

**UNITED STATES OF AMERICA
FEDERAL ENERGY COMMISSION**

EL07-39-000 -NYISO Compliance filing- ICAP Market Redesign.

COMMENTS OF CONSUMER POWER ADVOCATES

November 16, 2007

Consumer Power Advocates is an organization of several large non-profit medical and educational institutions in New York City, all of which purchase large amount of electricity as customers of The Consolidated Edison Company of New York, and several of which are members of the NYISO governance committees, voting in the End-User sector. As such, CPA has an interest in the above case.

CPA takes issue with the NYISO compliance filing on the above captioned case, with regard to the effectiveness of the mitigation measures applied to both existing generators and new entry, and with regard to payment of refunds.

Uneconomic Entry

The requirement that new generators bid into the ICAP auctions at 75% of CONE for the first 3 years of operation is a unreasonable. Investors would necessarily be wary that an otherwise economic project would not only receive less revenue than expected, but that it would be at risk of being excluded from meeting any ICAP obligations. Rather set up a level playing field among incumbent and new generators, the NYISO proposal would merely allow for the possibility that a pivotal generator bid just below 75% of CONE, freezing new entrants out of any ICAP revenue. Buyers who would have contracted for that new capacity would be required to purchase ICAP at the resulting Demand Curve price even if they remained contractually obligated to continue payment for the new entrant. Worse, this replacement obligation would be purchased at a price inflated by an artificial short created by the exclusion of the new capacity. Contrary to the assertions of NYISO, this could only create a barrier to new entry.

Supplier mitigation

We are concerned that the supplier mitigation proposed by NYISO will be ineffective. The incentives to withhold are equal to the increase in price times the volume to which that price increase applies, less the value of the volume withheld. As we have seen, a financial transaction can effectively increase the incentive to withhold by increasing the total amount of ICAP for which an excessive price is collected. Elimination of the \$105 DGO revenue cap as proposed by NYISO further increases the incentive to withhold. By NYISO's assertion that eliminating the revenue cap will not cause inefficient, above-market outcomes, and that financial transactions can be ignored both depend on the effectiveness of the proposed mitigation measures. The proposed

mitigation measures include NYISO oversight of outcomes, and the requirement to bid into the ICAP auction at a predetermined “going forward” cost. These measures are inadequate. The fact is that any pivotal generator can withhold simply by allowing its UCAP value to decline. That could be accomplished through deferred maintenance or any number of operating practices that limited the availability of a generator. Under these circumstances, the revenue cap must be retained to limit the price increase possible by withholding, and to provide the last line of defense against market power.

Refunds

Contrary to NYISO assertions, parties have been on notice since May 12, 2007 that this proceeding may result in refunds of revenue resulting from the unreasonable results of a flawed market design. Given the history of this case and its cost to consumers, the Commission should require refunds to the maximum extent allowed by law.

For all the above reasons, CPA urges the Commission to modify the NYISO filing to retain the DGO revenue cap, to eliminate the provisions related to new entry, and to require refunds of any revenue found to be in excess of that expected absent any withholding.

Respectfully submitted,

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Executive Director