Via http://comments.cftc.gov

September 18, 2015

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: IF 15-007 and IF 15-005, ICE Futures US, Rule Amendment Filings

Dear Mr. Kirkpatrick:

Pursuant to CFTC Rule 40.6(c)(2),[1] the Edison Electric Institute ("EEI") and the Electric Power Supply Association ("EPSA") (collectively, "Joint Associations") respectfully submit these comments in response to the Commodity Futures Trading Commission's ("CFTC" or "Commission") request for public comment following issuance of a stay on a rule amendment self-certification filing[2] by ICE Futures US ("ICE") to increase position limits, single-month accountability levels, and all-month accountability levels, based on a revised deliverable supply estimate in the cash market for the underlying commodity, for eight financial power futures contracts traded in Zone G (Hudson Valley) of the New York Independent System Operator's ("NYISO") day-ahead and real-time power markets.[3]

The Joint Associations respectfully request that the Commission conclude that the Zone G Filings and the underlying ICE Cash Market and Deliverable Supply Analysis[4] are consistent with

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[1] 17 C.F.R § 40.6(c).

[2] ICE FUS Submission 15-01 (filed May 11, 2015); ICE FUS Submission 15-01 Supplement to Amendments (filed June 23, 2015). [Collectively, "Zone G Filings"].

[3] *See, e.g.* Hudson Valley Zone G, New York Independent System Operator Zone Maps, at http://www.nyiso.com/public/markets_operations/market_data/maps/index.jsp.

[4] Zone G Filings, ICE FUS Submission 15-01, Appendix B Analysis (filed May 11, 2015). ["ICE Analysis"].

the relevant provisions of the Commodity Exchange Act ("CEA") and implementing regulations.[5] Additionally, the Joint Associations request that as to other Rule 40.6(a) filings made by a Designated Contract Market ("DCM") as to power futures contracts, the Commission adopt a standing presumption that together, a measurement of generation capacity *and* transmission capability[6] would constitute the appropriate factors for calculating deliverable supply.[7]

The Joint Associations further request that the Commission direct staff to consider 40.6(a) filings under a deliberative, facts-and-circumstances analysis that does not impose a "one-size-fits-all" approach to specific calculations proposed in any given DCM filing. CFTC staff should provide DCMs adequate flexibility to put forward supply calculations representative of available transmission and generation, which account for the defining and/or unique attributes of the financial or underlying physical marketplace that would impact the deliverability of power supply for the subject zone, hub or region. CFTC staff should also defer to a DCM's and affected market participants' unique informational contributions and experience about the diverse hedging constructs and underlying physical marketplace characteristics which impact the deliverability of electricity at a specific hub, zone or region.

I. STATEMENT OF INTEREST

EEI is the association of U.S. shareholder-owned electric companies. EEI's members serve over 70 percent of the end use customers in the United States. EEI members are not financial entities. Rather, they are physical commodity market participants that rely on commodity derivative contracts primarily to hedge and mitigate their commercial risk. EEI members participate in and serve customers in all parts of the country, including all of the markets operated by Regional Transmission Organizations ("RTO") and Independent System Operators ("ISO").

EPSA is the national trade association representing leading competitive power suppliers, including generators and marketers that are active participants in physical commodity markets with related commercial hedging activities. These suppliers account for nearly 40 percent of the installed generating capacity in the United States and provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of

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[5] Commodity Exchange Act, Section 5c(c)(1)-(2); 17 C.F.R. §§ 40.6(c)(1), 40.7(a)(3); 17 C.F.R. § 38, Appendix C.

[6] Defined in the Zone G Filings as Total Transmission Capability, or "TTC".

