, 2011 filing was published in the *Federal Register*, 76 Fed. Reg. 37,803 (2011), with comments due on or before July 11, 2011. New York City Suppliers filed a protest. NYTOs filed a motion to accept a late-filed protest and a protest.

B. Procedural Matters

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process. We will also accept New York Transmission Owners' out-of-time protest given that the answer helps us in the disposition of issues and will not harm other parties in the proceeding.

C. Substantive Matters

1. Deliverability Costs

11. Pursuant to section 5.12.1 of the Services Tariff and section 25 of Attachment S of the NYISO Open Access Transmission Tariff (OATT), a new generator must be determined to be deliverable throughout the capacity zone in which it interconnects in order to participate in the capacity market. If the new generator is determined to not be deliverable, the developer is responsible for the cost of System Deliverability Upgrades necessary to achieve full deliverability as allocated pursuant to the provisions of the Attachment S. The deliverability requirements were not yet established in the NYISO OATT during the prior demand curve reset.

12. In its November 30, 2010 filing, NYISO proposed that System Deliverability Upgrade costs be excluded from the CONE of the rest-of-state (NYCA) proxy unit. NYISO argued that including these costs would suppress the desired economic signals because the resultant increased value of net CONE would effectively shift the deliverability costs to capacity buyers, would provide a windfall to existing generators

[9] The New York Transmission Owners are: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

that are grandfathered from deliverability requirements, and would skew retirement signals. In the January 28, 2011 Order, the Commission disagreed, finding that deliverability costs are among the "current localized levelized embedded cost of a new peaking unit," i.e., CONE, and directed NYISO to perform a well-supported deliverability analysis and to revise its demand curve for NYCA and, if necessary, for NYC and LI, to reflect the estimated cost of System Deliverability Upgrades under a level of excess capacity that slightly exceeds the minimum requirement.[10] The Commission also directed NYISO to revise its net CONE computations to include the reasonably ascertainable value of Transmission Congestion Contracts associated with System Deliverability Upgrades and to include this as an offset in the determination of the revised demand curves.[11]

a. NYISO's March 29, 2011 Filing

13. In its March 29, 2011 filing, NYISO states that it performed the deliverability analysis (Deliverability Test) directed by the Commission in the January 28, 2011 Order, basing the test on existing Attachment S Class Year[12] study procedures and limiting changes to those necessitated by the January 28, 2011 Order, including the requirement to use consistent excess capacity levels.

14. NYISO explains that the methodology for the Deliverability Test is conceptually and procedurally similar to the deliverability analysis performed in its annual Attachment S Class Year 2009 deliverability study. NYISO states that the Deliverability Test showed that the capacity of the proxy peaking unit would be deliverable for the rest-of state, NYC, and LI regions. NYISO contrasts this to the Attachment S Class Year 2009 deliverability study for the rest-of-state capacity region (NYCA) at the upstate New York-southeast New York (UPNY-SENY) interface where 1,586 MW of upstate capacity

[10] January 28, 2011 Order, 134 FERC ¶ 61,058 at P 53, 62.

[11] *Id*. P 63.

[12] A Class Year is the group of generation and merchant transmission projects included in the Annual Transmission and Reliability Assessment performed in accordance with the NYISO interconnection process. The Class Year deliverability study, performed pursuant to Attachment S of the NYISO OATT, establishes a base case that includes existing generation and projects that have completed the Class Year process and accepted their respective System Deliverability Upgrade cost allocations (if they have any).

was not deliverable.[13] NYISO adds that because, under its Deliverability Test, the peaking plants in each region were determined to be deliverable, the inclusion of System Deliverability Upgrades is not needed. As a result, NYISO is not proposing any changes to the ICAP demand curves to reflect deliverability costs; and, according to NYISO, because there were no System Deliverability Upgrade costs, there is no need to include in the ICAP demand curves offsets related to Transmission Congestion Contracts.

15. NYISO adds that the Deliverability Test was performed on the study case reflecting the excess capacity levels. NYISO explains that the study case for the Deliverability Test was created by adding capacity to the base case equal to the excess capacity level that NYISO and the MMU are proposing in this compliance filing, i.e., 2.3 percent for NYC, 4.1 percent for LI, and 1.1 percent for NYCA.[14]

16. NYISO also states that it performed additional sensitivities recommended by stakeholders and that capacity was delivered under these conditions as well. These included using alternate interconnection points in NYC and using the levels of excess capacity reflected in the existing demand curve rates.

b. Responsive Pleadings

17. New York City Suppliers and IPPNY urge the Commission to require that NYISO, in future reset processes: (1) address the System Deliverability Upgrade and the System Upgrade Facility analyses in a more defined coordinated fashion; (2) provide the assumptions and the underlying analyses to support its findings for stakeholder review as part of the reset process; and (3) perform the System Deliverability Upgrade analysis in a manner that is consistent with sites where the proxy plant could feasibly be built or, alternatively, that accounts for all of the costs of connecting at a remote interconnection point. IPPNY adds that the Commission should require, in future reset processes, the consistent representation of whether the New York State Electric & Gas Corporation (NYSEG) transmission right represents firm capacity in both NYISO's reliability

[13] NYISO states that this is because the Deliverability Test was performed at a reduced level of ICAP (i.e., the assumed levels of excess capacity above the minimum requirement) compared with the actual levels modeled under the Attachment S process. NYISO March 29, 2011 Filing, Cory Aff. ¶ 27. *See* January 28, 2011 Order, 134 FERC ¶ 61,058 at P 54-55 for a discussion of the deliverability issue at NYISO internal interfaces.

[14] NYISO March 29, 2011 Filing at 7, Corey Aff. ¶¶ 18-19.

planning process and its Demand Curve System Deliverability Upgrade analysis. Consumer Parties assert that modifications to the Services Tariff to incorporate the methodology used in the compliance filing for assessing the applicability of System Deliverability Upgrade costs are not warranted.

c. NYISO's Answer

18. NYISO requests that the Commission reject IPPNY's and the New York City Suppliers' request for further guidance on the appropriate methodology and stakeholder procedures for developing NYISO's estimate of System Deliverability Upgrade costs in future reset proceedings. NYISO asserts that the suggestions regarding the methodology and/or the procedures are beyond the scope of review of the instant filing and are unsupported. NYISO further argues that any study methodology needs to account for changes in NYISO's market rules that may be in place at the time of the next ICAP demand curve reset. NYISO explains that a methodology established now may be inconsistent with the processes and procedures that will be in place under Attachment S of NYISO's tariff at the time of the next ICAP demand curve reset. Finally, "locking in" a specific methodology now for future use would prevent NYISO and its Consultant from vetting their approach to future analyses with stakeholders based on the then-current deliverability rules.

19. NYISO also states that the Commission should reject IPPNY's proposal regarding the use of actual site-specific costs. NYISO states that while it has used data associated with specific locations in the Attachment S Class Year methodology to analyze whether a System Deliverability Upgrade is required in the class year process, it may be appropriate to use another methodology in the future.

20. NYISO also responds to IPPNY's request regarding NYSEG's existing transmission right that represents firm capacity. NYISO states that IPPNY's proposal ignores the fact that its reliability planning process in OATT Attachment S section 25.7.11 requires NYISO to use the NYSEG right as firm capacity and, in order to determine whether System Deliverability Upgrades are required and thus, should be accounted for in the Demand Curve, the analysis needs to be consistent with Attachment S. In addition, NYISO states that IPPNY's proposal would require NYSEG to disclose to all stakeholders whether it had a long term contract, instead of NYSEG's current requirement that it notify NYISO, before the start of each capability period, of the megawatts of its existing transmission right.

d. Commission Determination

21. We accept NYISO's proposal with respect to System Deliverability Upgrade costs and find that it complies with the Commission's directive in the January 28, 2011 Order requiring NYISO to perform a supporting analysis. We find that NYISO performed its analysis using a level of excess capacity consistent with that used in other aspects of the

demand curve reset analysis, as directed by the Commission, which we accept elsewhere in this order, and calculated the resulting headroom on the transmission system employing a reasonable methodology based on the existing tariff's Attachment S. We find that it is appropriate for NYISO to estimate the level of deliverability costs under these conditions of excess capacity, because the purpose of the demand curve is to create economic incentives for suppliers of capacity to move the aggregate level of capacity in the market toward this target level of capacity, i.e. the minimum capacity requirement plus the assumed level of excess. Since deliverability costs need not be incurred when aggregate capacity is at the target level, including these costs in net CONE would unreasonably inflate the price of the demand curve at the target capacity level, thereby unreasonably encouraging capacity to exceed the target level. Therefore, the results of the Deliverability Test for demand curve purposes will necessarily differ from the conclusions reached in the Attachment S Class Year process for determining interconnection costs. We find that NYISO has performed an appropriate analysis for deliverability and has reasonably concluded that the addition of the proxy peaking plants in each of the capacity zones would be deliverable without requiring upgrades to the transmission system when this level of excess capacity exists in the market. Accordingly, for this demand curve reset, we agree with NYISO that it is not necessary to add deliverability costs to net CONE and as a result, there will also be no offsets related to Transmission Congestion Contracts.

