

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

<b>New York Independent System Operator, Inc.</b>	) ) )	<b>Docket No. ER21-502-004</b>
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**COMMENTS IN SUPPORT OF REQUEST FOR EXPEDITED ACTION ON REMAND  
OF NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rule 213 of the Rules of Practice and Procedure promulgated by the Federal Energy Regulatory Commission (“Commission”),<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”) hereby submits these comments in response to the motion submitted by the Independent Power Producers of New York, Inc. (“IPPNY”) on October 5, 2022 in the above-referenced docket (“IPPNY Request”).<sup>2</sup> Without addressing the merits of the ultimate outcome advocated by IPPNY, the NYISO supports the request for expedited action by the Commission. Expeditious resolution of this proceeding will promote greater market certainty regarding the Installed Capacity (“ICAP”) Demand Curves applicable for the remainder of the current reset period.<sup>3</sup>

**I. BACKGROUND**

On November 30, 2020, the NYISO filed a proposal including: (1) the ICAP Demand Curves for the 2021/2022 Capability Year; and (2) the methodologies and inputs for use in conducting annual updates to determine the ICAP Demand Curves for the 2022/2023,

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<sup>1</sup> 18 C.F.R. § 385.213(a)(3). Capitalized terms not otherwise defined herein shall have the meaning specified in the NYISO Market Administration and Control Area Services Tariff (“Services Tariff”).

<sup>2</sup> Docket No. ER21-502-004, *New York Independent System Operator, Inc.*, Motion for Expedited Order on Remand of Independent Power Producers of New York, Inc. (October 5, 2022).

<sup>3</sup> The 2021-2025 reset period encompasses the ICAP Demand Curves applicable from May 1, 2021 through April 30, 2025.

2023/2024, and 2024/2025 Capability Years.<sup>4</sup> The NYISO’s proposal represented the culmination of the quadrennial review of the ICAP Demand Curves required by the Services Tariff (commonly referred to as the “ICAP Demand Curve reset” or “DCR”). The DCR: (1) provides a forum for an open and transparent assessment of the assumptions and parameters for establishing the ICAP Demand Curves; and (2) includes a comprehensive stakeholder process for vetting the necessary assumptions and parameters with all interested parties. The proposal submitted by the NYISO reflected careful consideration of all stakeholder feedback and struck a reasonable balance to establish appropriate ICAP Demand Curves.

On April 9, 2021, the Commission issued an order accepting all aspects of the NYISO’s proposal except the NYISO’s proposed amortization period.<sup>5</sup> The NYISO proposed use of a 17-year amortization period for the 2021-2025 reset period. The 17-year amortization period represented a reasonable assumption that carefully considered the current state of applicable laws, rules, and regulations, the assumed resource design and operational capabilities reflected in the NYISO’s proposal, and divergent stakeholder feedback.<sup>6</sup> The Commission, however, rejected the NYISO’s proposed assumption and directed use of a 20-year amortization period.<sup>7</sup> Consistent with the Commission’s directive, the NYISO has continued to administer the ICAP

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<sup>4</sup> Docket No. ER21-502-000, *supra*, 2021-2025 ICAP Demand Curve Reset Proposal (November 30, 2020) (“2021-2025 DCR Filing”).

<sup>5</sup> *New York Independent System Operator, Inc.*, 175 FERC ¶ 61,012 (2021) (“2021-2025 DCR Order”). The amortization period represents the assumed period over which a merchant investor would expect to recover the upfront capital costs to construct the representative resource selected to serve as the basis for establishing each ICAP Demand Curve.

<sup>6</sup> *See* 2021-2025 DCR Filing at 51-53; and Docket No. ER21-502-000, *supra*, Request for Leave to Answer and Answer of New York Independent System Operator, Inc. at 27-30 (January 5, 2021).

<sup>7</sup> 2021-2025 DCR Order at P 2, 19, and 161.

Spot Market Auctions since May 2021 utilizing ICAP Demand Curves that reflect use of a 20-year amortization period.<sup>8</sup>

After denial of its rehearing request,<sup>9</sup> IPPNY subsequently appealed the Commission's decision to the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit"). On August 9, 2022, the D.C. Circuit issued a decision granting IPPNY's appeal.<sup>10</sup> The D.C. Circuit found that the Commission had not adequately justified its decision to reject the 17-year amortization period proposed by the NYISO and, instead, require use of a 20-year amortization period.<sup>11</sup> The D.C. Circuit's decision vacated the Commission's determination regarding the amortization period and remanded the issue to the Commission for further consideration. The D.C. Circuit issued a mandate on October 4, 2022 making its decision effective. As a result, the issue is now before the Commission on remand.

## **II. COMMENTS IN SUPPORT OF EXPEDITED ACTION ON REMAND**

The unresolved nature of this proceeding creates ongoing market uncertainty.<sup>12</sup> The Commission has recognized that uncertainty can undermine confidence in the markets and adversely impact actions in response to the price signals produced by the markets.<sup>13</sup>

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<sup>8</sup> See Docket No. ER21-502-002, *supra*, Compliance Filing (April 16, 2021); and Docket No. ER21-502-002, *supra*, Letter Order (May 24, 2021).

