Attachment VII

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

New York Independent System Operator, Inc. Docket No. ER11-2224-0\_\_\_

AFFIDAVIT OF DAVID B. PATTON, PH.D.

March 29, 2011

### I. Qualifications

- My name is David B. Patton. I am an economist and President of Potomac Economics. Our offices are located at 9990 Fairfax Boulevard, Fairfax, Virginia 22030. Potomac Economics is a firm specializing in expert economic analysis and monitoring of wholesale electricity markets, and is the Market Monitoring Unit ("MMU") for the New York Independent System Operator, Inc. ("NYISO"). Potomac Economics serves in a substantially similar role for ISO New England, the Midwest Independent Transmission System Operator, Inc., and the Electric Reliability Council of Texas.
- 2. As the MMU for the NYISO, Potomac Economics is responsible for assessing the competitive performance of the markets that the NYISO administers, including the ICAP<sup>1</sup> market, and for assisting in the implementation of a monitoring plan to identify and remedy potential market design flaws and abuses of market power. This work has included preparing a number of reports that assess the performance of these markets and providing advice on numerous issues related to market design and economic efficiency. Prior to Potomac Economics becoming the MMU, I served as an independent Market Advisor to the NYISO.
- 3. I have worked as an energy economist for twenty years, focusing primarily on the electric utility and natural gas industries. I have provided strategic advice, analysis, and expert testimony in the areas of electric power industry restructuring, pricing, mergers, and market power. I have also advised Regional Transmission Organizations ("RTOs") on transmission pricing, market design, and congestion management issues. With regard to competitive analysis, I have provided expert testimony and analysis regarding market power issues in a number of mergers and market-based pricing cases before the Federal Energy Regulatory Commission ("Commission"), state regulatory commissions, and the U.S. Department of Justice.

<sup>&</sup>lt;sup>1</sup> Terms with initial capitalization not defined herein or in the compliance filing transmittal letter of which this Affidavit is made part, have the meaning set forth in the NYISO's Market Administration and Control Area Services Tariff, and if not defined therein, then as defined in the NYISO's Open Access Transmission Tariff.

- 4. Prior to my experience as a consultant, I served as a Senior Economist in the Office of Economic Policy at the Commission, advising on a variety of policy issues including transmission pricing and open-access policies, market design issues, and electric utility mergers. As a member of the Commission's advisory staff, I worked on policies reflected in Order No. 888, particularly on issues related to power pool restructuring, independent system operators ("ISOs"), and functional unbundling. I also analyzed the competitive characteristics of alternative transmission pricing and electricity auctions proposed by ISOs.
- 5. Before joining the Commission, I worked as an economist for the U.S. Department of Energy. During this time, I helped to develop and analyze policies related to investment in oil and gas exploration, electric utility demand side management, residential and commercial energy efficiency, and the deployment of new energy technologies.
- 6. I have a Ph.D. in Economics and a M.A. in Economics from George Mason University, and a B.A. in Economics with a minor in Mathematics from New Mexico State University.

### II. Purpose and Summary of this Affidavit

- 7. The purpose of this affidavit is to support the levels of excess capacity ("Excess Capacity Levels") that the NYISO's compliance filing used when computing, the new proposed Installed Capacity ("ICAP") Demand Curves beginning on the date in 2011 as established by Commission Order (as described in the NYISO compliance filing) through the end of Capability Years 2011/2012, and for Capability Years 2012/2013, and 2013/2014.
- 8. The Excess Capacity Level is a critical assumption used in constructing the Installed Capacity Demand Curves. The Excess Capacity Level assumption is the expected amount of capacity in excess of the minimum ICAP requirement.<sup>2</sup> As explained herein, it has a direct bearing on ICAP prices, Energy and Ancillary services prices, and, consequently, on entry and exit decisions.

<sup>&</sup>lt;sup>2</sup> For purposes of this affidavit, the Excess Capacity Level assumption is the assumed or expected level of excess capacity over the long run used to calculate the Demand Curves. I will distinguish this from the actual excess capacity or surplus capacity which is the amount of additional capacity in excess of the minimum ICAP requirement that may exist at any point in time.