22. Additionally, we reject the request of IPPNY and the New York City Suppliers that NYISO be directed to include specific assumptions and methods of analysis to be used in future demand curve reset processes. We make this finding on the basis that the triennial ICAP demand curve reset process described in section 5.14.1.2 of the Services Tariff provides for a nearly year-long stakeholder process where such assumptions are to be developed and debated; and this process serves stakeholders' interests in the same manner as they are served in the development of the numerous other components of the demand curve reset analysis. We remind NYISO however, that as part of this process, all assumptions for the System Deliverability Cost analysis must be presented to stakeholders as a routine part of supporting NYISO's future demand curve reset processes.

2. NYC Property Tax Abatement

23. In its November 30, 2010 filing, NYISO proposed NYC demand curves that assumed full NYC property tax abatement for the NYC peaking unit. In the January 28, 2011 Order, the Commission found that the NYISO proposal to assume full tax abatement for the NYC peaking unit was not just and reasonable and did not accept it. The Commission reasoned that property taxes are legitimate costs that are normally included in the cost of new entry, that the NYC tax abatement program in this case was discretionary and no longer an as-of-right program, and that it was unclear whether the LMS 100 combustion turbine proxy unit used to calculate net CONE for NYC demand

curve rates would meet the specific requirements for tax abatement under the new program. The Commission directed NYISO to exclude tax abatement from the calculation of net CONE and to file the revised NYC demand curves reflecting that recalculation.[15]

24. However, in the May 19, 2011 Order, the Commission granted rehearing on the tax abatement ruling after recent developments ameliorated its concerns. Specifically, on May 18, 2011, New York State enacted a new law that returned the NYC tax abatement program to an as-of-right program and modified the eligibility criteria, thereby addressing the concerns articulated by the Commission when it rejected NYISO's proposal in the January 28, 2011 Order. The Commission directed NYISO to reflect the effect of full NYC tax abatement as applicable for the peaking unit installed in NYC and revise the demand curve rates accordingly.[16]

a. NYISO's Filings

25. In the March 29, 2011 compliance filing, NYISO proposed to revise section 5.14.2.1 of its Services Tariff to reflect revised demand curves rates that were re-calculated to include NYC property tax in the calculation of the NYC net CONE consistent with the Commission's directive in the January 28, 2011 Order. In the June 20, 2011 filing, NYISO proposes revisions to the demand curve rates in that section of the Services Tariff to comply with the May 19, 2011 Order's directive that NYISO reflect the effect of 100 percent NYC property tax abatement for the peaking unit installed in NYC in calculating NYC net CONE. NYISO states that tax abatement adjusts the NYC net CONE to $20.04/kW-yr from $30.00/kW-yr filed in the March 29, 2011 filing for the 2011/2012 capability period.

b. Responsive Pleadings

26. In response to the June 20, 2011 filing, New York City Suppliers state that they do not object to the way in which NYISO has complied with the May 19, 2011 Order; but rather, object to the proposed average excess capacity values and incorporate into their protest their April 19, 2011 protest to the March 29, 2011 compliance filing.

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[15] January 28, 2011 Order, 134 FERC ¶ 61,058 at ¶ 90.

[16] May 19, 2011 Order, 135 FERC ¶ 61,170 at P 43.

c. Commission Determination

27. We accept NYISO's June 20, 2011 tariff record revisions to the NYC demand curve rates to reflect 100 percent of the NYC property tax abatement in the computation of NYC net CONE as in compliance with the directive of the Commission in the May 19, 2011 Order. We find that New York City Suppliers' protest is outside the scope of our consideration of NYISO's June 20, 2011 filing, which addresses whether NYISO complied with the May 19, 2011 Order on the tax issue. New York City Suppliers protest concerns the issue of the appropriate level of excess capacity to use in the determination of demand curves. They raise this issue in protests to NYISO's June 20, 2011 compliance filing as well as NYISO's March 29, 2011 compliance filing. We address that protest below in our consideration of NYISO's March 29, 2011 filing with respect to the level of excess capacity.[17]

3. Level of Excess Capacity

28. To develop net CONE, the Services Tariff requires NYISO to adjust CONE to reflect energy and ancillary services revenues under an assumed level of excess capacity in the market. Section 5.14.1.2 states, in pertinent part, that the periodic review of the demand curves shall assess:

> (ii) the likely projected annual energy and ancillary services revenues of the peaking unit over the period covered by the adjusted ICAP demand curves, net of the costs of producing such energy and ancillary services, under conditions in which the available capacity would equal or slightly exceed the minimum Installed Capacity requirement.

A higher level of excess capacity decreases energy and ancillary services revenue offsets and thus results in a higher net CONE, while a lower assumed level of excess capacity has the opposite effect.

29. In its November 30, 2010 filing, NYISO calculated its proposed demand curve rates to reflect the effect of excess capacity assumptions on both energy and ancillary services revenues as well as on ICAP market revenues. NYISO proposed a level of excess capacity for each adjustment equal to one-half the capacity of the designated

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[17] We reject as superseded and moot the proposed tariff record filed March 29, 2011, that contained revised NYC demand curve parameters to comply with the January 28, 2011 Order to reflect the elimination of tax abatement as the Commission's directives on this issue were reversed and superseded on rehearing in the May 19, 2011 Order.

peaking resource for each locality, i.e., 207 MW for NYCA and 95 MW for NYC and LI. Stated as a percentage of the minimum ICAP requirements, NYISO proposed average excess capacity adjustments of 1 percent for NYCA, 1.1 percent for NYC, and 2.1 percent for LI. In doing so, NYISO stated that it assumed that "the timing of [new] entry could reasonably coincide with the time at which the excess [capacity] is anticipated to fall to zero,"[18] which, when one averages zero excess capacity with the capacity of the new peaking unit, would lead to an average excess capacity equating to one-half the capacity of a new entrant designated peaking resource. NYISO asserted that this assumption was consistent with the Services Tariff and the Consultant's concept of the average excess capacity adjustment. NYISO added, in response to criticisms from the MMU, that parties' concerns that NYISO's estimates do not reflect 'real world' conditions or unreasonably assume that NYISO and investors will have 'perfect foresight' are therefore misplaced.[19] NYISO stated that its proposed average excess capacity adjustments were lower than those in the previous demand curve reset in part because NYISO and the Consultant determined that it is appropriate to set the level in relation to the size of the peaking unit used to establish the demand curves.

30. In the January 28, 2011 Order, the Commission found that NYISO's proposed excess capacity adjustments were unsupported and, therefore, could not be found to be just and reasonable. The Commission found the criticisms of the MMU to be persuasive, and also found NYISO's proposed levels of excess capacity disregarded the factors that it used to support the levels of excess capacity in the past.[20] In addition, the Commission was unable to reconcile the conflicting evidence contained in the November 30, 2010 filing—a recommendation from the Consultant, a different recommendation proposed by NYISO, as well as the MMU's disagreement on certain aspects of NYISO's proposal.

31. Accordingly, the Commission directed that the levels of excess capacity approved for use in the last reset proceeding should be maintained for this reset (i.e., 1.5 percent in NYCA and 4.0 percent in both NYC and LI) or, in the alternative, NYISO could propose to use a new level of excess capacity provided it fully supported that proposal. The Commission also directed NYISO to use the excess capacity assumption consistently wherever the assumed level of capacity is applied in determining other elements of the demand curves, including the capacity and energy and ancillary services revenue offsets

[18] NYISO November 30, 2010 Transmittal Letter at 17-19 (citing NYISO November 30, 2010 Filing, Attachment 1 at 24-28).

[19] *Id*. at 18-19.