[7] The CFTC's definition of deliverable supply, stated in its November 2011 Final Rule, Position Limits, is "the quantity of the commodity meeting a derivative contract's delivery specifications that can reasonably be expected to be readily available to short traders and saleable by long traders at its market value in normal cash marketing channels at the derivative contract's delivery points during the specified delivery period, barring abnormal movement in interstate commerce." Final Rule and Interim Final Rule, *Position Limits for Futures and Swaps*, 17 C.F.R. §§ 1, 150, 151, 76 Fed. Reg. 71,626 at 71,633 (Nov. 18, 2011), vacated and remanded for further proceedings, I.S.D.A. et al., v. U.S. C.F.T.C., 11-CV-2146 (D.D.C. September 28, 2012).

competition to all power customers.

The Joint Associations' members have a direct and significant interest in the deliverable supply estimates used by the Commission to establish speculative position limits; they use commodity derivatives to hedge commercial risks associated with procuring and delivering energy resources – both conventional fuels and renewable energy output – to ultimate end-use industrial, commercial and residential customers.

The Joint Associations' members participate in physical energy commodity markets and in the commodity derivatives market to hedge and mitigate commercial risks toward ensuring the reliable delivery of energy to ultimate end-use customers, come rain or shine. Importantly, the Joint Associations' members have also long used natural gas futures contracts to hedge the price risk associated with electricity production, particularly long-term electricity price exposure—known commonly as cross-commodity hedging. Regulations that render these specific commercial risk management options in short supply, or make them more costly, create a very tangible risk that end-use commercial, residential and industrial customers will face more volatile prices for energy from both traditional fuel-based and renewable resources, especially during periods of high demand like daily summer peaks or severe cold weather events.

Therefore, Joint Associations' members have a direct and significant interest in Commission decision-making that impacts commercial hedging activities, including position limits and accountability levels for exchange-traded power and natural gas futures contracts. If such regulations rely on outdated statistics to ascertain the size, scope and depth of the financial and underlying cash markets for power and natural gas, the futures exchanges would be required to retain artificially restrictive limits on positions held by commercial firms in power and natural gas products. This approach is unfavorable to the Joint Associations' membership, as it constrains liquidity and viability of the derivatives market for meeting their commercial hedging needs. Finally, Joint Associations emphasize that it is in our members' interests that the Commission craft or modify position limits rules with due recognition of the carefully-considered expertise and industry knowledge put forth by the exchanges and market participants. Specifically as to power and natural gas contracts, Joint Associations believe the Commission should give deference to stakeholders' unique information and experience about the diverse hedging constructs and underlying physical marketplace characteristics that impact deliverability of the power or gas commodity at a specific hub, zone or region.

II. BACKGROUND: ICE RULE AMENDMENT REQUESTS

ICE filed Submission No. 15-101 on May 11, 2015, seeking to amend its rulebook provisions to increase position limits and accountability levels for eight financial power futures and proposing to implement the increases on May 27, 2015, for effect to all expiration months inclusive of open interest months. ICE stated that the amendments are consistent with the CEA, CFTC rules and relevant Core Principles, including: that the relevant exchange rules will be

enforced by the ICE Market Regulations Department, that clearing will continue by a CFTC registrant, and that the contracts will be carried by registered FCMs qualified to handle customer business. ICE also stated that the contracts are not readily subject to manipulation as they are based on established and liquid cash markets for the underlying commodity that trading in these contracts is under continual monitoring, and that position limits will be based upon cash markets for the underlying commodity.

ICE provided a Cash Market and Deliverable Supply Analysis ("ICE Analysis") in its submissions, predicated on the sum of generation capacity at the zone and Total Transfer Capability ("TTC") available into the zone— a knowable and standardized measurement of the supply of electricity that can be delivered at a contract's delivery points and excluding reserves unavailable for delivery.[8] ICE reasoned that because electricity derivatives contracts are based on hubs, or zones, the sum of TTC[9] and generation capacity is integral to efficiency, liquidity and reliability of those hubs or zones. ICE concluded that given the direct reference between physical delivery capability at a hub and the futures contracts, the best estimate of deliverable supply, applying the CFTC definition as to a "quantity of electricity that could reasonably be expected to be readily available to short traders and saleable by long traders at its market value at the contracts' delivery points," is the sum of generation and transmission capabilities. ICE proposed to set higher spot month limits based on this analysis of increased deliverable supply.

