



with the Services Tariff, as well as the established capacity requirements for maintaining resource adequacy.

If the Commission does not accept the NYISO's proposal in this proceeding, without modification, on or before April 13, 2021, the NYISO plans to continue use of the currently effective ICAP Demand Curves, as set forth in Section 5.14.1.2.2.5 of the Services Tariff, until the implementation of new ICAP Demand Curves for the 2021/2022 Capability Year. Continued use of the currently effective ICAP Demand Curves on an interim basis is consistent with Commission precedent. It would also ensure use of ICAP Demand Curves on an interim basis that the Commission has previously determined to be just and reasonable. The NYISO, therefore, requests that the Commission expeditiously clarify that continuation of the currently effective ICAP Demand Curves, if necessary, would be reasonable and appropriate, or provide further direction to the NYISO regarding the ICAP Demand Curves that should be utilized in the interim until the implementation of new ICAP Demand Curves for the 2021/2022 Capability Year.

Alternatively, the NYISO requests an expedited waiver of the provisions of Sections 5.14.1.2 and 5.14.1.2.2.5 of the Services Tariff specifying that the currently effective ICAP Demand Curves expire on May 1, 2021. Such waiver, if required, would have the same practical effect as an order confirming that the currently effective ICAP Demand Curves should remain in use until the implementation of new ICAP Demand Curves for the 2021/2022 Capability Year.

The potential need for continuation of the currently effective ICAP Demand Curves beyond April 30, 2021 only arises if the Commission does not accept the NYISO's proposal in this proceeding, without modification, on or before April 13, 2021. As noted in the 2021-2025 DCR Supplemental Filing, if the Commission accepts the NYISO's proposal in this proceeding,

without modification, on or before April 13, 2021, the NYISO would be capable of implementing the new ICAP Demand Curves for the 2021/2022 Capability Year prior to conducting the May 2021 ICAP Spot Market Auction.<sup>5</sup> As of the date of this filing, however, the Commission has not yet issued an order addressing the NYISO's proposal. Accordingly, the NYISO hereby submits this request to provide greater certainty to the marketplace regarding the ICAP Demand Curves that would apply beginning May 1, 2021 absent the implementation of new ICAP Demand Curves for the 2021/2022 Capability Year prior to the May 2021 ICAP Spot Market Auction.

To help mitigate the current marketplace uncertainty that exists with respect to the ICAP Demand Curves applicable beginning May 1, 2021, the NYISO respectfully requests that the Commission act expeditiously in response to this filing and abbreviate to the maximum extent practicable any notice and comment procedures to facilitate issuance of an order addressing this request on or before April 9, 2021.

#### **I. REQUEST FOR COMMISSION ACTION**

The NYISO's proposal in this proceeding represents the culmination of the quadrennial review of the ICAP Demand Curves required by the Services Tariff.<sup>6</sup> The periodic reviews (commonly referred to as the "ICAP Demand Curve reset" or "DCR") provide a forum for an open and transparent assessment of the assumptions and parameters for establishing the ICAP Demand Curves. The DCR includes a comprehensive stakeholder process for vetting the necessary assumptions and parameters with all interested parties. The NYISO's proposal in this proceeding establishes the ICAP Demand Curves for the 2021/2022 Capability Year, as well as

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<sup>5</sup> 2021-2025 DCR Supplemental Filing at 17-18.

<sup>6</sup> See Services Tariff § 5.14.1.2.2.

the methodologies and inputs used in conducting the tariff-required annual updates to determine the ICAP Demand Curves for the 2022/2023 through 2024/2025 Capability Years.