[20] January 28, 2011 Order, 134 FERC ¶ 61,058 at P 120.

to net CONE as well as adjustments to System Deliverability Upgrade Costs, Transmission Congestion Contract offsets, and the Winter/Summer adjustment, since these estimates depend on a determination of the level of installed capacity.[21] The Commission further stated that it is reasonable to establish demand curve parameters that produce revenues over time that allow a new entrant a reasonable opportunity to recover its costs in light of an assumed level of excess capacity.[22] In quoting from the 2008 Demand Curve Reset Order, the Commission stated that it is its responsibility to determine whether the judgments and the resultant outcomes of the methodology and inputs to the demand curve model fall within a zone of reasonableness.[23] The May 19, 2011 Order denied rehearing and clarification of this issue.[24]

a. NYISO's Proposal

32. In its March 29, 2011 compliance filing, NYISO opted to support new excess capacity factors that are different than what it proposed in its November 30, 2010 filing. NYISO now proposes revised excess capacity levels based on 100 percent of the capacity in megawatts of the proxy peaking "plant" containing two peaking units of the type that the Commission accepted in the January 28, 2011 Order for the purpose of developing net CONE, i.e. the Frame 7FA combustion turbine for NYCA and LMS 100 combustion turbine for NYC and LI. NYISO proposes to establish an assumed level of excess capacity of a 413 MW two-unit Frame 7FA peaking plant for NYCA and the capacity of a 195 MW two-unit LMS 100 peaking plant for NYC and LI. Stated in terms of a percentage of the minimum ICAP requirements, NYISO proposes that the level of excess capacity be 1.1 percent for NYCA, 2.3 percent for NYC, and 4.1 percent for LI. In his affidavit, the MMU supports NYISO's new proposal and explains that NYISO's proposed levels of excess capacity assume a hypothetical future fluctuation in the excess capacity level from zero to two times the size of the default peaking resource, i.e., the two-unit proxy peaking plant.[25]

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[21] *See* May 19, 2011 Order, 135 FERC ¶ 61,170 at P 67.

[22] *Id*. P 118.

[23] *Id*. P 119 (citing *New York Indep. Sys. Operator, Inc.* 122 FERC ¶ 61,064, at P 47 (2008) (2008 Demand Curve Reset Order)).

[24] May 19, 2011 Order, 135 FERC ¶ 61,170 at P 58-68.

[25] NYISO March 29, 2011, Patton Aff. at 11, ¶ 27.

33. Consistent with the foregoing proposed excess capacity assumptions, i.e., pegged to the megawatts of a peaking plant, NYISO also proposes revisions to section 5.14.1.2 of the Services Tariff to establish that the periodic review of the demand curves will assess the likely projected energy and ancillary services revenues of the peaking plant (a change from the existing tariff section's reference to peaking "unit") under excess capacity conditions equivalent to the megawatt capacity of the peaking plant specified in the final report by the Consultant.[26] The proposed tariff revisions define a peaking plant as the number of units (whether one or more) that constitute the scale identified in the periodic review.[27] NYISO also states that, consistent with the directive of the January 28, 2011 Order, its Consultant revised the model it uses to develop the demand curves to use the levels of excess capacity, i.e. the peaking plant, consistently for all purposes that excess capacity assumptions are used in calculating the demand curve rates.

34. NYISO and its MMU state that it is appropriate to link excess capacity levels to the peaking plant used to establish the demand curves. According to the MMU, if the ICAP demand curves are sufficient for an investment cycle of the proxy peaking plant, then those ICAP demand curves will necessarily be sufficient for other types of investments whose net CONE values are less than that of the proxy peaking plant. NYISO adds that it would only be reasonable to use an excess capacity level based on investments in resources other than the peaking plant if NYISO were also using the lower net CONE of these alternative technologies. NYISO states that this is because resources would be expected to enter the market if their net CONE is lower than that of the demand curve peaking plant. NYISO notes that the Consultant determined that net CONE for a combined cycle gas turbine plant is 46 percent lower than the NYC LMS 100 peaking plant.[28] Therefore, NYISO concludes that suppliers will not be under-compensated.[29]

35. NYISO further states that its proposal to use 100 percent of the capacity of the peaking plant for excess capacity adjustments establishes an objective standard that promotes greater transparency, predictability, and objectivity. NYISO also states that the

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[26] NYISO also included these proposed revisions to section 5.14.1.2 in its June 20, 2011 filing.

[27] Section 5.14.1.2 of the Services Tariff currently defines the peaking unit as the unit with the lowest fixed costs and highest variable costs among economically viable technologies.

[28] NYISO March 29, 2011 Filing at 10 (citing Meehan Aff. ¶ 18).

[29] NYISO March 29, 2011 Filing at 9, Patton Aff. ¶¶ 14, 23-25 (citing January 28, 2011 Order, 134 FERC ¶ 61,058 at P 121).

proposal allows investors to form better long-term expectations, and is consistent with a realistic investment cycle for the demand curve peaking plant given the uncertainty surrounding peak load forecasts and the timing of investments and retirements involving capacity resources.[30] In addition, the MMU asserts that the level of excess capacity should not be based on an actual prevailing surplus because this would likely exacerbate the surplus and could lead to an ever-increasing future cycle of such surpluses and adjustments, as the levels of excess capacity used to establish the ICAP demand curves affect the actual future excess capacity levels.[31]

36. The MMU asserts that there is no single "correct" or "right" level of excess capacity but rather a range of potentially reasonable outcomes.[32] The MMU states that the level of excess capacity should reflect a reasonable expected value of the actual level of excess capacity over the long term and, thus, it is important to recognize that the amount of excess capacity above the minimum installed capacity requirement would be expected to fluctuate for three reasons: investments are lumpy, investments are not perfectly coordinated in competitive markets, and neither investors nor NYISO have perfect foresight. The MMU concludes that levels of excess capacity of a 413 MW peaking plant for NYCA and a 195 MW peaking plant for NYC and LI, which assume that the level will fluctuate between zero and two peaking plants, are appropriate and alleviate the concerns the MMU raised in the November 30, 2010 filing.

37. The MMU finds that, unlike the levels of excess capacity proposed by NYISO in the November 30, 2010 filing, the levels of excess capacity proposed here are not unreasonably low because the proposed levels do not assume perfect coordination and perfect foresight. According to the MMU, any concerns that the ICAP demand curves may under-compensate suppliers, may not be sufficient to maintain adequate resources, or may otherwise be unreasonably low should be ameliorated based on the fact that lower-cost resources are actively entering the New York City market and would clearly be economic in that market under NYISO's proposed ICAP demand curve with a 2.3 percent level of excess capacity.[33]

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[30] NYISO March 29, 2011 Filing at 9-10, Patton Aff. ¶¶ 12, 26-33.

[31] The MMU also asserts that artificially perpetuating a surplus by establishing an unreasonably high ICAP demand curve would diminish the effects of demand response resources. NYISO March 29, 2011 Filing at 10 (citing Patton Aff. ¶ 16).

[32] NYISO March 29, 2011 Filing at 11, Patton Aff. ¶ 31.

[33] NYISO March 29, 2011 Filing, Patton Aff. ¶¶ 37-40.

38. Finally, NYISO and the MMU assert that the levels of excess capacity used in the 2008 reset should no longer be used. NYISO asserts that levels of excess approved for that reset, particularly the assumed four percent level of excess capacity for NYC, would be unreasonably high if applied to ICAP demand curves used for the current reset. NYISO states that this is because the implementation of New York City buyer-side capacity market power mitigation measures since the 2008 demand curve reset makes it unlikely that average capacity surpluses as high as four percent would exist in New York City.[34]

b. Responsive Pleadings

39. IPPNY and New York City Suppliers state that NYISO's revised levels of excess capacity are unsupported, are not just and reasonable, and fail to satisfy the directives in the January 28, 2011 Order. Thus, they state that the Commission should reject NYISO's proposed revisions to the Services Tariff and direct NYISO to use the currently-effective levels of excess capacity.

40. IPPNY and New York City Suppliers assert that NYISO offers largely the same inadequate justification that the Commission rejected in the January 28, 2011 Order, including NYISO's use of the MMU's original proposal from the November 30, 2010 filing that the Commission found, in the January 28, 2011 Order, to be inadequately supported. IPPNY and New York City Suppliers argue that the MMU provides a qualitative discussion regarding lumpiness, lack of coordination, and imperfect foresight but fails to demonstrate how these factors were used to determine whether NYISO's proposed values fall within the range of reasonableness or to provide any quantitative analysis of the impact of these three factors on the excess capacity level. Further, according to IPPNY and New York City Suppliers, the MMU has failed to take into account the high degree of variability in reserve requirements for each of the capacity zones[35] and the substantial peak load forecast errors that, based on IPPNY's own quantitative calculations, could result in excess capacity levels near the upper end of the MMU's range of reasonable excess capacity levels.[36]

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[34] NYISO March 29, 2011 Filing at 11, Patton Aff. ¶¶ 15, 34-36.

[35] IPPNY states that between 2006 and 2011 NYCA installed reserve margins varied in the range of 115.5 percent to 118 percent and the locality requirement for LI varied in the range of 94 percent to 104.5 percent. IPPNY April 19, 2011 Protest, Younger Aff. ¶ 24.

[36] IPPNY April 19, 2011 Protest at 11.