- 9. I agree with the NYISO that Excess Capacity Levels for New York City ("NYC"), Long Island ("LI"), and the New York Control Area ("NYCA") should be based on the size of the peaking plants that the Commission has accepted for purposes of establishing the respective ICAP Demand Curves ("the Default Peaking Resource"). Among other considerations discussed below, I explain why it is appropriate for the NYISO to link the Excess Capacity Level assumption to the Default Peaking Resource. In addition, I explain why the NYISO's proposed method for setting Excess Capacity Levels has the advantage of transparency, predictability, and objectivity.
- 10. The NYISO's approach to setting Excess Capacity Levels, set forth in its compliance filing, is the same as the one that I proposed for NYC and Long Island in my November 30, 2010 affidavit in this proceeding.<sup>3</sup> I previously supported the NYISO's original (November 30) proposal to use a 1.0 percent Excess Capacity Level for the NYCA but setting that level at 1.1 percent is also reasonable.
- 11. For the current Demand Curve reset period, the NYISO proposed to use the 195 MW LMS100 peaking plant for NYC and Long Island. This would result in Excess Capacity Levels equal to 2.3% and 4.1% of the respective average minimum Installed Capacity requirements in those locations. Using the 413 MW Frame 7FA peaking plant for the NYCA would result in an Excess Capacity Level equal to 1.1% of the NYCA minimum Installed Capacity requirement. While there is no single "correct" set of assumptions regarding long-term Excess Capacity Levels, I have concluded that the NYISO's proposed Excess Capacity Levels for determining the ICAP Demand Curves are reasonable for the following reasons.
- 12. First, the NYISO's proposed Excess Capacity Levels are consistent with a realistic investment cycle for the Default Peaking Resource given uncertainty regarding peak load forecasts (and future requirements) and the timing of investment and retirements of Capacity resources. Uncertainty and timing considerations were my primary concerns regarding the NYISO original proposed Excess Capacity assumptions, which could only be

<sup>&</sup>lt;sup>3</sup> Affidavit of Dr. David B. Patton, Ph.D, Docket No. ER11-2224-000 at P 27 (November 30, 2010) ("Patton Affidavit November 30 Filing").

achieved if investment in Default Peaking Resources were perfectly coordinated in an environment of no uncertainty.<sup>4</sup> However, the NYISO's proposed Excess Capacity Levels in the compliance filing allow for the uncertainties described above by establishing an average expected surplus that reasonably reflects the uncertainties that can lead to excess capacity.

- Second, the NYISO's proposed Excess Capacity Levels are high enough so that investment 13. and retirement decisions can be expected to lead to adequate planning reserves over the long term to maintain reliability. Therefore, they will not result in ICAP Demand Curves that under-compensate suppliers, but instead should produce "consistent reliability signals" in New York State that the Commission recognized would prevent capacity levels from falling to the minimum requirement.<sup>5</sup> At the same time, they are not so high as to risk inflating the ICAP Demand Curves to levels which would inefficiently perpetuate New York's existing capacity surplus. In this regard, it is important that Excess Capacity Level assumptions not be based on the actual prevailing surplus. A high Excess Capacity Level assumption based on a prevailing surplus will result in an ICAP Demand Curve that makes entry economic for large amounts of surplus capacity. Thus, a high assumption will result in inefficiently high levels of entry and inefficiently low levels of exit, which can be expected to increase the surplus. If the NYISO were to respond by increasing the Excess Capacity Level assumptions, it would result in a Demand Curve that provides incentives for even more entry and less exit, thereby exacerbating the surplus and could lead to an ever-increasing cycle of such surpluses and adjustments.
- 14. Third, investment in a wide array of technologies should be equally economic in the long run because entry of the most economic technologies should alter net revenues from the Energy and Ancillary services markets to bring about parity in the net CONE values of different types of resources. The proposed Excess Capacity Level assumptions are consistent with a realistic investment cycle for the Default Peaking Resource. It follows that the economic signals associated with this Demand Curve should be sufficient to

<sup>&</sup>lt;sup>4</sup> *See Id.* at P 23.

<sup>&</sup>lt;sup>5</sup> January Order at P 120.

support investment in other economic technologies as well over the long run. However, the NYISO has produced evidence that other technologies are more economic than the Default Peaking Resource in the short term. For example, the net entry costs for a new combined cycle generating unit in New York City is 46 percent lower than the net CONE for the Default Peaking Resource as stated in the Affidavit of Eugene Meehan in the compliance filing. This information provides additional assurance that ICAP Demand Curves based on the NYISO's proposed Excess Capacity Levels will be more than adequate to maintain reliable planning reserves.

