NEW YORK INDEPENDENT SYSTEM OPERATOR
10 Krey Boulevard Rensselaer, NY 12144

March 29, 2011

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re:** ***New York Independent System Operator, Inc.*****, Compliance Filing and Request for Flexible Effective and Implementation Dates, Docket No. ER11-2224-00_**

In compliance with the Commission's January 28, 2011 Order ("January Order")[1] on the NYISO's November 30, 2010 filing[2] ("November Filing") proposing updated Installed Capacity ("ICAP")[3] Demand Curves beginning on the date in 2011 established by Commission order (as described herein) through the end of Capability Year 2011/2012, and for Capability Years 2012/2013 and 2013/2014 , the NYISO respectfully submits this compliance filing. This filing proposes certain compliance tariff revisions that were directed by the January Order. It also proposes to revise certain ICAP Demand Curve cost components and provides support for those changes consistent with the January Order's guidance.

As discussed in Section IV below, the NYISO proposes to implement the revised ICAP Demand Curves during the upcoming Summer Capability Period.[4] The actual effective

[1] *New York Independent System Operator, Inc.*, 134 FERC ¶ 61,058 (2011) ("January Order").

[2] New York Independent System Operator, Inc., Tariff Revisions to Implement ICAP Demand Curves for Capability Years 2011/2012, 2012/2013, and 2013/2014, Docket No. ER11-2224-000 (filed November 30, 2010).

[3] Terms with initial capitalization that are not otherwise defined herein shall have the meaning set forth in the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff"), and if not defined therein, in the NYISO's Open Access Transmission Tariff ("OATT").

[4] The January Order held that the currently effective ICAP Demand Curves should remain in effect until superseded. *See* January Order at P 168. On March 28, 2011, the NYISO submitted a compliance filing to add a column to the table in Section 5.14.1.2 of the Services Tariff to reflect the ICAP Demand Curves values to be in effect from April 30, 2011 until Commission action on this compliance filing. That filing is pending before the Commission. *See* New York Independent System Operator, Inc., Compliance Filing to State Currently Effective ICAP Demand Curves, Request for Action on Pending Filings, and Request for Expedited Action by April 4, 2011, Docket No. ER11-2224-003 (filed March 28, 2011).

date for its proposed compliance tariff revisions will depend on the timing of a Commission order accepting revised ICAP Demand Curves.

## I. LIST OF DOCUMENTS SUBMITTED

The NYISO respectfully submits the following documents:

1. This filing letter;
2. A blacklined version of the modifications to Section 5.14.1.2 of the Services Tariff (Attachment I);
3. A clean version of the modifications to Section 5.14.1.2 of the Services Tariff ("Attachment II").
4. The affidavit of Mr. David Lawrence ("Lawrence Affidavit") (Attachment III);
5. The affidavit of Mr. Eugene T. Meehan ("Meehan Affidavit") (Attachment IV);
6. The affidavit of Mr. Christopher Ungate ("Ungate Affidavit") (Attachment IV);
7. The affidavit of Mr. Steven Corey ("Corey Affidavit") (Attachment V); and
8. The affidavit of David B. Patton, Ph.D. ("Patton Affidavit") (Attachment VI).

## II. BACKGROUND

The November Filing proposed various revisions to the ICAP Demand Curves for Capability Years 2011/2012, 2012/2013, and 2013/2014. The January Order accepted the NYISO's proposed tariff changes subject to modification, suspended them for five months, or until an earlier date set by a subsequent Commission order in this proceeding. It also directed the NYISO to make this compliance filing. Among other things, the NYISO was required to:

- Include a calculation of the costs of System Deliverability Upgrades ("SDUs"), if any, in the determination of the net costs of new entry ("CONE") for the New York Control Area ("NYCA"), New York City ("NYC"), and Long Island ICAP Demand Curves based on a "deliverability analysis that reflects a level of capacity that slightly exceeds the minimum capacity requirements."[5]
- Address a protest regarding the November Filing's estimates of the costs of System Upgrade Facility ("SUF") in NYC and provide support for the NYISO's estimates of NYC SUF costs.[6]
- Either continue the levels of excess Capacity ("Excess Capacity Levels") for the respective ICAP Demand Curves that are included in the currently effective ICAP Demand Curves, or, propose new Excess Capacity Levels with appropriate support.[7]

[5] January Order at PP 53, 62.