<sup>9</sup> See Docket No. ER21-502-003, *supra*, Request for Rehearing of Independent Power Producers of New York, Inc. (May 10, 2021); and Docket No. ER21-502-003, *supra*, Notice of Denial of Rehearings by Operation of Law (June 10, 2021).

<sup>10</sup> Case No. 21-1166, *Independent Power Producers of New York, Inc. v. FERC*, 2022 WL 3210362 (D.C. Cir. 2022).

<sup>11</sup> *Id.* at 4.

<sup>12</sup> As previously noted, the current reset period lasts until May 1, 2025. Thus, approximately 2.5 years remain within the current reset period.

<sup>13</sup> See, e.g., *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,252 at P 55 (2017); *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,237 at P 23 (2019); and *PJM Interconnection, L.L.C.*, 177 FERC ¶ 61,209 at P 48 (2021).

The ICAP Demand Curves apply in monthly ICAP Spot Market Auctions conducted by the NYISO. These auctions serve to ensure that Load Serving Entities procure, and resources have obligations to supply, the necessary quantities of capacity to meet the established statewide and locational capacity requirements in New York. The auctions provide price signals to inform the value of capacity. These price signals can help inform various investment and operational decisions of existing supply resources, developers, and consumers. Market participants also utilize the ICAP Demand Curves to inform projections regarding the expected future value of capacity.

Uncertainty engendered by the absence of resolution regarding the applicable amortization period and the impacts thereof on the ICAP Demand Curves adversely impacts confidence in the price signals produced by the ICAP Spot Market Auctions. This ongoing lack of certainty can also hamper the ability of market participants to develop reasonable forward projections as to the expected value of capacity. Such uncertainty can adversely impact bilateral market activity, including the capability for supply resources, Load Serving Entities, and consumers to pursue hedging opportunities. Expeditious action on remand will provide important clarity to the marketplace regarding the ICAP Demand Curves applicable for the remainder of the current reset period. Such clarity would help reduce the current uncertainty that exists due to the unresolved nature of this proceeding.

If on remand the Commission were to direct a change to the current 20-year amortization period used in establishing the ICAP Demand Curves, the NYISO would seek to prospectively implement any revised ICAP Demand Curves as soon as reasonably practicable in consideration of the applicable auction timelines.<sup>14</sup> To implement new ICAP Demand Curves for a particular

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<sup>14</sup> If on remand the Commission were to direct any changes to the currently effective 20-year amortization period, the Commission should, consistent with its precedent seeking to avoid disruption of

ICAP Spot Market Auction, the NYISO generally requires certainty regarding the curves to be used for such auction approximately seven business days prior to the certification deadline for that auction.<sup>15</sup> This typically results in a need for certainty on or around the 10th day of the month to timely implement any revisions to the ICAP Demand Curves applicable for the ICAP Spot Market Auction conducted later in that month.<sup>16</sup> Absent certainty within such timeframe, the NYISO would typically defer implementation of any revised ICAP Demand Curves to the following ICAP Spot Market Auction.

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settled market outcomes and disfavoring attempts to rerun past market results, direct that any such changes apply on a prospective basis only. *See, e.g., New York Independent System Operator, Inc.*, 115 FERC ¶ 61,026 at P 55 (2006) (“any attempt to recalculate the market-clearing prices in this case would be mere conjecture as to what market participants’ bidding behavior might have been under different circumstances, with little evidence to support such conjecture.”). IPPNY, likewise, does not appear to seek any retroactive action by the Commission on remand. *See, e.g.,* IPPNY Request at 3 (“... it is critical that the Commission issue an order on remand expeditiously to ensure a just and reasonable rate is produced by the ICAP auctions to be held for as many months of the remaining Capability Years during the 2021-2025 DCR as possible”). (Emphasis added.)

<sup>15</sup> 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 typically occurs on a date that is approximately six business days prior to the start of a particular month.

<sup>16</sup> For example, the certification deadline for the upcoming November 2022 ICAP Spot Market Auction is October 21, 2022. To implement any revised ICAP Demand Curves for this auction, the NYISO would require certainty on the curve parameters on or around October 12, 2022. Based on the currently posted certification deadlines from the December 2022, January 2023, and February 2023 ICAP Spot Market Auctions, the NYISO would need certainty regarding the ICAP Demand Curves applicable for each such auction on or around November 7, 2022, December 9, 2022, and January 11, 2023, respectively.

### III. CONCLUSION

The NYISO respectfully requests that the Commission expeditiously issue an order on remand in this proceeding to address the assumed amortization period the NYISO should use in establishing the ICAP Demand Curves for the remainder of the 2021-2025 reset period.

Respectfully submitted,

/s/ Garrett E. Bissell

Garrett E. Bissell

Senior Attorney

New York Independent System Operator, Inc.

Dated: October 11, 2022

cc: Janel Burdick  
Matthew Christiansen  
Robert Fares  
Jignasa Gadani  
Jette Gebhart  
Leanne Khammal  
Jaime Knepper  
Kurt Longo  
David Morenoff  
Douglas Roe  
Eric Vandenberg  
Gary Will  
Adria Woods

## **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 11<sup>th</sup> day of October 2022.

/s/ Mitchell W. Lucas

Mitchell W. Lucas  
New York Independent System Operator, Inc.  
10 Krey Blvd.  
Rensselaer, NY 12144  
(518) 356-6242