- 15. Finally, a key attribute of the NYC Capacity market has changed since the last ICAP Demand Curve reset process. The NYISO has implemented a buyer-side capacity market power mitigation measure in New York City designed to deter uneconomic entry that would lead to relatively large surplus capacity levels. Buyer-side mitigation is intended to affect entry that would produce a forecasted actual excess capacity level that would make the investment clearly uneconomic. Based on investments in the default peaking resource, this would occur when the investment would generate an expected excess capacity level of greater than 580 MW (roughly corresponding to a 6 percent surplus). With this mitigation measure in place, it is unlikely that investment in the Default Peaking Resource could produce surpluses in New York City large enough to produce an average surplus of 4 percent, which was the assumed level of excess in the 2008 ICAP Demand Curve reset. In order to achieve a 4 percent level of average excess capacity, one would have to expect frequent surpluses larger than the 6 percent level that should trigger the buyer-side mitigation for Default Peaking Resources. Additionally, it is possible to have short-term periods of shortage due to uncertainties in load or new supply. Therefore, the average excess capacity level would likely be less than half of the 6 percent level that would trigger buyer-side mitigation, which is consistent with the new proposed level of 2.3 percent.
- 16. I also note that artificially perpetuating a surplus by establishing an unreasonably high ICAP Demand Curve would also affect Demand Side Resources. One of the benefits of demand response resources is they can 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 and erode this benefit. Additionally,

the Capacity surplus would substantially reduce the need to call on the Demand Side Resources, reducing their operating value to the system.

17. For these reasons, which are explained in more detail below, I conclude that the NYISO's proposed Excess Capacity Level assumptions are reasonable. Further, retaining the higher Excess Capacity Level assumptions used in the 2008 Demand Curve reset for New York City and the NYCA is no longer reasonable because those levels would likely perpetuate a substantial surplus by creating incentives to invest inefficiently, the costs of which would ultimately be borne by New York's consumers.

#### III. Comments on the Excess Capacity Levels Proposed in the NYISO's Compliance Filing

# A. Excess Capacity Assumptions in the Calculation of the ICAP Demand Curves

- 18. Excess Capacity Level assumptions are an important component in establishing the ICAP Demand Curves. For a given ICAP Demand Curve, the Excess Capacity Level assumption is the assumed amount of capacity in excess of the minimum ICAP requirement that is expected over the long run. Excess Capacity Level assumptions affect forecasted Energy and Ancillary Services revenues. Excess Capacity Levels lead to lower forecasted Energy and Ancillary Services revenues, which increases the Demand Curves. Conversely, low Excess Capacity Levels increase forecasted Energy and Ancillary Services revenues. Therefore, setting Excess Capacity assumptions at a reasonable level is important to the Commission's policy that capacity market payments should neither "over-compensate" nor "under-compensate" suppliers.<sup>6</sup>
- 19. In the Demand Curve context, over-compensating suppliers would be evidenced by a sustained capacity surplus resulting from inefficiently high levels of entry and/or inefficiently low levels of retirements. Likewise, under-compensating suppliers would be evidenced by inadequate supplies resulting from low levels of entry and/or high levels of retirements.

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New York Independent. System Operator, Inc., 118 FERC ¶ 61,182 at P 17 (2007).

- 20. In setting the Excess Capacity Level in the ICAP Demand Curve reset process, it is important to recognize that investors will expect the actual amount of excess capacity above the minimum Installed Capacity requirement to fluctuate for the following reasons:
  - Investments are "lumpy", so the addition of a resource when the market is approaching the minimum ICAP requirement would result in a temporary surplus in relation to the capacity of the resource.
  - Investments are not perfectly coordinated in competitive markets. Multiple investors frequently build to enter in the same year when they independently forecast that investment will be profitable. Additionally, suppliers sometimes decide to defer retirements or to repower units that would otherwise retire. All of these investment and retirement decisions, which can be made unexpectedly by competing suppliers, can result in unexpected excess capacity.
  - Neither investors nor the NYISO have perfect foresight. There are substantial forecast uncertainties associated with peak electricity demand (which are the basis for the NYISO's Capacity requirements). As I discussed in my affidavit in the November Filing, over-forecasts of demand are likely to have a larger effect on actual excess capacity levels than under-forecasts.<sup>7</sup> Hence, forecast uncertainty should contribute to a low level of expected actual excess capacity.
- 21. Since these factors can be expected to lead to fluctuations in actual excess capacity levels, the Excess Capacity Level assumptions underlying the ICAP Demand Curves should reflect a reasonable expected value of the actual excess capacity over the long term. However, it is very important not to allow short-term expectations of actual excess capacity levels to influence the Excess Capacity Level assumptions because short-term fluctuations in actual excess capacity may occur for a variety of reasons. If the NYISO were to increase the Excess Capacity Level assumption when short-term capacity surpluses rise, and lower them when such surpluses fall, it would exacerbate the fluctuations in excess capacity. Such adjustments in the Excess Capacity Level assumptions would increase the incentive
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Patton Affidavit November 30 Filing at P. 25-27.