41. New York City Suppliers state that the compliance filing does not provide further support (beyond that included in the November 30, 2010 filing) for the proposed use of a realistic investment cycle for the peaking plant to determine levels of excess capacity. IPPNY and New York City Suppliers contend that the MMU's conclusions about uneconomic entry mitigation rules for NYC that were implemented after the previous demand curve reset are quantitatively incorrect. They argue that it is unreasonable for the MMU to presume that uneconomic entry mitigation by itself will control the levels of excess capacity; and therefore, the levels are understated. IPPNY contends that the MMU relies on the mitigation rules to justify limiting excess capacity levels by forcing tighter investment decisions and also does not recognize the degree of interaction among other risk factors such as forecast errors and variations in reserve requirements.[37] Additionally, IPPNY and New York City Suppliers contend that NYISO's discussion of the net CONE calculation for a combined cycle plant is irrelevant, and beyond the scope of compliance filing because it was not required by the Commission, and the accuracy and validity of the calculations have never been vetted through the stakeholder process.

42. IPPNY and New York City Suppliers state that the proposed codification of NYISO's proposed methodology could lead to absurd results that would bear no relation to regulatory or market conditions. IPPNY postulates that in the next reset process NYISO could determine that a smaller generating facility (e.g., a 10-20 MW micro-generator) be selected as the proxy peaking plant, while actual levels of excess capacity would continue at much higher levels due to forecast errors and minimum reserve requirements. Rather, IPPNY and New York City Suppliers request that the Commission direct NYISO to revise the Services Tariff to specify that NYISO will perform a quantitative study of the excess capacity level when each future reset process is initiated, fully taking into account: (1) the size of the proxy unit; (2) lumpiness of capacity additions; (3) NYISO Tariff/process protections against a capacity shortage; (4) the fact that entry commitment is made years in advance of actual conditions; (5) the fact that entry is not coordinated; (6) imperfect forecasts; and (7) potential variability in the minimum reserve requirement.[38]

43. Consumer Parties support NYISO's proposed levels of excess capacity but not the proposed tariff revisions. Consumer Parties assert that the proposed tariff revisions are beyond the scope of the compliance requirements of the January 28, 2011 Order by binding parties to a prescriptive formula in future demand curve reset proceedings. Further, Consumer Parties argue that continued use of the previously-approved levels of

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[37] *Id*.

[38] *Id*. at 12.

excess capacity is unreasonable and is not internally consistent. Consumer Parties state that, the adoption of the uneconomic entry mitigation measures renders the previouslyapproved level of excess capacity for NYC implausible by imposing unjustified, higher capacity prices on consumers.[39]

44. Consumer Parties note that NYISO provided more empirical support in this reset compared to the relative lack of empirical support in the previous reset, and contend that NYISO's proposed excess capacity levels in the compliance filing are justified. Further they assert that the proposed levels of excess capacity are consistent with the fundamental purpose of the ICAP demand curves—the provision of effective economic signals to indicate the relative need for investment in new capacity supply resources, i.e., signals for new entry would be produced in advance of a need, thereby allowing entry to be reasonably timed to coincide with the actual need.[40] In addition, Consumer Parties assert that NYISO's proposal addresses the Commission's concerns expressed in the January 28, 2011 Order because NYISO revised its initial proposal upward to account for the lumpiness of capacity additions and the timing of market entry while avoiding over-compensating capacity supply resources.

45. Consumer Parties contend that the Commission should limit the revisions to the Services Tariff to those required by the January 28, 2011 Order. Consumer Parties argue that the compliance obligation does not mandate or authorize NYISO to include a prescriptive formula to fix the determination of the appropriate level of excess capacity for all future triennial resets. Consumer Parties assert that the proposed revisions are contrary to: (1) the Commission's statement in the January 28, 2011 Order that the proposed level of excess capacity "may differ in different periodic reviews;"[41] (2) NYISO's prior statement that there is no single correct assumption regarding the level of excess capacity, but rather a range of reasonable assumptions; and (3) NYISO's other positions in the compliance filing regarding the intentional lack of delineation of such

[39] Consumer Parties April 19, 2011 Protest at 12, 17 (citing January 28, 2011 Order, 134 FERC ¶ 61,058 at P 62, 117).

[40] Consumer Parties April 19, 2011 Protest at 13-15 (citing NYISO November 30, 2010 Filing at 13-14; NERA, *Independent Study to Establish Parameters of the ICAP Demand Curve for the New York Independent System Operator Inc.*, Docket No. ER08-283-000, at 64 (2007)).

[41] Consumer Parties April 19, 2011 Protest at 17 (citing January 28, 2011 Order, 134 FERC ¶ 61,058 at P 117).

details in the Services Tariff.[42] Further, Consumer Parties assert that the proposed revisions do not allow for stakeholder review and refinements in future triennial resets. Alternatively, Consumer Parties propose revised tariff language that limits the tariff revisions to state only that the excess level will be used consistently in determining all costs and revenues.[43]

c. Answers

46. In its answer, the City of New York asserts that NYISO's analysis of the appropriate level of excess capacity is reasonable and appropriate. The City of New York argues that the New York City Suppliers have improperly attempted to create a different burden of proof than that set by the Commission and they provide no analysis supporting their position, and therefore the Commission should disregard their objections. The City of New York also asserts that IPPNY and New York City Suppliers' proposed use of specific factors in quantitative studies for future demand curve reset proceedings has not been through the stakeholder process, is outside the scope of the compliance filing and the January 28, 2011 Order, and should be rejected by the Commission.

47. In their answer, NYTOs disagree with the contention of IPPNY and New York City Suppliers that NYISO has not provided sufficient support for the proposed levels of excess capacity. NYTOs contend that IPPNY and New York City Suppliers neither demonstrate that the MMU's analysis is unreasonable nor undermine the cogency of the MMU's determinations. NYTOs state that the MMU's affidavit demonstrates that NYISO's proposed levels of excess capacity fall within a zone of reasonableness without the quantitative analysis insisted on by IPPNY and New York City Suppliers. NYTOs contend that quantitative analysis is not necessary or precise, the specific factors identified by the Commission as relevant have been addressed, and NYISO has provided a reasonable estimate of a level of surplus "slightly in excess" of the minimum requirement. Also, NYTOs argue that the variability in the Installed Reserve Margin goes in both directions and that it has not been demonstrated in the NYISO stakeholder process that this factor is the major driver or even relevant to the estimate of the assumed level of excess capacity. NYTOs also state that testimony from Michael D. Cadwalader, attached to their answer, explains the flaws in the analysis provided by IPPNY of the impact of peak load forecast uncertainty on the assumed level of excess capacity.[44] Finally, NYTOs contend that the assumed level of excess capacity is necessarily a matter

[42] *Id*. at 18.

[43] *Id*. at 19.

[44] NYTOs May 4, 2011 Answer at 6 (citing Cadwalader Aff. ¶¶ 5-9).

of judgment, and that the Commission should rely on the judgment of NYISO and the MMU.

48. In addition, NYTOs state that the criteria put forth by IPPNY for future determinations of levels of excess capacity have not been presented or discussed in the NYISO stakeholder process and reflect the special interests of IPPNY and its members. NYTOs assert that the proposed criteria are outside the scope of this compliance proceeding and should not be entertained by the Commission.

49. In its answer, NYISO requests that the Commission reject protestors' arguments regarding both NYISO's proposed levels of excess capacity and NYISO's proposed revisions to the Services Tariff. NYISO argues that additional quantitative analysis is not necessary and was not required as part of the January 28, 2011 Order. NYISO states that such quantitative analysis would not be practical given the limited number of data points available. NYISO states that imperfect entry coordination of multiple competing projects and imperfect investor foresight are factors that do not readily lend themselves to quantitative analysis but they do have an impact on the level of excess existing at any point in time. According to NYISO, the MMU considered a range of permissible parameters while recognizing the impossibility of forecasting individual investment decisions.[45] NYISO asserts that neither IPPNY nor New York City Suppliers offer any support for maintaining the currently-effective levels of excess capacity. Additionally, NYISO states that relying solely on quantitative analysis would ignore important qualitative factors, and the interrelationship among them, such as those considered in the compliance filing.

50. NYISO's filing includes an answering affidavit from the MMU. The MMU states that much of IPPNY's discussion is premised on the assumption that the uncertainties related to capacity requirements and investment will produce excess capacity. However, the MMU states that if such uncertainties are randomly distributed around zero (e.g., load is as likely to be over-forecasted as under-forecasted), then the uncertainties will produce shortages and surpluses that offset one another. The MMU acknowledges that these uncertainties have the potential to lead to a bias in favor of excess capacity because the planning process will support regulatory actions to address shortages, but the MMU states that it is unreasonable to simply assume that these factors will never result in shortages. The MMU states that NYISO's qualitative analyses and explanations were conservative in assuming that actual excess capacity levels will always fluctuate between zero and a maximum excess capacity level. The MMU states that in reality, most of the

[45] NYISO May 4, 2011 Answer at 6 (citing NYISO March 29, 2011 Filing, Patton Aff. ¶¶ 19, 26).

factors that can lead to excess capacity in the market can also contribute to transitory shortages, a fact which tends to mitigate IPPNY's concerns that the proposed excess capacity levels are too low.