On May 26, 2015, the CFTC issued a stay in the matter of the ICE Zone G Filings, concluding that the filings were potentially inconsistent with the CFTC Act and §§40.6(c)(1) and 40.7(a)(3) of the CFTC's regulations thereunder. The CFTC stated that the request "lacks sufficient analysis of peak vs. off-peak power, dynamic constraints to the use of name plate rating ("NPR"), effects of ancillary services on supply, double counting for total transfer capability, historical delivered power vs. load demanded, and seasonality effects on the markets." With regard to these observations, the CFTC noted its authority to object to the proposed rule amendment if the CFTC believes it is inconsistent with the Commodity Exchange Act or the Commission's regulations. Accordingly the CFTC invited public comment on these issues as per §40.6(c). On June 23, 2015, ICE itself submitted a supplemental filing regarding the issues of peak/off-peak and seasonality, total transfer capability, and generation. The Commission extended the public comment deadline, pursuant to ICE's request, to September 21, 2015.

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[8] *See* ICE Analysis, *supra* note 4.

[9] Total transfer capability is an industry-wide definition describing the amount of electric power that can be moved or transferred reliably from one area to another area of the interconnected transmission systems by way of all transmission lines (or paths) between those areas under specified system conditions. "Total Transfer Capability." *Glossary of Terms Used in NERC Reliability Standards*. North American Electric Reliability Corporation, 3 Mar. 2015, available online.

III. COMMENT SUMMARY

To accurately quantify deliverable supply estimates for power, the applicable measure of "readily available [power] for delivery" must include the sum of (i) available generation capacity, and (ii) the total transfer capability of available transmission. Given that deliverable supply analysis must account for both of these elements, the Commission should find that the ICE Analysis is consistent with the CFTC DCM Core Principles and related regulations administered by ICE Futures U.S. pursuant to the CEA.

In addition, the Commission should direct CFTC staff to adopt a presumption, confirmed in a written response to the ICE Zone G Filings and made available to the public, that a DCM making a Rule 40.6(a) filing may appropriately justify position limits increases based on a deliverable supply estimate methodology that accounts for both generation capacity and transmission capability. Working under a presumption that the right metrics for deliverable supply include generation *and* transmission, the CFTC staff should be able to conduct an efficient, well-considered analysis for any DCM filing made with regard to position limits for power futures. Going forward, such a presumption should also help market participants and registrants achieve more certainty that rule amendment certifications/approvals regarding position limits increases will not be delayed by repeated threshold inquiries as to the appropriateness of including transmission and generation.

The Zone G Filings implicate a critical area of the position limits regulations. A streamlined, transparent and expedient review process for the Zone G filings will set necessary precedent to encourage additional rule amendment filings by DCMs to update deliverable supply for power commodities across the board. These filings should be efficiently reviewed by staff so that commercial market participants' legitimate hedging opportunities are not constrained by artificially low limits based on outdated deliverable supply estimates. Overall, the Section 40.6(a) process should be a focused, iterative exercise that encourages DCMs to update outdated information. The framework for CFTC review of position limits for power contracts in particular should be receptive to filers putting forth case-based, tailored analyses to explain how their proposed approach to measuring generation capacity, *and* total transmission capability, is appropriate towards a position limits increase in a specific zone or region. Staff reviewing such filings should also give deference to the considerable technical expertise that DCMs and market participants can bring to the table as support for why position limits increases are necessary in the power sector – *e.g.*, the regulatory climate in different RTOs/ISOs, relative liquidity in neighboring markets, trading and supply dynamics between competitive and rate-regulated markets, variability in the availability of trading and physical power transaction data, industry-accepted methods for forecasting load, the number of buyers and sellers in a given market, population density (in and around a zone/hub), and the locationally unique aspects of the infrastructure available at a zone/hub.