[6] *Id.* at P 140.

[7] *Id.* at P 114.

- Use the selected Excess Capacity Levels consistently throughout the analyses used to develop the ICAP Demand Curves.[8]
- Revise the NYC Demand Curve to exclude real property tax abatement from the calculation of net CONE.[9]

The NYISO timely sought rehearing and/or clarification of a number of these directives. The Commission has not yet acted on those requests. Consequently, this compliance filing proposes to make the changes, and provides the additional support, mandated by the January Order.[10]

The Commission recognized that implementing revised ICAP Demand Curves in the middle of a Capability Period could pose various difficulties. It therefore allowed the NYISO to propose an implementation date for the revised ICAP Demand Curves at any point between the end of the five month suspension period, or an earlier date that might be set by a future order, and November 1, 2011, *i.e.*, the first day of the NYISO's winter Capability Period.[11]

## III. DESCRIPTION OF PROPOSED COMPLIANCE TARIFF REVISIONS

### A. Compliance Tariff Revisions

#### 1. Revised ICAP Demand Curve Values

Section 5.14.1.2 of the Services Tariff includes a table that identifies the points at which the NYISO's three ICAP Demand Curves are to be established. The NYISO has prepared a blacklined version of the Section 5.14.1.2 table that reflects values that incorporate all of the compliance changes described in this filing.

#### 2. Using Consistent Excess Capacity Levels for All Purposes

The January Order requires the NYISO "to revise section 5.14.1.2 of the Services Tariff so that it is clear that the demand curves will be developed using an internally consistent determination of excess capacity..... "[12] The NYISO sought expedited

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[8] *Id.* at P 129, *see also*, PP 122 and 161.

[9] *Id.* at P 90.

[10] The fact that the NYISO is fulfilling its compliance obligations by making this filing should not be construed as a withdrawal or waiver of any argument made in the *Request for Rehearing, Alternative Request for Clarification, and Partial Request for Expedited Action of the New York Independent System Operator, Inc.*, Docket No. ER11-2224-000 (filed February 28, 2011) ("NYISO Request for Rehearing").

[11] January Order at P 168. *See also, New York Independent System Operator, Inc.*, 134 FERC ¶ 61,178 (2011) (stating that the "NYISO may choose to defer the effective date even further [than June 28, 2011] if it does not wish to implement the revised rates during the summer Capability Period.").

[12] January Order at P 129.

clarification or in the alternative, rehearing, of this requirement to the extent that it conflicted with the January Order's determination that the November Filing's proposed Energy and Ancillary Services revenue offsets were just and reasonable.[13] The Commission has not yet acted on this request.

Accordingly, the NYISO is proposing revisions to section 5.14.1.2 of the Services Tariff to clearly establish that the costs and revenues of the peaking plant for each Demand Curve shall be determined under conditions in which the capacity, including the peaking plant, is equal to the sum of: (a) the applicable minimum Installed Capacity requirement; and (b) the peaking plant's capacity equal to the number of MW specified in the final report prepared by the NYISO's independent Demand Curve consultant (the "Consultant") [14] for the applicable triennial ICAP Demand Curve reset process used to determine all peaking unit costs and Energy and Ancillary Services revenues. The proposed tariff revisions also specify how each of the minimum ICAP requirements of the ICAP Demand Curves will be established. As described below, the Consultant's model that was used to develop the ICAP Demand Curves included in the November Filing has been revised to utilize consistent Excess Capacity Levels for the peaking plant's entire thirty-year modeling horizon.[15]

The NYISO's rationale for proposing to determine Excess Capacity Levels based on the size of the peaking plants is explained in Section III. B.3 below and in the Patton Affidavit. The changes in the Consultant's model underlying the ICAP Demand Curves that would result from the use of these new Excess Capacity Levels for the entire thirty-year period are described in the Meehan Affidavit.

The revisions to use a consistent level of excess capacity permit the NYISO to recognize the peaking plant's MW when setting the Excess Capacity Level. In the 2005 and 2008 Demand Curve reset orders,[16] and the January Order, the Commission accepted a two-unit project to establish the Demand Curves. To add clarity, the proposed revisions specify that "peaking unit" is the total quantity of MW identified for the peaking plant. Thus, for

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[13] NYISO Request for Rehearing at 39-42.