51. NYISO disagrees with protestors' contention that the January 28, 2011 Order required NYISO to address all of the factors identified by IPPNY and New York City Suppliers. NYISO states that the January 28, 2011 Order found the then-existing record in this proceeding did not contain "adequate support" for the NYISO proposal, noted that "factors such as capacity addition lumpiness and reliability signals need to be considered," and directed the inclusion of "well-reasoned analyses and explanations" to support the proposal.[46] NYISO states, however, that it addressed both of these factors, specifically, the size of the proxy unit and lumpiness of capacity additions. NYISO states that, although IPPNY depicts proxy unit size and "lumpiness" as if they were separate factors, the MMU demonstrates, in testimony attached to NYISO's answer, that these factors are actually one and the same in considering excess capacity level assumptions because when one considers the effect of lumpiness on excess capacity in the market, one must assume a particular resource to evaluate this factor.[47] NYISO states that the MMU also refutes IPPNY's suggestion that the proposed tariff revisions should be rejected on the basis that tying the excess capacity levels to the size of peaking unit might lead to absurd results in the future if a micro-capacity resource is identified in some future ICAP demand curve reset process as the proxy peaking unit. In such a case, according to NYISO, it would be reasonable to establish a minimum excess capacity level that recognizes that other factors would tend to dominate the lumpiness factor associated with the size of the proxy peaking unit.[48] NYISO adds that the lumpiness of investment in capacity resources should be addressed in the excess capacity level assumption based on investment in the proxy peaking unit.

52. NYISO also requests that the Commission reject arguments from parties regarding NYISO's proposed revisions to the Services Tariff. NYISO states that, in contrast to revisions proposed by Consumer Parties, NYISO's proposed tariff revisions are within the scope of this proceeding because the proposed revisions: (1) are consistent with the Commission's directive in the January 28, 2011 Order that the levels of excess capacity should be internally consistent; (2) effectively address the factors identified in the

[46] NYISO May 4, 2011 Answer at 6-7 (citing January 28, 2011 Order, 134 FERC ¶ 61,058 at P 128).

[47] *Id*. at 7 (quoting Patton Aff. ¶ 9).

[48] NYISO May 4, 2011 Answer at 7 (quoting Patton Aff. ¶ 9).

January 28, 2011 Order for consideration when proposing levels of excess capacity; and (3) would provide greater predictability for stakeholders to make their own assessment of the demand curves that may be established in the future.[49] NYISO also states that the alternate tariff revisions suggested by IPPNY and New York City Suppliers are outside the scope of this compliance filing because the January 28, 2011 Order did not require NYISO to conduct a quantitative analysis or to separately evaluate each of the factors identified by the parties. However, NYISO adds that several of IPPNY's proposed factors would already effectively be incorporated into the Services Tariff under NYISO's proposed revisions.

d. Commission Determination

53. The Services Tariff contains a provision that the demand curves should reflect net revenues expected when supply is at or "slightly" above the minimum requirement. The assumed level of excess capacity affects the determination of projected energy and ancillary services revenues and the projected amount of capacity revenues realized in the spot capacity market.[50] In the 2005 Demand Curve Reset Order, the Commission explained that it expects that, under the demand curves, capacity will tend toward the level where prices on the demand curves match the costs of peaking capacity net of energy and ancillary service revenues. However, the Commission observed, capacity as a percentage of peak demand will naturally fluctuate over time on either side of this level as short-term market conditions vary. If the net revenue offset were to reflect energy and ancillary service revenues expected when supply conditions were precisely at the minimum capacity requirement, capacity would likely fall below the minimum during some periods. There was, and continues to be, widespread agreement among the parties that if the market did not elicit sufficient capacity to meet the minimum requirement, New York regulatory authorities would take immediate out-of-market actions to prevent capacity from falling below the minimum requirement. To avoid such out-of-market activity, the Commission held that the net revenue offset should reflect energy and ancillary service revenues expected when supply is modestly greater than the minimum requirement, so that capacity is less likely to fall below the minimum requirement as capacity conditions fluctuate over time.[51]

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[49] NYISO May 4, 2011 Answer at 14-15.

[50] January 28, 2011 Order, 134 FERC ¶ 61,058 at P 91.

[51] *New York Indep. Sys. Operator, Inc.*, 111 FERC ¶ 61,117, at P 46-48 (2005) (2005 Demand Curve Reset Order).

54. Thus, the Commission has previously acknowledged that the assumption of excess capacity must balance competing interests, i.e., avoid imposing excessive capacity costs on customers that would result from demand curves that create incentives that lead to high levels of excess capacity supply, while ensuring sufficient incentives such that levels of capacity do not fall below the minimum requirement. Therefore, to yield a rate that is just and reasonable, the revenue offset should be based on supply conditions that average some level above the minimum requirement, so that supply falls neither below the minimum level, nor excessively above the minimum requirement.[52] As discussed below, we accept NYISO's revised assumptions for the levels of excess capacity and accept NYISO's proposed tariff revisions.

i. Proposed Excess Capacity Levels

55. In the March 29, 2011 compliance filing, NYISO proposes that the levels of excess capacity in each locality used in the demand curve reset process be equal to the total capacity of the applicable proxy "peaking plant"[53] rather than equal to one-half the capacity of a single peaking unit as proposed in the November 30, 2010 Filing. Specifically, NYISO proposes to use the capacity of two-unit proxy peaking plants of 413 MW for NYCA and 195 MW for NYC and LI. This translates to proposed levels of excess capacity of 1.1 percent, 2.3 percent, and 4.1 percent in NYCA, New York City, and Long Island, respectively.

56. We accept NYISO's revised levels of excess capacity because the proposed levels: (1) reflect reasonable assumptions that do not require perfect foresight of both coordination between load forecasts and market entry/exit; (2) reasonably account for the lumpiness of investment in new capacity; (3) establish assumed levels of excess capacity that reasonably account for those factors within the meaning of "slightly exceed" as required by section 5.14.1.2 of the Services Tariff, and are consistent with prior Commission determinations;[54] and (4) balance the competing interests in both creating an

[52] 2005 Demand Curve Reset Order, 111 FERC ¶ 61,117 at P 46-48; 2008 Demand Curve Reset Order, 122 FERC ¶ 61,064 at P 31, 33.

[53] NYISO proposes revisions to section 5.14.1.2 of the Services Tariff that, among other things, defines "peaking plant" as the number of units (whether one or more) that constitute the scale identified in the periodic, i.e. triennial ICAP demand curve, review.

[54] 2008 Demand Curve Reset Order, 122 FERC ¶ 61,064, at P 34.

incentive for new investment to ensure that capacity does not fall below the minimum requirement and ensuring that the resulting rates do not impose excessive costs on customers.[55]

57. As we have held in this proceeding, capacity additions are unlikely to be perfectly coordinated with load such that a single resource will always enter the market at the exact point when the level of capacity falls to the minimum requirement, i.e. when additional capacity is needed, as NYISO's original proposal of one-half of a peaking unit assumed. The use now of the larger capacity of a two-unit peaking plant does not reflect any assumption of such exact coordination with the level of existing capacity and provides a greater margin for error to account for load forecasting uncertainties.[56] The current proposal to use the full capacity of a two-unit peaking plant implicitly assumes a market entry/exit cycle where capacity will remain on average above the minimum requirement by at least the capacity of a new two-unit peaking plant.[57] This is consistent with the development of the demand curves, which were modeled on the basis of the CONE of a two-unit proxy peaking plant as the most likely addition of new capacity.[58] By factoring in such a level of excess capacity, the demand curve rates are designed to provide incentives for such a plant to be built; thereby, providing, with sufficient lead time, the appropriate market signal to add capacity supply when needed.

58. For the same reasons, the use of the full capacity of a two-unit proxy peaking plant also reasonably accounts for the lumpiness of capacity additions and, thus, meets the concerns raised by the Commission in the January 28, 2011 Order. "Lumpiness" refers to the fact that entry and exit necessarily occurs in discrete megawatt sizes for each generation technology. As such, a generator addition does not precisely match the amount of capacity that the market may need to accommodate a given increase in load;

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[55] 2005 Demand Curve Reset Order, 111 FERC ¶ 61,117 at P 48.

[56] *See* 2005 Demand Curve Reset Order, 111 FERC ¶ 61,117 at P 46-47. The Commission previously stated that assuming capacity could fall to the minimum requirement will likely result in capacity falling below the minimum requirement during some periods.

[57] NYISO March 29, 2011 Filing, Attachment VII, Patton Aff. at ¶¶ 27-28.