to invest when actual excess capacity levels are rising and would decrease the incentive to invest when they are falling.

22. This conclusion is consistent with the NERA/S&L Report, which explains that actual capacity excesses are not relevant because the Excess Capacity Level assumption is "not attempting to hold the entrant harmless from excess capacity that results because load growth slows, developers enter the market even with an excess or when technologies other than the peaker are the lowest net cost. The NYISO tendency to not allow the market to go short is the only factor we adjust for."<sup>8</sup> Thus, looking to historic levels or accounting for other generalized forms of "merchant risk," as certain parties have suggested in this proceeding,<sup>9</sup> would be over-compensatory.

# **B.** Basing the Assumed Expected Excess Capacity Level on Investment in the Relevant ICAP Demand Curve Peaking Plant

- 23. In the prior section, I discussed the importance of establishing Excess Capacity Levels that represent an investor's reasonable expectation of actual excess capacity levels in the long run. I explain in this subsection that in developing this expectation, it is appropriate to assume the investments occurring in the future are investments in the Default Peaking Resource.
- 24. In the long run, all types of resources (baseload, intermediate, peaking) should be equally economic. When one type of resource becomes more profitable, increased investment in that type should reduce its profitability and increase the profitability of others by shifting the net revenues in the energy market. In the short run, however, some types of resources may be more economic for entry than others; *i.e.*, the Default Peaking Resource may or may not be the most economic investment. If the Default Peaking Resource is not the most economic resource, then an ICAP Demand Curve constructed to support investment in the Default Peaking Resource (by assuming Excess Capacity Levels that would naturally prevail if investors are choosing to build the Default Peaking Resource), then the Commission can be confident that the resulting ICAP Demand Curve will be adequate for

<sup>&</sup>lt;sup>8</sup> NERA/S&L Report at 72.

<sup>&</sup>lt;sup>9</sup> Motion for Leave to Answer and Answer of Independent Power Producers of New York, Inc. at 7-8, Docket No. ER11-2224-000 (filed January 7, 2011).

other more economic resources. Hence, suppliers will not be under-compensated. In other words, if the ICAP Demand Curve is sufficient for an investment cycle in the Default Peaking Resource, that Demand Curve will necessarily be sufficient for other types of investments whose net CONE values are less than that of the Default Peaking Resource. As discussed below, this is currently the case because other technologies have net CONE values as much as 46 percent less than the Default Peaking Resource.

- 25. Because a demand curve based on the default resource will be sufficient for lower cost resources, it is appropriate to hypothesize a cycle of investment in the default resource in developing reasonable Excess Capacity Levels for the ICAP Demand Curves. Therefore, it would be inappropriate to utilize either a "combined cycle unit or a combination of generation that is expected to enter the market."<sup>10</sup> These resources would only be expected to enter the market if their cost of entry is lower than the Demand Curve peaking resource. If that is the case, it would only be reasonable to use an excess capacity assumption based on investments in these different technologies if the NYISO were also using the lower net CONE of these technologies. This would require abandoning the present ICAP Demand Curves and reconstructing them with new parameters, including estimates of net CONE for these different technologies.
- 26. I view the January Order as seeking evidence that supports specific Excess Capacity Levels. However, there is no evidence that could conclusively prove specific Excess Capacity Levels to be the "right" levels. The Excess Capacity Levels themselves affect the expected future excess capacity levels (an assumption of higher Excess Capacity Levels will lead to greater incentives to invest and to higher actual capacity levels). Therefore, one must ultimately exercise reasoned judgment to choose a single value from a reasonable range of potential values that are consistent with a hypothetical investment pattern in the Demand Curve resource.
- 27. In this case, I find that a reasonable value is a 195 MW peaking resource for New York City and Long Island and a 413MW peaking resources for NYCA. For NYC and Long Island, I previously proposed that this capacity amount would be an appropriate assumed

<sup>&</sup>lt;sup>10</sup> January Order P 121.