The Joint Associations' recommendations are appropriately respectful of the differing roles of the regulator and the self-regulating entities in the energy markets, and will encourage filings where they are needed to quickly move away from artificially low deliverable supply estimates. This approach will also help focus the CFTC staff's rule amendment review process to narrower but more complex issues within any specific filing. The issue of whether transmission and generation should together be counted toward deliverable supply, should be a threshold presumption in favor of including both, rather than a primary area of focus in staff's review. In addition to these recommendations, below, the Joint Associations provide responses to the July 7, 2015 CFTC Solicitation of Comments, Additional Questions.[10]

IV. COMMENTS

On several occasions, the Joint Associations have requested that the Commission reevaluate and update the data used to arrive at deliverable supply estimates, toward ensuring that a future position limits rule is not unnecessarily restrictive of commercial hedging and risk mitigation.[11] While those requests were typically raised in a public comment period on *proposed* CFTC rules, the same issues are equally relevant in this proceeding, having a more immediate impact on commercial hedging. Thus, it is critically important for the CFTC to update deliverable supply methodology for currently in-effect regulations, based on a sound understanding of the combined role of transmission and generation in the physical power markets. Our comments seek to provide helpful guidance to the CFTC on this issue, and also recommend specific steps the Commission should take to ensure a deliberative, efficient review process for such filings.

A. The Commission Should Adopt a Working Presumption in Self-Certification Filing Reviews that Generation Capacity and Total Transmission Capability Must Both Be Considered to Determine Deliverable Supply for Power Contracts.

The Commission should find that the Zone G Filings and ICE Analysis are consistent with the CFTC DCM Core Principles and related regulations. The regulatory review and conclusions

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[10] CFTC Questions for Commenters, *Solicitation of Comments regarding the ICE Futures U.S. Inc. Futures Contracts in New York Independent System Operator ("NYISO") Electric Power for Zone G* (July 7, 2015), Web Posting, available online. ["CFTC Questions"].

[11] Comments of the Electric Power Supply Association, *Position Limits for Derivatives*, RIN Number 3038-AD99 (August 4, 2014)(stating that "Commission reliance upon out-of-date statistics will likely result in imposing limits that are unnecessarily restrictive and will harm the liquidity of the derivatives markets. Since all futures transactions occur on an exchange, we believe the exchanges are in the best position to provide accurate and current information on the market. The Joint Associations therefore encourage the Commission to follow its established practice of deferring to the exchanges' expertise and adopt position limits based upon the most current and complete information), available online; *see also* Comments of the Edison Electric Institute and Electric Power Supply Association (Feb. 7, 2014), Comments of the Edison Electric Institute and Electric Power Supply Association (March 28, 2011), available online, Comments of the American Gas Association, Edison Electric Institute, Electric Power Supply Association (March 1, 2012), available online.

reached in the instant Zone G proceeding will set the stage for how the Commission views future Section 40.6(a) filings regarding deliverable supply increases for wholesale power markets. Therefore, it is critical that the Commission directly acknowledge in a publicly available written response to ICE, which can be relied on by future filers and market participants alike, that both transmission and generation capabilities are appropriately included together toward a measure of deliverable supply, consistent with the CEA and implementing regulations. In addition, the Commission should direct CFTC staff to adopt a presumption to this effect when reviewing Section 40.6(a) filing for increases to deliverable supply for power contracts.

(i) In Electric Markets, Supply that is Readily Available to Serve Load is Dependent on Capacity, Generation, and Transmission Imports from Neighboring Systems.