[58] *See* December 3, 2010 Errata Filing of NYISO, *Independent Study to Establish Parameters of the ICAP Demand Curve for the New York Independent System Operator* (NERA Report), at 8-9 ("We . . . assumed the Tariff to apply to reasonably large scale generating facilities . . .") , and 18 (Table II-1, Key Characteristics of Evaluated technologies, Column 1 "Capacity of a 2-Unit Addition").

and therefore, produces some level of surplus above the minimum capacity requirement. We find the revised level of excess capacity of the full capacity of a two-unit proxy peaking plant used to develop CONE reasonably reflects the lumpiness of capacity additions.

59. The MMU states that there is no quantitative analysis that would derive a reasonably accurate projection of a long-term level of excess capacity because of the limited number of relevant data points, and because both over-and under-forecasts of load are likely to affect levels of installed capacity. The MMU finds that the new proposed values are not based on unrealistic assumptions; rather, as supported by the MMU, the instant proposal takes into account uncertainties regarding load growth and decentralized investment decision-making by competing suppliers. According to the MMU, each of these factors could result in capacity levels that will predictably fall within a distribution of outcomes that is capable of reflecting those uncertainties.[59] NYISO's previous proposal was not capable of reflecting those uncertainties. On the basis of this and other findings, the MMU finds that each of the proposed excess capacity percentages falls within a reasonable range. We concur with the MMU on the justification that the proposed levels fall within a just and reasonable range.[60]

60. As discussed here, we reject protestors' arguments regarding NYISO's proposed levels of excess capacity. IPPNY and New York City Suppliers, in their protests of the March 29, 2011 compliance filing, assert that NYISO's proposal is inadequately supported and argue that the MMU offers a qualitative discussion but no quantitative analysis. They support continued use of the currently effective levels in the absence of what, in their view, is a reasonable alternative. We disagree. NYISO correctly asserts that imperfect entry coordination of multiple competing projects, imperfect investor foresight, and forecasting individual investment decisions are factors that do not readily lend themselves to quantitative analysis. Further, the Commission did not require NYISO to produce a quantitative analysis, and, in fact, no party has developed such an analysis. In light of this, we find it entirely reasonable for NYISO to determine the level of excess capacity using reasoned and supported judgment. We note that in prior reset proceedings, the Commission accepted as just and reasonable an approach to determining this demand curve input parameter based on reasoned judgment, and we believe it is appropriate to do so again here.[61]

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[59] NYISO March 29, 2011 Filing, Attachment VII, Patton Aff. at ¶ 28.

[60] *See* 2005 Demand Curve Reset Order, 111 FERC ¶ 61,117 at P 48.

[61] *See* 2008 Demand Curve Reset Order, 122 FERC ¶ 61,064 at P 26.

61. IPPNY and New York City Suppliers argue that NYISO and the MMU fail to discuss how fluctuations in the installed reserve margin should be reflected in the level of excess capacity. For example, if the installed reserve margin requirement is reduced by one percentage point (e.g., from 17 percent to 16 percent), the immediate effect of this reduction is to increase the surplus amount of capacity by one percentage point. IPPNY and New York City Suppliers argue that this factor would tend to increase the expected average level of excess capacity in arguing for a higher assumed level of excess capacity than what NYISO proposes. However, IPPNY fails to consider that changes to the installed reserve margin occur in both directions, so that increases in the installed reserve margin would have the effect of immediately reducing the amount of surplus capacity. IPPNY also fails to consider that the capacity prices determined by the curves in each auction do indeed reflect changes to the level of reserve requirements. That is because the demand curves slope downward and express the capacity to be acquired in percentage terms about the minimum requirement, rather than in absolute megawatt quantities. Should a change in the reserve requirement result in a higher level of excess capacity actually available in the market, the excess supply will produce a reduction in the capacity prices determined by the demand curves (because the intersection of the supply curve with the demand curve will move to a lower point on the demand curve), and vice-versa. If the reserve requirement increases, excess capacity will be reduced and the capacity price will increase to a higher point on the demand curve. Finally, IPPNY and the New York City Suppliers have not shown how NYISO could predict what changes, if any, will occur in future installed reserve margin requirements, or how such changes should be incorporated into the determination of the demand curve parameters. Accordingly, we will reject this argument.

62. IPPNY and New York City Suppliers argue that NYISO's analysis on buyer-side mitigation measures appears to contain infirmities that require supporting analysis. For example, they dispute NYISO's analysis of when the uneconomic entry mitigation measures should be assumed to take effect. We need not make a determination in this regard because our acceptance of NYISO's proposed excess capacity levels is based on the megawatt capacity of the peaking unit for New York City and not on the effectiveness of uneconomic entry mitigation. IPPNY proposes that the Services Tariff be revised to include a list of factors that would be part of a required quantitative analysis. As we have accepted the use of the proxy peaking plant in each capacity zone as the measure of excess capacity levels, and have not required that a quantitative analysis be performed, we will not direct NYISO to incorporate the quantitative factors listed by IPPNY into the Services Tariff.[62]

[62] May 19, 2011 Order, 135 FERC ¶ 61,170 at P 68.

ii. Proposed Tariff Revisions for Excess Capacity Levels

63. We also accept NYISO's proposed revisions to the Services Tariff as just and reasonable as well as consistent with the Commission directive to NYISO to support its proposed excess capacity levels. NYISO proposes revisions that require the excess capacity levels used in the demand curve reset process to be set at the megawatt capacity of the proxy peaking plant used to determine CONE for each of the three capacity regions. With this revision, NYISO has reduced uncertainty and added clarity to the triennial demand curve reset process by providing a definition of the formerly subjective and undefined tariff term "slightly exceeds." In this proceeding, as they have in the past triennial reset proceedings, the parties and the Commission have struggled with determining what level of excess capacity could meet the tariff requirement that capacity be assumed to be "slightly" above the minimum. NYISO's proposal to remove the "slightly" requirement and replace it with an internally consistent use of the capacity of the proxy peaking plant resolves that issue. At the same time, use of the peaking plant allows for variability in the levels of excess capacity in different periodic reviews, as stakeholders can in future triennial resets determine what constitutes the appropriate proxy peaking resource as well as the number of units that make up the proxy peaking plant.

64. In accepting the tariff revisions, we dismiss protesters' arguments, including IPPNY claims that the proxy peaking plant may at some point in the future be too small, e.g., 20 MW, as speculative and without merit, and Consumer Parties' proposed tariff revisions as unnecessary. As we stated, the revisions here do not prevent the parties in the stakeholder process, or in the next triennial reset, from determining the appropriate proxy peaking unit parameters, including the peaking technology, the unit size, and the number of units that make up the peaking plant. The revisions only establish that the proxy peaking plant will be used as the basis for excess capacity levels consistently throughout the analyses used to develop the demand curves. We note that the burden remains with NYISO to demonstrate that the choice of peaking plant, as well as other elements of the proposed demand curves, are just and reasonable.

4. NYC System Upgrade Facility Costs

65. In its November 30, 2010 filing, NYISO estimated the cost of System Upgrade Facilities, i.e. interconnection costs, for the NYC proxy peaking plant at $4.8 million, which it stated was based on historical NYC average System Upgrade Facility costs.[63] In the January 28, 2011 Order, the Commission directed NYISO to provide support for its estimate of NYC System Upgrade Facility costs that are included in the NYC CONE, and to address arguments made by IPPNY that the estimated costs are unrealistic.[64]

a. NYISO's Filing

66. In its March 29, 2011 filing, NYISO proposed to include $14.5 million of NYC System Upgrade Facility and interconnection costs in the CONE for the NYC peaking unit. NYISO states that its initial estimate was based on the average System Upgrade Facility costs of five projects from Class Years 2001 and 2002, the most recent historical precedents.[65] NYISO's Consultant states that he reviewed interconnection cost information for four projects in Class Years 2009 and 2010 and for two possible interconnection points for the most recent high voltage direct current project. The Consultant prepared an updated interconnection cost estimate for the LMS 100 peaking plant based on cost data from these five projects and supplemented with independent cost estimates developed by the Consultant.[66] The Consultant also states that recently updated ConEd and NYPA transmission design criteria were presumed to be applicable to the interconnection of the LMS 100 proxy peaking plant and the five projects analyzed were assumed to be compliant.[67] NYISO states that the impact of this revision on the NYC

[63] December 3, 2010 Errata Filing of NYISO, *Independent Study to Establish Parameters of the ICAP Demand Curve for the New York Independent System Operator* (NERA Report) at 102-112.

[64] January 28, 2011 Order, 134 FERC ¶ 61,058 at P 140.

[65] NYISO March 29, 2011 Filing, Ungate Aff. ¶ 8.

[66] NYISO March 29, 2011 Filing, Ungate Aff. ¶¶ 10, 19.