The ICAP Demand Curves proposed by the NYISO for the 2021/2022 Capability Year would first be utilized in the May 2021 ICAP Spot Market Auction. Per the specifications of the Services Tariff, the currently effective ICAP Demand Curves, as set forth in Section 5.14.1.2.2.5, expire on May 1, 2021. Accordingly, absent Commission acceptance, and NYISO's implementation, of new ICAP Demand Curves for the 2021/2022 Capability Year prior to the May 2021 ICAP Spot Market Auction, the Services Tariff does not specify the ICAP Demand Curves that should apply. This potential circumstance gives rise to unnecessary marketplace uncertainty in advance of the upcoming May 2021 ICAP Spot Market Auction.<sup>7</sup> To help mitigate this ongoing uncertainty, the NYISO respectfully requests clarification that, if the Commission does not accept the NYISO's proposal in this proceeding, without modification, on or before April 13, 2021, the currently effective ICAP Demand Curves, as set forth in Section 5.14.1.2.2.5 of the Services Tariff, should remain in effect beyond April 30, 2021 (without any escalation, modification or other adjustment thereto) until the 2021-2025 DCR is resolved and new ICAP Demand Curves are implemented for the 2021/2022 Capability Year.<sup>8</sup>

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<sup>7</sup> The certification deadline for the May 2021 ICAP Spot Market Auction is April 22, 2021. The NYISO would need to implement new ICAP Demand Curves for the 2021/2022 Capability Year prior to this date for use in the May 2021 ICAP Spot Market Auction.

<sup>8</sup> The NYISO requires certainty regarding the new ICAP Demand Curves for the 2021/2022 Capability Year approximately seven business days prior to the certification deadline for a particular ICAP Spot Market Auction in order to implement such new ICAP Demand Curves for use in that ICAP Spot Market Auction. Absent certainty within such timeframe, the NYISO would seek to defer implementation of the new ICAP Demand Curves to the following ICAP Spot Market Auction. The certification deadline for each month is set forth in the NYISO's "ICAP Event Calendar" available at: [http://icap.nyiso.com/ucap/public/evt\\_calendar\\_display.do](http://icap.nyiso.com/ucap/public/evt_calendar_display.do). The certification deadline generally occurs on a date that is approximately six business days prior to the start of a particular month. The certification deadline for the May 2021 ICAP Spot Market Auction is April 22, 2021. The currently scheduled certification deadlines for the June 2021 and July 2021 ICAP Spot Market Auctions are May 20, 2021 and June 22, 2021, respectively.

Continued use of the currently effective ICAP Demand Curves absent implementation of new, Commission-accepted ICAP Demand Curves for the 2021/2022 Capability Year is appropriate because the tariff does not address the ICAP Demand Curves that should apply in such circumstances. The currently effective ICAP Demand Curves represent the curves developed in accordance with the procedures accepted by Commission for establishing ICAP Demand Curves for the period covered by each DCR.<sup>9</sup> Thus, the currently effective ICAP Demand Curves are the only Commission-accepted formulation of the curves. Furthermore, continued use of the currently effective ICAP Demand Curves, without any modifications or adjustments, is consistent with precedent under such circumstances.

Resolution of the DCR to establish the ICAP Demand Curves for the 2011/2012, 2012/2013, and 2013/2014 Capability Years (“2011-2014 DCR”) did not occur in time to permit the implementation of new ICAP Demand Curves for the 2011/2012 Capability Year prior to the May 2011 ICAP Spot Market Auction. As a result, the Commission directed the NYISO to maintain the then-currently effective ICAP Demand Curves for the 2010/2011 Capability Year pending resolution of the 2011-2014 DCR and the NYISO’s implementation of new ICAP Demand Curves for the 2011/2012 Capability Year.<sup>10</sup> Under these circumstances, the Commission directed that the NYISO continue use of the ICAP Demand Curves for the 2010/2011 Capability Year, without any modifications or adjustments, until the implementation

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<sup>9</sup> Notably, the Commission expressly approved the currently effective ICAP Demand Curves, as set forth in Section 5.14.1.2.2.5 of the Services Tariff. See Docket No. ER21-130-000, *New York Independent System Operator, Inc.*, Letter Order (October 22, 2020).