Excess Capacity Level for these locations because it is consistent with a hypothetical future fluctuation in excess Capacity from zero to two times the size of the Default Peaking Resource (almost 400 MW). In other words, if the market fluctuated uniformly between excess capacity levels of 0 MW and 400 MW (so the excess capacity was evenly distributed in this range), it would produce an average excess capacity level of 200 MW. In reality, the surpluses would not likely be uniformly distributed because the larger surplus levels correspond to periods when investment is the least economic, implying less likelihood that excess capacity will prevail at the higher end of the range. Additionally, it is possible to have short-term periods of shortage due to uncertainties in load or new supply (negative excess capacity). Therefore, the average excess capacity level would likely be lower than 200 MW. Nonetheless, I assume a uniform distribution of excess capacity levels of my analysis and recommendation in order to be conservative.

- 28. This approach is reasonable because it is easy to envision that uncertainties regarding load growth, and decentralized investment decision-making by competing suppliers, could result in periodic excess capacity levels of 400 MW. One must also assume that actual capacity levels will periodically fall close to zero, which has occurred historically and would be consistent with a properly functioning capacity market that is not over-compensating suppliers.
- 29. As discussed in my affidavit submitted with the November Filing, assuming perfect coordination and foresight would produce an expected excess capacity level equal to one half of a peaking resource (98 MW), which NYISO had previously proposed. That level is unreasonably low for the reasons I provided in my prior affidavit. The lowest excess capacity assumption for New York City that I would deem reasonable would be approximately 2 percent (170 MW), which would allow for a fluctuation in the excess capacity level from zero to 340 MW (1.75 times one peaking resource). This is based on reasonable expectations regarding entry and exit amid uncertainty during an investment cycle where the Default Peaking Resource is the most economic, as discussed above.
- 30. Importantly, this same approach which relies on reasonable expectations amid uncertainty should be applied to identify a high-side of the reasonable range. Using the example of New York City, the four percent Excess Capacity Level that underlies the current ICAP

Demand Curve implies a fluctuation in the excess capacity level from zero to almost 700 MW (almost 3.5 times the size of the default peaking resource). It is not reasonable to expect that this hypothetical investment process would routinely produce excess capacity levels equal to the size of three and a half peaking resources. This conclusion is strengthened by the introduction of the buyer-side mitigation measure that is discussed in the next section.

- 31. The highest Excess Capacity Level assumption that I believe would be reasonable for New York City would be approximately three percent or just over 250 MW. This level would be consistent with an investment pattern that would have actual excess capacity levels fluctuate from 0 to more than 500 MW (2.6 times the size of the default peaking resource). For the same reason, I believe that 500 MW would also be the maximum reasonable Excess Capacity Level assumption for NYCA.
- 32. Therefore, I believe that a reasonable range for the Excess Capacity Level assumption for New York City is 2 to 3 percent. The NYISO proposal and my recommendation for New York City of 2.3 percent is within this range, albeit on the lower side of the range. Choosing a Excess Capacity Level assumption on the lower side of the range is appropriate for reasons set forth in subsection IV.B below. Likewise, the NYISO proposal for the Excess Capacity Level assumption for LI and NYCA are also within a reasonable range for those areas for the same reasons.
- 33. In addition, linking the Excess Capacity Levels to the size of the Default Peaking Resource is simple, transparent, and objective. This assumption could be reasonably applied in the future if the Default Peaking Resource used to establish the Demand curve changes. Hence, it would allow investors to form better long-term expectations regarding the likely future actual excess capacity levels.

# IV. Changes in Conditions or Other Factors that Warrant Revisiting the Excess Capacity Assumption

#### A. Buyer-Side Market Power Mitigation

34. The NYISO has introduced a buyer-side ICAP market power mitigation measure designed to deter uneconomic entry in New York City that would lead to relatively large surplus

capacity levels. This measure did not exist when the current excess capacity assumption of 4 percent was developed for New York City and is, therefore, one of the changes that warrants revisiting this assumption.