[67] According to Mr. Ungate, ConEd updated its criteria in December 2009 and NYPA initially issued criteria in February 2010. *See* NYISO March 29, 2011 Filing, Ungate ¶ 11.

demand curve is an increase in the NYC net CONE and corresponding reference price of approximately 5.1 percent.[68]

b. Responsive Pleadings

67. New York City Suppliers and IPPNY support NYISO's proposed NYC System Upgrade Facility costs as a significant improvement over its initial proposal, and state that NYISO's analyses take into account more recent project cost information, and produce reasonable results for the current reset process.[69] However, IPPNY and New York City Suppliers assert that in future demand curve reset proceedings: (1) System Upgrade Facility cost calculations must be conducted as part of the regularly scheduled reset process according to defined rules to ensure reasonable results in every subsequent reset process; (2) the Commission should direct NYISO to adopt a transparent and consistent procedure for evaluating System Upgrade Facility and deliverability costs; and (3) analyses of System Upgrade Facility and deliverability costs for purposes of demand curves must be conducted in a coordinated fashion with NYISO's reliability planning process and in consideration of where feasible construction sites exist.

68. The NYTOs respond that the Commission should reject IPPNY's request. According to the NYTOs, the proposals were never presented or discussed in the NYISO stakeholder process, were developed unilaterally by IPPNY, and represent their special interests. Therefore, the NYTOs request the Commission deny IPPNY's request as outside the scope of this compliance proceeding.

69. In its answer, NYISO states that the Commission should reject New York City Suppliers' and IPPNY's request for further Commission guidance on the appropriate methodology and stakeholder procedures for developing NYISO's estimate of System Upgrade Facility costs in future reset proceedings. NYISO asserts that the suggestions regarding the methodology and/or the procedures have not been shown to be necessary, are beyond the scope of review of the instant filing, and are unsupported. NYISO further asserts that any study methodology needs to account for changes in NYISO's market rules that may be in place at the time of the next ICAP demand curve reset. NYISO adds that a methodology established now may be inconsistent with the processes and procedures that will be in place under Attachment S of NYISO's tariff at the time of the next ICAP demand curve reset. Finally, according to NYISO, "locking in" a specific methodology now for future use would prevent NYISO and its ICAP demand curve

[68] NYISO March 29, 2011 Filing, Lawrence Aff. ¶ 8.

[69] IPPNY April 19, 2011 Protest at 13 and New York City Suppliers April 19, 2011 Protest at 18.

consultant from vetting their approach to future analyses with stakeholders based on the then-current deliverability rules.

70. NYISO also objects to IPPNY's argument that site-specific cost data from specific locations must be utilized in future analyses of deliverability and system upgrade facility costs. NYISO states that its Consultant, Mr. Ungate, used actual cost data to determine the estimated costs of the peaking unit used to establish the demand curves. NYISO adds that while the Attachment S Class Year methodology uses specific locations to analyze whether a System Upgrade Facility is required in the Class Year process, NYISO did not use and did not need to use specific locations to estimate System Upgrade Facility costs; instead, it estimated System Upgrade Facility costs at the different possible levels of interconnection and different types of substations in NYC. NYISO states, however, that it may be appropriate to use another methodology in the future.

c. Commission Determination

71. We find that NYISO's filing complies with the Commission's directive in the January 28, 2011 Order. NYISO re-examined the level of System Upgrade Facility costs used to develop the NYC net CONE; and, using more current interconnection cost information, proposed a revised cost estimate. We find NYISO's revised cost estimate to be just and reasonable and accept the resulting adjustment to the NYC net CONE.

72. In the January 28, 2011 Order the Commission directed NYISO to examine and justify its estimate of interconnection costs for the proxy peaking unit in NYC because the cost estimate used by the Consultant in the November 30, 2010 filing was based on historical information dating back to 2001. NYISO re-examined the System Upgrade Facility costs as described above using input from recent projects in the Class Year 2009 and 2010 queues, recently updated ConEd and NYPA design parameters, and the Consultant's own estimates and then applied this information to the LMS 100 proxy peaking unit. We find this to be reasonable.

73. IPPNY and New York City Suppliers request that the Commission require NYISO to better define the methodology and process to be used in determining system upgrade facility costs in future reset periods. They argue for a more transparent and consistent procedure and argue that NYISO should take into consideration where feasible construction sites actually exist. We reject the request from IPPNY and New York City Suppliers for the reasons NYISO provided in its May 4, 2011 answer.[70] We agree with NYISO that the protestors' request is beyond the scope of this compliance filing, and even if it were not, protestors fail to adequately support their requested action. Further,

[70] NYISO May 4, 2011 Answer at 17-18.

we find the opportunity for stakeholders to provide input into the development of System Upgrade Facility costs and to propose specific criteria in NYISO's tariff in the triennial ICAP demand curve reset process described in section 5.14.1.2 of the Services Tariff, which is a nearly year-long stakeholder process, provides sufficient transparency. No party has shown that the existing process does not provide for adequate stakeholder input.

5. Winter/Summer Adjustment

74. Section 5.14.1.2 of the Services Tariff sets forth the parameters of the demand curves for NYCA, New York City and Long Island assuming specified annual levels of available capacity supply. However, because available capacity is typically greater in the winter than in the summer, since the lower ambient air temperatures in the winter allow certain generators to produce more energy, the resulting greater supply translates to lower capacity prices on the demand curve. In recognition of this, section 5.14.1.2 of the Services Tariff requires that "seasonal differences" be accounted for in developing monthly ICAP values. This upward adjustment of ICAP values (prices) will allow for the collection, over the year, of the capacity revenues reflected in the demand curves. In its November 30, 2010 filing, NYISO proposed winter/summer adjustments based on the ratio of winter to summer ICAP capacity supply available using actual capacity data contained in its 2010 Load and Capacity Data Report known as the Gold Book.

75. In the January 28, 2011 Order the Commission directed NYISO to revise the winter/summer adjustments to reflect the same level of excess capacity as used in other aspects of the demand curve development.[71] In the May 19, 2011 Order the Commission further elaborated on the issue, particularly with respect to the ratio of winter to summer capacity (WSR) that is used by NYISO in the formula for calculating the adjustment. The Commission stated that NYISO should provide values for WSR that are consistent with the assumed levels of excess capacity used to calculate other components of net CONE, or explain why the values for WSR based on recent actual data provide a reasonable approximation of the ratio of the average winter to summer available ICAP that would arise under the assumed level of excess capacity.[72]

a. NYISO's Filing

76. In the June 20, 2011 filing, NYISO proposes to not alter the WSRs that were included in the November 30, 2010 filing and, instead, opts to explain its proposal. NYISO states that the WSRs used in the November 30, 2010 filing were based on

[71] January 28, 2011 Order, 134 FERC ¶ 61,058 at P 161.

[72] May 19, 2011 Order, 135 FERC ¶ 61,170 at P 100.

observed ratios at actual levels of excess capacity using information from the 2010 Load and Capacity Data report that included forecasted new entry. NYISO states that to compute WSRs based upon assumed levels of excess capacity used to calculate other components of net CONE would require identifying changes to the current population of ICAP, to each category of ICAP, and for each region.[73] To estimate the effect on WSRs of alternative assumptions about the mix of capacity resources, NYISO states that it used the capacity assumptions developed for the Deliverability Test described in the March 29, 2011 filing[74] to calculate ICAP at the proposed levels of excess capacity.[75] NYISO states that it then compared the resulting WSRs using the ICAP modeled in the Deliverability Test with the WSR values used in the November 30, 2010 filing. NYISO concludes that the differences in WSRs between the November 30, 2010 filing and those derived from the capacity assumptions underlying the Deliverability Test are either zero or small: 0.0 percent in NYCA, -10.1 percent in NYC, and +6.5 percent in LI); and, therefore, it asserts that the values used in the November 30, 2010 filing are reasonable and consistent with the levels of excess capacity modeled in other aspects of the demand curve.[76] NYISO further adds that it believes the WSRs used in the November 30, 2010 filing are superior because the values used in the Deliverability Test are strictly based on the requirements of the loadflow-based analysis that models peak hour load summer conditions and the values neither consider winter conditions, nor the presence of Special Case Resources.

b. Responsive Pleadings

77. NYTOs observe that in the June 20, 2011 compliance filing, the ICAP demand curves were based on the same WSRs used in the earlier November compliance filing and, thus, are not consistent with the assumed average levels of excess capacity used in the June compliance filing. NYTOs contend that while NYISO claims there was zero to minimal difference between the two methodologies, using the WSRs reported in the June compliance filing would cause a $0.85/kW-month reduction in the monthly reference point for NYC in the 2011/2012 capability year.[77] NYTOs state that this impact is similar to the impact of including revised system upgrade facility costs in the derivation

[73] June 20, 2011 filing, Lawrence Aff. ¶¶ 8-9.