<sup>10</sup> See *New York Independent System Operator, Inc.*, 134 FERC ¶ 61,058 at P 168 (2011); *New York Independent System Operator, Inc.*, 134 FERC ¶ 61,178 at P 16 (2011); *New York Independent System Operator, Inc.*, 135 FERC ¶ 61,002 at P 3 and 10 (2011); and *New York Independent System Operator, Inc.*, 135 FERC ¶ 61,170 at P 101 and 104 (2011).

of new ICAP Demand Curves for the 2011/2012 Capability Year.<sup>11</sup> Ultimately, the NYISO continued use of the ICAP Demand Curves for the 2010/2011 Capability Year in conducting the ICAP Spot Market Auctions for May 2011 through September 2011.<sup>12</sup> Following resolution of the 2011-2014 DCR, the NYISO implemented new ICAP Demand Curves for the 2011/2012 Capability Year and began utilizing such new curves for the October 2011 ICAP Spot Market Auction.<sup>13</sup>

Consistent with the 2011-2014 DCR, the NYISO requests that the Commission clarify that in the event it does not accept the NYISO's proposal in this proceeding, without modification, on or before April 13, 2021, the currently effective ICAP Demand Curves, as set forth in Section 5.14.1.2.2.5 of the Services Tariff, should remain in effect (without any escalation, modification, or other adjustment to such curves) on an interim basis pending resolution of the 2021-2025 DCR and the implementation of new ICAP Demand Curves for the 2021/2022 Capability Year. Issuance of such clarification by the Commission on an expedited basis will help to mitigate current marketplace uncertainty regarding the ICAP Demand Curves that would apply beginning with the May 2021 ICAP Spot Market Auction.

Alternatively, if deemed necessary, the NYISO requests that the Commission grant an expedited waiver of the provisions in Sections 5.14.1.2 and 5.14.1.2.2.5 of the Services Tariff establishing an end date of April 30, 2021 for the currently effective ICAP Demand Curves. Waiver of this specified end date would permit the NYISO to retain use of the currently effective ICAP Demand Curves pending resolution of the 2021-2025 DCR and the implementation of new

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<sup>11</sup> See, e.g., *New York Independent System Operator, Inc.*, 134 FERC ¶ 61,178 at P 16 (2011); and *New York Independent System Operator, Inc.*, 135 FERC ¶ 61,002 at P 3 (2011).

<sup>12</sup> See, e.g., Docket No. ER11-2224-010, *New York Independent System Operator, Inc.*, Letter Order (October 6, 2011).

<sup>13</sup> *Id.*

ICAP Demand Curves for the 2021/2022 Capability Year. The need for any such waiver arises only if the Commission does not accept the NYISO's proposal in this proceeding, without modification, on or before April 13, 2021. If the Commission accepts the NYISO's proposal in this proceeding, without modification, on or before April 13, 2021, the NYISO will implement the proposed ICAP Demand Curves for the 2021/2022 Capability Year for use in the May 2021 ICAP Spot Market Auction.

The NYISO's alternative waiver request is consistent with Commission precedent. The Commission has granted waivers of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver addresses a concrete problem; (3) the waiver is of limited scope; and (4) the waiver does not have undesirable consequences, such as harming third parties.<sup>14</sup> The alternative waiver requested by the NYISO meets these criteria.

The NYISO has acted in good faith. In accordance with the requirements of the Services Tariff, the NYISO, in collaboration with its stakeholders, conducted the quadrennial review of the ICAP Demand Curves. On November 30, 2020, as required by Section 5.14.1.2.2.4.11 of the Services Tariff, the NYISO timely filed the proposed results of the 2021-2025 DCR in this proceeding for Commission review and action. At the time of this filing, the NYISO's proposal remains pending before the Commission. In the 2021-2025 DCR Supplemental Filing, the NYISO informed the Commission that absent issuance of an order addressing the NYISO's proposal on or before March 15, 2021, further action may be required to address the potential that the Commission might not accept the NYISO's proposal in this proceeding, without modification, on or before April 13, 2021.<sup>15</sup> This filing seeks to provide marketplace certainty

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<sup>14</sup> See, e.g., *New York Independent System Operator, Inc.*, 160 FERC 61,124 at P 22 (2017).

<sup>15</sup> 2021-2025 DCR Supplemental Filing at 18.

regarding the interim ICAP Demand Curves that would apply if the Commission does not accept the NYISO's proposal in this proceeding, without modification, on or before April 13, 2021.