[14] The "Consultant" is an independent team of experts selected pursuant to the requirements of section 5.14.1.2 of the Services Tariff. References to the "Consultant", unless otherwise specified, encompass National Economic Research Associates, Inc. ("NERA") and its subcontractor, Sargent and Lundy ("S&L").

[15] The Meehan Affidavit describes the "Revised Model". The Revised Model is being posted to the NYISO's website on March 29, 2011 and will continue to be available on it, as is the Original Model (as such term is defined in the Meehan Affidavit, the model used for the November Filing). Also on the same date as this filing, NYISO ICAP Working Group stakeholders are being sent an email notification of the web posting of the Revised Model. It may be retrieved at <http://www.nyiso.com/public/markets_operations/market_data/icap/index.jsp> (under Reference Documents - 2011-2014 Demand Curve Reset) and <http://www.nyiso.com/public/markets_operations/committees/meeting_materials/index.jsp?com=bic_icapwg>

[16] *See New York Indep. Sys. Operator, Inc.,* 110 FERC ¶61,201 (2005), *New York Indep. Sys. Operator, Inc.,* 122 FERC ¶ 61,064 (2008) ("2008 Reset Order").

example, in the current reset, for NYC and Long Island, 195 MW would be utilized rather than 97.5 MW for an individual unit at the two-unit site. If the Commission accepts the proposed tariff revisions including the description of peaking plant, a corresponding change within the definition of "Net CONE" in Services Tariff Attachment H would be necessary. At the Commission's direction, the NYISO would file in compliance to change the term "peaking unit" within the definition of Net CONE to peaking plant as defined in Services Tariff Section 5.14.1.2.

### B. Compliance Adjustments to ICAP Demand Curve Values

#### 1. Inclusion of System Deliverability Upgrades

The November Filing proposed to exclude SDU costs from the CONE of the peaking plant on a variety of tariff and policy grounds. The January Order disagreed with this proposal and instructed the NYISO to "revise the NYCA and, if necessary, the NYC and LI demand curves to reflect the estimated cost of [SDUs] under a level of excess capacity that slightly exceeds the minimum requirement..... "[17] The NYISO was also directed to "perform a well-supported deliverability analysis that reflects a level of capacity that slightly exceeds the minimum capacity requirements."[18] The January Order further indicated that the deliverability analysis should use the same Excess Capacity Level assumptions that are used in other parts of the NYISO's ICAP Demand Curve analyses.[19]

In compliance with the January Order, the NYISO conducted this deliverability analysis ("Deliverability Test") under the direction of the Manager of Interconnection Projects, Mr. Steven Corey. This Deliverability Test was distinct and independent from the

[17] January Order at P 53.

[18] *Id.* at P 62. The NYISO is not proposing to revise its tariffs to establish that the methodology underlying the Deliverability Test conducted to support this compliance filing be used in all future ICAP Demand Curve resets. Although it may be appropriate to utilize it, or elements of it, in future resets, there are several reasons that militate against committing now to do so in the future. Among other things: (a) it would be beyond the scope of this compliance filing to do so, (b) the Services Tariff and the ICAP Manual generally do not delineate the specific costs to be included in the peaking plant CONE or the manner in which they are to be computed and there is no reason to treat NYISO deliverability analyses differently, (c) the methodology is more appropriately established closer in time to when the future Deliverability Test analyses will be performed, (d) although the NYISO has vetted the methodology used in the Deliverability Test with stakeholders, and revised it after considering stakeholder comments, there is no reason at this time to foreclose the possibility of future stakeholder discussions regarding, and adjustments to, the Deliverability Test or the methodology used in future Demand Curve resets; and (e) because the Deliverability Test was performed after the Consultant's report and the NYISO's recommendations were finalized, it was appropriate to utilize different values than might have been used if the Deliverability Test had been undertaken at an earlier point in the process (For example, information from the NYISO-proposed draft study was available at the time of this Deliverability Test and it is unlikely it would be available at the time of the deliverability analysis performed for a future reset.)

[19] January Order at P 62.