[74] *See* discussion *supra* at P 13-16.

[75] Citing March 29, 2011 Filing, Corey Aff. at Table A.

[76] NYISO June 20, 2011 Filing, Lawrence Aff. ¶ 12.

[77] NYTOs July 11, 2011 Protest at 5 (citing the attached Cadwalader Aff. ¶ 14).

of the NYC ICAP demand curves, a change NYISO made in response to the January 28, 2011 Order.[78]

78. NYTOs also contend that using the June compliance filing's WSRs would cause a $0.41/kW-month decrease in the monthly reference point for the NYCA for the 2011/2012 capability year, while causing an increase of $.19/kW-month for LI. According to the NYTOs, this is similar to the impact that granting various suppliers' requests to increase the assumed average level of excess capacity from 1.1 percent to 1.5 percent of the NYCA ICAP requirement would have on those ICAP demand curves.

c. NYISO's Response

79. NYISO responds that it has confirmed that the WSR values in the Lawrence affidavit submitted in the June 20, 2011 compliance filing were copied incorrectly. NYISO submits a revised Table 2 to the June Lawrence affidavit.According to NYISO, the revised Table 2 states the actual WSRs set forth in the November filing and computes the percentage difference between the WSRs calculated from the Deliverability Test and NYISO's WSRs proposed in the November filing. NYISO indicates a percentage difference for NYCA (+13.5 percent), NYC (-9.2 percent), and LI (+6.5 percent). NYISO argues that the WSRs proposed in the November filing are therefore appropriate and reasonable to use in the ICAP demand curves. NYISO states that the Deliverability Test represents a snapshot covering the peak load period only, and ignores significant factors such as winter conditions and Special Case Resources. Thus, according to NYISO the revisions to the table do not alter NYISO's position that it would be unreasonable to use the WSRs based on the Deliverability Test since WSRs are not used in any part of the Deliverability Test.

d. Commission Determination

80. We find that NYISO has not adequately complied with the requirements of the May 19, 2011 Order. We agree with NYISO that computing WSRs based upon assumed levels of excess capacity used to calculate other components of net CONE would require identifying changes (from the calculation of WSRs in the November 30, 2010 filing) to the current population of ICAP, to each category of ICAP, and for each region. That is because the additional capacity available in the winter compared to the summer (due, e.g., to the effect of changes in ambient air temperature) varies by the type of generation capacity. But NYISO estimated changes to the resource mix that would result from its proposed levels of excess capacity when it applied the Deliverability Test to determine the need for including deliverability costs in net CONE. However, the mix of resources

[78] *Id*. (citing May 19, 2011 Order, 135 FERC ¶ 61,170 at P 100).

that underlies NYISO's application of the Deliverability Test is different from the mix that underlies its calculation of WSRs in its November 30, 2010 filing.

81. The Commission gave NYISO two options, i.e., include values for WSRs that are consistent with the assumed levels of excess capacity or explain why the values from the November 30, 2010 filing are a reasonable approximation. We find that NYISO has not met its burden of showing that its alternative values are a reasonable approximation. NYISO argues that the differences in WSRs resulting from the two methods, which range between -9.2 percent to +13.5 percent, are "small" and that the originally filed ratios are superior to those developed using the excess capacity assumption. However, NYISO does not support these statements. It does not analyze the differences in rate impact between the two methods or explain why it believes this range of differences is indeed "small" such that it need not adopt the same mix of resources when applying the Deliverability Test and calculating WSRs. In contrast, the NYTOs have raised legitimate concerns as to what constitutes a "minimal difference" and have shown that the resulting changes to net CONE using the ratios developed by NYISO do not reasonably approximate those that would be used under the assumed mix of resources used by NYISO to apply the Deliverability Test. As such, we will require NYISO to revise its demand curve parameters so that the same levels of excess capacity, and the underlying mix of resources, are used to calculate deliverability costs and the winter/summer adjustment.

6. Effective Date

82. The currently effective tariff record (section 5.14.1.2 of the Services Tariff) contains demand curves rates that NYISO filed on March 28, 2011, to continue the existing 2010/2011 rates in effect on and after May 1, 2011, until a date set by order of the Commission as conditionally accepted by the Commission in the April 4, 2011 Order.[79] As so revised, the currently effective section 5.14.1.2 provides that the 2010/2011 ICAP demand curve prices remain in effect "5/1/2011 to Date Determined by Commission Order" and that the new ICAP demand curve prices NYISO proposed in its November 30, 2010 filing will take effect upon a "Date Determined by Commission Order to 4/30/12" as well as for capability periods 2012/2013 and 2013/2014. Accordingly, the 2010/2011 demand curve rates reflected in the March 28, 2011 filing continue in effect pursuant to the April 4, 2011 Order, subject to being revised prospectively to reflect compliance with the Commission's orders in this proceeding.

[79] April 4, 2011 Order, 135 FERC ¶ 61,002 at P 10.

a. NYISO Filing

83. In its June 20, 2011 filing, NYISO states that it will be possible to implement the revised ICAP demand curves for the ICAP spot market auction that next follows a Commission order that does not require further analysis or revised computations. NYISO states that it requires 12 business days between the date of a Commission order and the deadline for certification of Load-Serving Entities and ICAP suppliers prior to the monthly auction in which the revised curves are to be effective. Accordingly, NYISO proposes that the Commission approve flexible effective or implementation dates for the revised rates in its June 20, 2011 filing.[80] Specifically, NYISO requests an implementation date that is the date of the ICAP Spot Market Auction that next follows a Commission order accepting specific numeric values for the new ICAP demand curves (i.e., an order that does not require further analysis or revised computations). NYISO states that it will notify the Commission once final implementation dates are determined; and, to the extent necessary, will make an additional filing at the same time to update section 5.14.1.2 of the Services Tariff to reflect the actual effective date of the proposed compliance revisions to that provision.[81]

b. Responsive Pleadings

84. New York City Suppliers state that NYISO could implement revised ICAP demand curves if the Commission issues an order within 12 business days of the auction as compared to the certification deadline.[82]

c. Answers

85. NYISO responds that the New York City Suppliers' suggestion that the implementation period could be shorter is unsupported and ignores the importance of implementing the revised demand curves prior to the ICAP supplier and Load Serving Entity certification deadline.[83]

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[80] The revised section 5.14.1.2 in the June 20, 2011 filing also contains the proposed tariff language from NYISO's March 29, 2011 filing, discussed earlier herein, specifying that the capacity of the designated peaking plant will be deemed the excess capacity for all purposes in determining the demand curve price points in the tariff.

[81] NYISO March 29, 2011 Filing at 3-4.

[82] New York City Suppliers Protest at 8, n.32.

[83] NYISO May 4, 2011 Answer at n.7.

d. Commission Determination

86. We will accept the subject revised tariff record filed on June 20, 2011, setting revised demand curve rates and revised tariff provisions addressing excess capacity, to be effective the date of this order, subject to the conditions discussed above and to the condition that NYISO file to revise the section 5.14.1.2 tariff record to insert the approved effective date of the rates for the 2011/2012 capability period, to be effective "to 4/30/12" as well as for the 2012/2013 and 2013/2014 capability periods. We reject the tariff records filed on March 29, 2011, as superseded and moot. By the Commission acting on NYISO's June 20, 2011 compliance filing and conditionally accepting the revised 2011/2012 rates effective as of the date of this order, NYISO will have the ability to implement the revised rates in the next spot market auction in which such revised rates can be used, consistent with its request and the ICAP event calendar.[84] Therefore, we direct NYISO to file revisions to section 5.14.1.2 of the Services Tariff record accepted today that revise the values for demand curves for the capability periods covered by this filing, i.e., through April 30, 2014, to be consistent with our acceptance of the June 20, 2011 demand curve parameters, within 10 days of the date of this order and at the same time to notify the Commission as to the ICAP spot market auction in which the new demand curve rate will be in effect. NYISO must also comply with our finding above to use the winter/summer adjustments resulting from the WSRs developed using the approved capacity levels rather than those contained in its November 30, 2010 filing, as discussed above.

The Commission orders:

(A) The revised tariff record in the June 20, 2011 filing in Docket No. ER11-2224-009 is hereby accepted to be effective the date of this order, subject to the conditions of this order as discussed above and to Commission action on the requests for rehearing of the May 19, 2011 Order. NYISO is directed to file a revised tariff record that reflects the changes discussed above and which indicates the effective dates and demand curve values consistent with the discussion above, within 10 days from the date of this order.

[84] The NYISO ICAP event calendar can be found at: http://icap.nyiso.com/ucap/public/evt_calendar_display.do

(B) The proposed tariff records filed in Docket Nos. ER11-2224-004 and ER11-2224-005 are hereby rejected as superseded and moot.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.