- 35. The mitigation is intended to affect entry that would produce a forecasted surplus large enough to cause the investment to be clearly uneconomic. As defined in Section 23.4.5.7.2 of the Services Tariff, new entry into the NYC Capacity market may be subject to an offer floor defined in accordance with the Services Tariff as either 75 percent of the Mitigation Net CONE or the Unit Net CONE of the new entrant. For the proposed Demand Curve, 75 percent of the Mitigation Net CONE is equal to \$19.63, which corresponds to an actual excess capacity level of 580 MW. Hence, any new investment in Default Peaking Resources subject to this buyer-side mitigation measure will not clear in the NYISO capacity market when the actual excess capacity level exceeds 580 MW. Not receiving capacity revenues for a new investment will generally make investments unprofitable, particularly investments in the Default Peaking Resource.
- 36. With this buyer-side mitigation measure in place, therefore, it is highly unlikely that the investment cycle for the Default Peaking Resource could produce actual excess capacity levels in New York City that average of 4 percent because the market power mitigation measure would tend to truncate actual excess capacity levels above 6 percent. For example, if the buyer-side mitigation measure would begin mitigating new resources at 580 MW, one can assume that additional default peaking resources will not continue to enter in order to produce excess capacity levels beyond 580 MW.<sup>11</sup> However, actual excess capacity levels above 580 MW (6 percent) would be necessary to produce a long run average excess capacity level of 4 percent. This is one of the primary reasons why the current Excess Capacity Level assumption of 4 percent for New York City is now unreasonable and why the NYISO's proposed New York City Excess Capacity Level assumption of 2.3 percent is within the reasonable range, which I believe is between 2 and 3 percent.

<sup>&</sup>lt;sup>11</sup> This analysis is based on investments in the default peaking resources. As discussed earlier, the likely excess capacity levels should be based entirely on a hypothetical investment cycle in the default peaking resource because a Demand Curve sufficient for this resource will be sufficient for any other resources that are more economic.

#### **B.** The Entry Costs of Alternate Technologies

- 37. Most recent investments in NYC and in upstate New York have been combined-cycle gas turbine generators ("CCGT"). The affidavit of Eugene Meehan presents estimates of the net CONE for a CCGT in New York City. He shows that the net CONE for a CCGT are 46 percent lower than the net CONE for the default peaking resource in New York City. The net CONE of the CCGT is \$151/kW-yr and the net CONE of the default ICAP peaking resource is \$279/kW-yr. Given these numbers, an excess capacity level of more than 8 percent would have to occur before a CCGT would no longer be economic to build in New York City. Hence, the proposed Demand Curve for New York City (with the 2.3 percent Excess Capacity assumption) should be more than adequate to maintain capacity levels in New York City substantially above the minimum requirement and will, therefore, not undercompensate suppliers.
- 38. This difference should not exist in the long run because all types of resources should be equally economic as discussed above. However, it can be the case in the short term. When this type short-term disequilibrium occurs, one would expect inflated surplus levels as the lower-cost generation enters under the higher ICAP Demand Curve based on the default peaking resource.
- 39. Ultimately, given the significance of this cost difference, the NYISO may wish to consider future tariff changes that would allow the most economic entrant to be the basis for the Capacity Demand Curve. However, in the context of this compliance filing, the known presence of substantially lower cost alternative technologies justifies the use of an Excess Capacity Level assumption that is at the lower end of the reasonable range, as is the case for the NYISO proposal.
- 40. The fact that these lower-cost resources are actively entering the NYC market and would clearly be economic under the NYISO's proposed ICAP Demand Curve with a 2.3 percent Excess Capacity Level should ameliorate any concerns that the Demand Curves may under-compensate suppliers, may not be sufficient to maintain adequate resources, or may otherwise be unreasonably low.

# V. Conclusion

- 41. Based on the foregoing arguments, I recommend that the Commission accept the NYISO's new proposed expected levels of average excess capacity, *i.e.* 1.1% for the NYCA, 2.3% for NYC, and 4.1% for LI. and incorporate them into the ICAP Demand Curves for Capability Years 2011/2012, 2012/2013 and 2013/2014.
- 42. This concludes my affidavit.

### ATTESTATION

I am the witness identified in the foregoing Affidavit of David B. Patton, Ph.D. dated March 29, 2011 (the "Affidavit"). I have read the Affidavit and am familiar with its contents. The facts set forth therein are true to the best of my knowledge, information, and belief.

David B. Patton March 29, 2011

Subscribed and sworn to before me this 29th day of March 2011

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Notary Public

MAITHEW JAMES CARRIER Notary Public City/County of <u>FairSax</u> Commonwealth of Virginia Notary registration number - 7233763 My commission expires - Nov. 30, 2013

My commission expires: November 30 2013