NYISO's ongoing study process for Class Year 2009 and Class Year 2010 projects. Although the Deliverability Test relied in part on NYISO-prepared drafts study reports for those Class Years, the analyses for those Class Years are not yet complete.

As the Corey Affidavit explains, the Deliverability Test was based as closely as practicable on existing Class Year study procedures. Changes were limited to those necessitated by the January Order, including the requirement to use consistent Excess Capacity Levels. Those assumed Capacity levels would not be used in the standard Attachment S process. The approach taken by the Deliverability Test was reasonable and should be accepted by the Commission.

When the NYISO undertakes its annual Class Year deliverability test under Attachment S to its OATT, it establishes an Annual Baseline Transmission Assessment ("ATBA"). The "base case" generation project assumptions used in the Deliverability Test (described and referred to in the Corey Affidavit as the "DCR Base Case") was the same ATBA case used for Class Years 2009 and 2010, with certain projects added. The NYISO's purpose in making these adjustments was to ensure that the Deliverability Test included projects for which there was a reasonable certainty they would enter service during the new ICAP Demand Curve period and that would be modeled in the base case (ATBA) of future Class Year studies. Therefore, projects that were determined to be deliverable in the NYISO-prepared draft of the Class Year study and that had an executed (or unexecuted and filed) Interconnection Agreement) were added to the ATBA case to create the DCR Base Case for the Deliverability Test.[20] The DCR Base Case MW used in the Deliverability Test is set forth in Table A to the Corey Affidavit.

The Deliverability Test used the same five-year planning load forecast that is being used under the Attachment S study process for Class Year 2009 and Class Year 2010. Using this five-year planning forecast period is reasonable because it is the planning forecast that would be used to determine whether a project in a Class Year being studied at the same general time as the deliverability analysis for the Demand Curves, would be deliverable and, if not deliverable, the project's SDU cost allocation. In addition, the five-year planning forecast encompasses the entire duration of the new ICAP Demand Curves.[21] Consistent with

[20] The NYISO considered whether it was appropriate to include in the two part criterion a limiting date by which an Interconnection Agreement must be either executed or, if unexecuted, filed with the Commission ("IA Date"). When it examined the potential projects that met both parts of the criteria, the only projects were Long Island Solar, LLC, with an IA date of October 15, 2010, and Bayonne Energy Center, LLC, with an IA date of November 10, 2010. Those dates are both substantially before the Commission's January Order directing the NYISO to perform the deliverability analysis. They also are prior to the NYISO's November Filing. Thus, the NYISO determined that for purposes of its analysis for this compliance filing it was not necessary to establish an IA Date parameter for the criterion.

[21] The NYISO believes that it is appropriate to incorporate in the DCR Base Case the Class Year 2009 and Class Year 2010 projects meeting the identified two part criterion. Although expected entry date is not a criteria used, or a consideration in, in the Class Year deliverability study, the DCR Base Case projects have an expected entry date that generally coincides with the three-year duration of the proposed ICAP Demand Curves. The NYISO notes, however, that some projects in Class Year

Section 25.7.8.2.4 of Attachment S, the NYISO used the Load Forecast Uncertainty from the most recent base case IRM.

Consistent with the Class Year deliverability study inputs, the DCR Base Case included the 1080 MW of Existing Transmission Capacity for Native Load[22] ("ETCNL") and the 1090 MW of External Capacity Resource Interconnection Service Rights ("External CRIS Rights") that currently exist in the NYCA.[23] Consistent with OATT Attachment S Section 25.7.8.2.9, these amounts were not adjusted, pro-rated, or proportionally reduced.

The amount of capacity in the DCR Base Case was assumed to equal the minimum Installed Capacity requirements. The NYISO then created the DCR Study Case by adding capacity to the DCR Base Case equal to the Excess Capacity Level that the NYISO and its independent Market Monitoring Unit ("MMU") are proposing in this compliance filing, *i.e.* 2.3% for NYC, 4.1% for Long Island, and 1.1% for the NYCA. This was done by adding the MW of the peaking units. The Deliverability Test was performed on the DCR Study Case reflecting the Excess Capacity Levels.

