RE: Oversight - The New York Independent System Operator's (NYISO) proposed plan to adopt a market demand curve for its wholesale markets for electric capacity.

ORAL TESTIMONY ON BEHALF OF CONSUMER POWER ADVOCATES

My name is Catherine Luthin and I am the owner and founder of Luthin Associates – an energy management consulting firm. I am here in my capacity as Executive Director of Consumer Power Advocates, otherwise known as CPA. CPA is an association of large, non-profit institutions whose primary goal is to decrease the cost of energy by focusing on regulatory decisions and programs that impact energy consumers in New York City. The rising cost of energy has dramatic and serious implications for these institutions and threatens the viability not only of CPA members, but of energy consumers statewide.

Over the past several months, there has been quite a serious debate at the New York Independent System Operator (NYISO) over various aspects of market design. One of the key issues at hand is the potential need for an Installed Capacity pricing structure that would establish support levels at various points along a capacity "Demand Curve", allegedly ensuring a somewhat predictable revenue stream for Generation Owners and, presumably, their economic viability. While there is no doubt that the viability of these generators is key to maintaining system reliability, there *is* doubt as to as to whether the Demand Curve proposal would result in anything other than a massive windfall for existing generators.

Proponents of the Demand Curve believe that this proposal is a credible solution to the lack of new generational entry and construction in New York. CPA believes that there is no assurance that the Demand Curve will, in fact, attract new market entry and that it is quite possible, if not probable, that any additional dollars spent will flow to existing generators and will not materially advance the stated goal of attracting new generation. Capacity revenue alone can hardly be viewed as a dominant factor in a generators decision concerning the New York Control Area. Such revenue would, *at best*, be an incremental factor that prospective investors would consider in evaluating the merits of such an investment – and would probably be secondary to energy prices and perhaps to ancillary services revenue as well. Accordingly, we should not accept the simplistic proposition that the implementation of the demand curve will give rise to new entry.

Contrary to the position of some demand curve proponents, significant generation projects totaling approximately 1,475 Megawatts are under construction and on track to come on-line in the next few years. In addition, Con Edison recently issued an RFP for 500 MW of new, in-city generation construction to be completed by 2006. Importantly, the RFP explicitly excludes projects that are already under construction. Therefore there is the prospect of as much as 2000 MW of new generation anticipated to be built within the next several years (appendix). This is far from saying that there are no concerns about the City energy situation – clearly, capacity requirements for New York City have been projected by the NYISO to be tight next summer. Within the forecast is the projection that capacity requirements should be adequate during the 2003 peak demand season. However, the use of Special Case Resources – those resources such as emergency generational capacity or load shedding – is *essential* to meet those requirements.

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The notion that the NY power market is on the verge of collapse and can only be saved by the imposition of a Demand Curve is, simply put, overstated. Consumer Power Advocates has been involved in the debate over this issue for more than 8 months. The imposition of the Demand Curve will dramatically impact the cost of electric capacity, undermine the economic viability of suppliers, and could translate into a 3 year cost of up to $1 billion to New York State consumers[1].

CPA believes that sufficient emphasis has not been placed on the exploration of viable alternatives to the Demand Curve, nor has adequate focus been placed on the need for additional, more comprehensive cost impact analysis. Alternatives such as long-term contracts and increased reliance on demand response programs should be considered as potentially less costly and more effective resource adequacy proposals.

Given the economic challenges we face, ensuring a well-conceived market design could not be more important than it is right now. Several market participants have highlighted the potential for market manipulation resulting from the Demand Curve proposal. One of the major concerns of CPA is that under the demand curve, suppliers will have an incentive to withhold capacity. To date, no adequate market mitigation provisions have been included for addressing this potentially costly situation.

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[1] A Review of the Economic Analysis of the Demand Curve, Dr. Carl Pechman, Power Economics, Inc. ("Pechman Report"), pp. 6-7. Multiple Intervenors retained Dr. Pechman to investigate the analytical support for the Demand Curve. Dr. Pechman's report was presented at the February 11, 2002 BIC meeting and the February 13, 2003 MC meeting.

Ill-conceived deregulation schemes caused California residents an estimated $45 Billion and prompted California Public Utilities Commissioner Carl Wood to call deregulation "the most expensive public policy mistake in the history of California"[2]. We must proceed with both prudence and caution when contemplating the implementation of new market measures – the potential for unseen circumstances is enormous.

[2] Source: Calif. Vote spells end of energy deregulation, Reuters, 01.16.03, 6:27 PM ET

APPENDIX

New Projects Impacting Capacity

These projects will add 1500 - 2000 MW of generating capacity in New York City alone, with the precise amount depending on the outcome of the RFP process.

- Keyspan-Ravenswood (250 MW with an operational date expected in late 2003)
- Con Edison East River re-powering (adding approximately 175 MW net in late 2004)
- NYPA Poletti (500 MW expected by mid-2005).
- PSEG Cross-Hudson generator lead (550 MW now in the late stages of a PSC Art.VII application process, with a projected operational date in 2005)
- Con Edison RFP (500 MW by the first half of 2006) PSEG Cross-Hudson is also reportedly a bidder on the RFP.