The alternative waiver request would address a concrete problem. The NYISO's proposal in this proceeding includes the proposed ICAP Demand Curves for the 2021/2022 Capability Year. The currently effective ICAP Demand Curves, as set forth in Section 5.14.1.2.2.5 of the Services Tariff, expire on May 1, 2021. The tariff does not address the ICAP Demand Curves that would apply in the interim pending resolution of the 2021-2025 DCR. Consistent with Commission precedent, the waiver would permit the currently effective ICAP Demand Curves to remain in effect beyond April 30, 2021 until the implementation of new ICAP Demand Curves for the 2021/2022 Capability Year.

The alternative waiver request would be limited in scope and duration. The potential need for a waiver arises only if the Commission does not accept the NYISO's proposed ICAP Demand Curves for the 2021/2022 Capability Year, without modification, on or before April 13, 2021. Moreover, the waiver would be temporary and remain in effect only until such time as the 2021-2025 DCR is resolved and the NYISO implements new, Commission-accepted ICAP Demand Curves for the 2021/2022 Capability Year.

The NYISO does not anticipate that the alternative waiver request would result in undesirable consequences. As noted above, the currently effective ICAP Demand Curves, as set forth in Section 5.14.1.2.2.5 of the Services Tariff, otherwise expire on May 1, 2021. The proposed ICAP Demand Curves for the 2021/2022 Capability Year remain pending before the Commission. Absent Commission acceptance of the NYISO's proposal in this proceeding, without modification, on or before April 13, 2021, the NYISO anticipates it will be unable to implement new ICAP Demand Curves for the 2021/2022 Capability Year in time for use in the

May 2021 ICAP Spot Market Auction. In such case, the Services Tariff does not address the ICAP Demand Curves that should be used by the NYISO to conduct ICAP Spot Market Auctions beginning with May 2021 pending resolution of the 2021-2025 DCR and the implementation of new ICAP Demand Curves for the 2021/2022 Capability Year. The alternative waiver would allow for continued use of the currently effective ICAP Demand Curves on an interim basis. This would ensure the NYISO's continued ability to conduct the tariff-required ICAP Spot Market Auctions during the interim period until the NYISO implements new, Commission-accepted ICAP Demand Curves for the 2021/2022 Capability Year. The Commission has previously determined that the currently effective ICAP Demand Curves are just and reasonable. Thus, the continued use thereof for an interim period should not result in the kind of "undesirable consequences" that would render a waiver inappropriate.

## **II. REQUEST FOR EXPEDITED ACTION**

The NYISO respectfully requests that the Commission act expeditiously and issue an order granting the requested clarification, or in the alternative, waiver on or before April 9, 2021. The NYISO also requests that the Commission shorten, to the maximum extent practicable, any applicable notice and comment periods that would otherwise apply to this request in order to facilitate issuance of an order by the aforementioned date. Expeditious action will provide important clarity to the marketplace regarding the ICAP Demand Curves that would apply beginning with the May 2021 ICAP Spot Market Auction if the Commission does not accept the NYISO's proposal in this proceeding, without modification, on or before April 13, 2021.

## **III. CONCLUSION**

The NYISO respectfully requests that the Commission expeditiously grant the clarification, or in the alternative, waiver requested herein to provide certainty to the marketplace

that the currently effective ICAP Demand Curves, as set forth in Section 5.14.1.2.2.5 of the Services Tariff, would remain in effect if the Commission does not accept the NYISO's proposal in this proceeding, without modification, on or before April 13, 2021.<sup>16</sup> The Commission should also confirm that, if required, the currently effective ICAP Demand Curves would remain in effect, without any modification or adjustment thereto, and continue to be used in the ICAP Spot Market Auctions until resolution of the 2021-2025 DCR and the implementation of new ICAP Demand Curves for the 2021/2022 Capability Year.

Respectfully submitted,

/s/ Garrett E. Bissell

Garrett E. Bissell

Senior Attorney

New York Independent System Operator, Inc.

Dated: March 30, 2021

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<sup>16</sup> As previously stated, if the Commission accepts the NYISO's proposal, without modification, on or before April 13, 2021, the NYISO is capable of implementing, and will implement, its proposed ICAP Demand Curves for the 2021/2022 Capability Year for use beginning with the May 2021 ICAP Spot Market Auction.

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 30<sup>th</sup> day of March 2021.

*/s/ Joy A. Zimmerlin*

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