Any deliverability analysis must be performed by modeling the unit at a specific interconnection point. The NYISO identified for each capacity region a specific interconnection point to model load flows for the respective peaking plants. The specific interconnection points are described in the Corey Affidavit.[24]

The Deliverability Test performed on the DCR Study Case showed that the transmission system would be deliverable for the Rest of State (for the NYCA peaking plant), NYC, and Long Island regions. Because the peaking plants in each region were determined to be deliverable, an SDU is not needed. As confirmed by the Lawrence Affidavit, because an SDU is not required, there are no SDU costs to be included in the CONE of any of the peaking plants.[25] Therefore, the NYISO is not proposing any changes to the ICAP Demand Curves to reflect deliverability costs in this compliance filing.

The Commission directed the "NYISO to revise its net CONE computations to include the reasonably ascertainable value of TCCs associated with System Deliverability Upgrades and to include this offset in the revised demand curves."[26] Because the Deliverability Test found that no SDUs were required, and thus there were no SDU costs, there is no need to include TCC-related offsets in the ICAP Demand Curves and the NYISO is not proposing to do so.

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2011 may also be expected to enter during the period covered by the new Demand Curves. The fiveyear planning forecast to be used for Class Year 2011 was not finalized as of the date of this analysis, nor was it finalized as of the date of this filing.

[22] *See OATT* Attachment L, Section 18.3, Table 3.

[23] *See* OATT Attachment S Section 25.7.11.

[24] *See* Corey Affidavit P 19.

[25] *See* Lawrence Affidavit at P 5.

[26] January Order at P 63.

Another suggestion during the stakeholder process was to include the 1080 MW ETCNL and the 1090 MW of External CRIS Rights when prorating the generation reductions for the Deliverability Test. Under this scenario, the NYISO's conclusion remains the same: the peaking plant would be deliverable, as explained in the Corey Affidavit.[27]

At the request of certain stakeholders, the NYISO also analyzed an alternative version of the Deliverability Test: using the currently effective Excess Capacity Levels. The Corey Affidavit describes that the peaking plant in each of the capacity regions is deliverable at those alternative Levels of Excess.

### 2. NYC System Upgrade Facility Costs

The November Filing's assumptions regarding NYC interconnection costs were disputed by the Independent Power Producers of New York ("IPPNY"). The January Order found that "there is merit to IPPNY's concerns with the level of interconnection costs used by the NYISO in determining CONE for the NYC locality" and directed the NYISO "to address IPPNY's arguments that the costs for System Upgrade Facilities that NYISO has used for NYC are unrealistic and provide support for the estimate it has used."[28]

In compliance with this directive, the NYISO re-examined the NYC SUF and interconnection costs that were included in the NYC peaking unit CONE. The NYISO is proposing to revise the values that were incorporated in the November Filing. The NYC SUF and interconnection costs are now calculated to be $14,479,000. The Ungate Affidavit explains the methodology and data used to model NYC interconnection costs, and the updated estimate of NYC SUF costs. This revision results in an $11,399,000 increase in the NYC peaking unit CONE.[29]

The Lawrence Affidavit describes how that cost was incorporated into the CONE of the NYC peaking plant, and it illustrates the impact of the SUF cost revision on the NYC Demand Curve.

### 3. Excess Capacity Levels

The November Filing proposed to adopt Excess Capacity Levels of 1%, 1.1% and 2.1% for the New York Control Area ("NYCA"), New York City ("NYC"), and Long Island, respectively. The January Order concluded that the November Filing's proposals were insufficiently supported and therefore could not be found to be just and reasonable.[30] At the same time, it rejected as insufficiently supported a variation on the November Filing's proposal that was prepared by the MMU. The Commission directed the NYISO to either

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[27] *See* Corey Affidavit at P 29.

[28] *Id.* at P 140.

[29] *See* Ungate Affidavit at P 28.

[30] *Id.* at P 114.

adopt the Excess Capacity Levels that were accepted in the 2008 Reset Order (*i.e.,* 4% for NYC and Long Island and 1.5% for the NYCA) or "propose to use a new level of excess capacity" in this compliance filing with additional support.[31]

The NYISO is proposing revised Excess Capacity Levels for NYC, Long Island, and the NYCA based on the MW of the peaking plants that the Commission has accepted for purposes of establishing the respective ICAP Demand Curves. This approach was initially proposed by the MMU in the November Filing.[32] The MMU provides additional support for this approach in the Patton Affidavit that is Attachment VI to this compliance filing.

For the current ICAP Demand Curve reset period, the NYISO's proposes to use the 195 MW LMS100 peaking plant for NYC and Long Island, which results in an Excess Capacity Level in NYC equal to 2.3%, and in Long Island equal to 4.1%, of the minimum Installed Capacity requirement for each Locality. The NYISO proposes to use the 413 MW Frame 7FA peaking plant for the NYCA results in an Excess Capacity Level equal to 1.1% of the NYCA minimum Installed Capacity requirement. The NYISO used the Excess Capacity Levels in the various analyses that support the establishment of the revised ICAP Demand Curves, including the Deliverability Test.

As the Patton Affidavit explains, it is appropriate to link Excess Capacity Levels to the peaking plant utilized to establish the Demand Curves. Utilizing either a "combined cycle unit or a combination of generation that is expected to enter the market" would not be appropriate.[33] Resources would only be expected to enter the market if their cost of entry is lower than the Demand Curve peaking plant's. It would only be reasonable to use an Excess Capacity Level based on investments in resources other than the peaking plant if the NYISO were also using the lower net CONE of these alternative technologies.

An additional value of the NYISO's proposal is that it establishes an objective standard that promotes greater transparency, predictability, and objectivity. Dr. Patton's Affidavit concurs and identifies that this approach also allows investors to form better long-term expectations regarding the likely Excess Capacity Levels used in future Demand Curve resets.[34]

Dr. Patton also states that the NYISO's proposal 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.[35] Consistent with the January Order recognition of lumpiness, Dr, Patton

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[31] *See* January Order at P 114.

[32] November Filing at Patton Affidavit P 27.

[33] *See* Patton Affidavit at P 25 (*quoting* January Order P 121.)

[34] *See* Patton Affidavit at P 33.

[35] *Id.* Patton Affidavit at PP 11-12, Section 3.B.

concludes that the NYISO's proposal also realistically accounts for the "lumpiness" of potential capacity additions.[36]

Dr. Patton's view is that the NYISO's proposed Excess Capacity Levels are high enough to promote long-term investment and retirement decisions that will result in sufficient planning reserves to maintain reliability.[37] He confirms that the proposed levels are sufficiently high to ameliorate the January Order's concern that actual capacity revenues not "be below those modeled at equilibrium due to expected excess capacity in the New York markets."[38] Dr. Patton concludes that ICAP Demand Curves based on the proposed Excess Capacity Levels should produce economic signals sufficient to support investment in both the peaking plants and in other economic technologies over the long run.[39] They thus reflect the existence of "consistent reliability signals" in New York State that the Commission has recognized are likely to prevent Capacity levels from falling to the minimum requirement.[40]

With respect to the short-term, the Meehan Affidavit demonstrates that there are other technologies that are more economic than the ICAP Demand Curve peaking plants.[41] Dr. Patton concludes that the lower net cost of entry of such technology provides additional assurance that ICAP Demand Curves based on the NYISO's proposed Excess Capacity Levels will be more than adequate.[42]

At the same time, Dr. Patton agrees that the proposed Excess Capacity Levels are not so high as to risk inflating the ICAP Demand Curves to an extent that would risk inefficiently perpetuating New York's existing capacity surplus and inefficiently over-compensating suppliers. Among other things, artificially perpetuating the existing surplus may tend to diminish the benefits of Demand Side Resources. A principal advantage of Demand Side Resources is their ability to satisfy the peaking capacity needs of the system and avoid the need to build new supply side resources. Setting unreasonably high excess Capacity assumptions would promote over-building of both traditional generating resources and Demand Side Resources, and erode this benefit. Additionally, the resulting Capacity surplus would substantially reduce the need to call on the Demand Side Resources, reducing their value to the system in the operating timeframe.[43]

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[36] *Id*. at P 20.

[37] *See* Patton Affidavit at P 13.

[38] *See* January Order at P 115.

[39] *See* Patton Affidavit at P 14.

[40] January Order at P 120.

[41] Meehan Affidavit at P 18 (demonstrating that the net CONE for a combined-cycle gas turbine generator is approximately 46% lower than the net CONE for the NYC peaking plant.).

[42] *See* Patton Affidavit at P 14.

[43] *Id.* at P 16.

Dr Patton further explains that Excess Capacity Levels should not be based on the actual prevailing surplus.[44] If the ICAP Demand Curves are set too high then inefficiently high levels of entry and inefficiently low levels of exit will occur, and can be expected to increase the surplus. An Excess Capacity Level that is too high increases the Demand Curve, and would likely exacerbate the surplus and could lead to an ever-increasing future cycle of such surpluses and adjustments.[45]

Dr. Patton also emphasizes that the Excess Capacity Levels that were used in the 2008 Reset should no longer be used. Current levels of excess, particularly the 4% Excess Capacity Level for NYC, would be unreasonably high if applied to Demand Curves beginning during Capability Years 2011/2012, and for Capability Years 2012/2013 and 2013/2014.[46] In particular, Dr. Patton argues that the NYISO's implementation of NYC buyer-side Capacity market power mitigation measures since the 2008 Reset makes it unlikely that average Capacity surpluses as high as 4 percent would exist in that Locality.[47]

As Dr. Patton stated in his affidavit in the November Filing, and restates in his Affidavit in this filing, he believes that there is no single "correct" Excess Capacity Level but a range of potentially reasonable outcomes. In response to the January Order,[48] the Patton Affidavit explains how Dr. Patton determined the upper and lower limits of this range and that the Excess Capacity Levels proposed in this compliance filing fall within it. Dr. Patton believes that a reasonable range for NYC would be between 2 and 3 percent and that the NYISO's proposal (2.3%) is thus reasonable.[49]

As described in Section III.B.2 above, the January Order's requirement that the NYISO use a consistent level of excess[50] conflicts with its acceptance of the November Filing's proposed Energy and Ancillary Services revenue offsets.[51] The NERA Original Model utilized for the November Filing used one level of excess for years one through three and a different level for years four through thirty. However, because the Commission has not acted on the NYISO's request for rehearing on that issue, as described in the Meehan Affidavit, the NERA Original Model was revised so that a consistent level of excess can be used for all years. As described herein, in the Meehan Affidavit,[52] and in the Lawrence

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[44] Dr. Patton's approach is therefore consistent with the January Order's observation that "[t]he current state of capacity surplus in the NYCA is not relevant to the specification of the demand curves." January Order at P 117.

[45] *See* Patton Affidavit at P 21.

[46] See Patton Affidavit, Section IV.

[47] *Id.* at PP 15, 34-35.

[48] January Order at P 125.

[49] *See* Patton Affidavit at P 32.

[50] January Order at P 129.

[51] *Id.* at P 136.

[52] *See* Meehan Affidavit at P 3.

Affidavit,[53] the proposed Excess Capacity Levels were utilized for all years. In addition to the Patton Affidavit and Meehan Affidavits, the Lawrence Affidavit describes the impact of the NYISO's proposed new Excess Capacity Levels on the peaking unit net CONE for each of the three ICAP Demand Curves.

The proposed Excess Capacity Level methodology used for this compliance filing is the same methodology identified in the proposed revisions to Services Tariff Section 5.14.1.2, as marked on Attachment I.

### 4. New York City Real Property Tax Abatement

The November Filing proposed to assume that the NYC peaking plant that is the basis for the NYC Demand Curve would receive a property tax abatement under the New York City Industrial Development Agency's *Third Amended and Restated Uniform Tax Exemption Policy* ("UTEP"). The January Order, however, determined that it was not "just and reasonable to assume full, or in fact, any tax abatement for the NYC LMS 100 peaking unit when granting the tax abatement is discretionary under the UTEP and not a matter of right ....."[54] The NYISO was therefore "directed to exclude tax abatement from the calculation of net CONE for NYC."[55]

Consequently, the NYISO is proposing to include NYC real property taxes in the revised NYC peaking plant CONE, and to include the corresponding change in net CONE. This change is incorporated into the table included in section 5.14.1.2 of the Services Tariff. The impact of including these taxes is illustrated in the Lawrence Affidavit.

### 5. Winter/Summer Adjustment

Finally, the January Order instructed the NYISO to "revise the winter/summer adjustment to reflect the assumption for the level of excess capacity" in order "to be consistent with other aspects of the demand curve reset analysis."[56] The January Order accepted the NYISO's proposed winter/summer adjustment methodology as "just and reasonable and consistent with the requirements of the Services Tariff with respect to the issue of quantities of capacity available versus quantities sold."[57]

The NYISO's request for clarification of this aspect of the January Order explained that the accepted winter/summer adjustment methodology is based on historic quantities of capacity actually available.[58] Excess Capacity Levels are therefore not an input into the

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[53] *See* Lawrence Affidavit at PP 16-17.

[54] *Id.* at P 88.

[55] *Id.* at 90.

[56] January Order at P 161.

[57] *Id.*

[58] NYISO Request for Rehearing at 42-44.

winter/summer adjustment methodology and the calculation of winter/summer adjustments will not be affected by the NYISO's choice of Excess Capacity Levels. Consequently, the NYISO is not proposing any further revisions to the proposed ICAP Demand Curves in response to the January Order's directive on this issue.

## IV. REQUEST FOR FLEXIBLE EFFECTIVE AND IMPLEMENTATION DATES

As noted above, the Commission has directed the NYISO to "indicate in its compliance filing the date it anticipates implementing the new demand curves" and that such date "should be no later than November 1, 2011, the date of the start of the six-month winter capability period…. The currently effective ICAP Demand Curves are to remain in effect until superseded."[59]

The ICAP Demand Curves are utilized in the ICAP Spot Market Auction so the effective date will need to relate to a particular ICAP Spot Market Auction. However, the NYISO must take several actions after receiving a Commission order accepting specific numeric values for revised Demand Curves in order to implement them for the next following ICAP Spot Market Auction.

The NYISO has determined that it can implement new ICAP Demand Curves in the middle of a Capability Period provided it has sufficient time between the date of a Commission order and the date of the ICAP Spot Market Auction to which revised ICAP Demand Curves would apply. The NYISO anticipates that it will be possible to implement revised ICAP Demand Curves for 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[60]) provided there are at least twelve business days between the date of such Commission order and the date of the deadline for certification for LSEs and ICAP Suppliers. Certification deadlines for ICAP Spot Market Auctions through the end of 2011 are set forth on the NYISO's ICAP Event Calendar, which is posted on the NYISO website.[61]

As it has done in past requests for flexible effective or implementation dates, the NYISO will notify the Commission once final dates have been determined. To the extent necessary, the NYISO 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.

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[59] January Order at P 168.

[60] If a Commission order requires further analysis or revised computations, the NYISO may need additional time to implement the new ICAP Demand Curves.

[61] The NYISO will need the intervening time to, among other things, review the Commission's order and identify the accepted numerical values for the ICAP Demand Curves, enter the revised values into its software, establish and post ICAP Demand Curve reference prices, compute Mitigation Net CONE, perform IT system verification and validation, and identify Pivotal Suppliers prior to the opening of the ICAP Spot Market Auction. The ICAP Event Calendar is available at <http://icap.nyiso.com/ucap/public/evt_calendar_display.do>

## V. SERVICE

This filing will be posted on the NYISO's website at www.nyiso.com. In addition, the NYISO will e-mail an electronic link to this filing to the official representative of each party to this proceeding, to each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, and to the New Jersey Board of Public Utilities.

## VI. CONCLUSION

Wherefore, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this compliance filing consistent with the date proposed in Section IV so that it may implement the revised ICAP Demand Curves during the Summer 2011 Capability Period.

Respectfully submitted,

*/s/Gloria Kavanah*_____

Gloria Kavanah
Senior Attorney
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
518.356.6103
gkavanah@nyiso.com

cc: Michael A. Bardee
Gregory Berson
Connie Caldwell
Anna Cochrane
Jignasa Gadani
Lance Hinrichs
Jeffrey Honeycutt
Michael Mc Laughlin
Kathleen E. Nieman

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this day served the foregoing document on the official service lists compiled by the Secretary in these proceedings. I have also electronically served the foregoing on all market participants, on each participant in the NYISO's stakeholder committees, on the New York State Public Service Commission, and on the New Jersey Board of Public Utilities.

Dated at Rensselaer, NY, this 29th day of March 2011.

*/s/ Joy Zimberlin*

Joy Zimberlin
New York Independent System Operator, Inc
10 Krey Blvd
Rensselaer, NY 12114
(518) 356-6207