In electricity markets, the amount of electricity supply that is readily available to serve load is a function of contracted capacity, generation, and grid imports from neighboring systems. Therefore, the inclusion of TTC toward deliverable supply is consistent with the CFTC working definition which states that deliverable supply is "the quantity of the commodity meeting a derivative contract's delivery specifications that can reasonably be expected to be readily available to short traders and saleable by long traders at its market value in normal cash marketing channels at the derivative contract's delivery points during the specified delivery period, barring abnormal movement in interstate commerce."[12]

Accordingly, the appropriate metric for deliverable supply is one that assesses the amount of the power commodity that is deliverable to a location during a time when market signals are dictating that as much supply as possible be delivered to that location. This should be determined not by looking to historic delivered supply, but by looking to the current, physical fundamentals of the electric grid. This would include both generation capacity native to the location, as well as the transmission capacity that can make external supply readily available at the location.

To get from source of generation to a sink of consumption, without the ability for storage, necessitates a methodical administration of the electric system. The electric system is composed of four primary components: capacity, generation, transmission and distribution. Capacity is the maximum electric output a generator can produce under specific conditions. Generation is the amount of electricity a generator produces over a specific period of time. For example, a generator with 1 megawatt (MW) capacity that operates at that capacity consistently for one hour will produce 1 megawatt hour (MWh) of electricity. Transmission refers to the wires, insulators and associated hardware that carry electric energy from one point to another in an electric power system at high voltages and are used to transport electricity in the wholesale markets. Distribution

[12] Final Rule and Interim Final Rule, Position Limits for Futures and Swaps, 17 CFR 1,150-51 (2011), available online.

are the wires, insulators and associated hardware that carry electricity from the transmission system to end-use customers. For deliverable supply calculation, capacity, generation and transmission are the key components of ensuring resource adequacy, *i.e.*, the ability of the electric system to meet the aggregate electric demand and energy supply of all end-use customers at all times. This also entails taking into account scheduled and unscheduled outages on the system.

Further, to ensure resource adequacy, generation facilities plan the system to meet one-hundred percent of peak load plus a reserve margin, which assures that load will be served even during periods that exceed the forecasted peak demand, or when there is an unexpected supply constraint or outage. For vertically integrated utilities, the reserve margin amount is set by the state public service commission, and in RTO/ISO markets the reserve margin is set by the RTOs/ISOs and approved by the Federal Energy Regulatory Commission ("FERC"). In wholesale markets operated by the RTOs/ISOs, such as the NYISO, resource acquisitions occur in the capacity and energy markets in order to meet applicable resource adequacy requirements. The capacity market is used to ensure that there are sufficient resources to meet projected load on a long-term basis. Capacity resources bid into the auction and the last resource needed to meet the last MW of load sets the clearing price. All the resources that clear any given capacity auction are obligated to provide electricity in the delivery year. Based on the constraints on the system, there may be a locational component as there is with NYISO Zone G, which means the clearing price in the zone is different from the clearing price for the rest of the ISO.

In the energy market, the RTOs/ISOs dispatch their systems using the least cost available generation consistent with the constraints of the transmission system and reliability requirements. The dispatch process occurs in two stages: day-ahead unit commitment, or planning for the next day's dispatch, and economic dispatch, or dispatching the system in real-time. The real-time market is used to balance the differences between the day-ahead scheduled amounts of electricity based on day-ahead forecast and the actual real-time load. The RTO/ISO markets calculate a locational marginal price ("LMP") at each location on the power grid. The LMP reflects the marginal cost of serving load at the specific location, given the set of generators that are being dispatched and the limitations of the transmission system. Generation imports from neighboring RTOs are able to participate in these markets and if cleared, will be used to meet demand.

The role of imports in a market is determined by market rules as well as the capacity of the transmission system. The total transfer capability of the transmission grid is a function of the system operating conditions and physical constraints on the system. As will be further discussed below in subsection (ii), imports play a critical role in determining how much power is "readily available for delivery" in the context of NYISO Zone G futures contracts.

In conclusion, the Joint Associations assert that the total amount of electricity readily available to meet load in a zone, inclusive of generation capacity and total transmission capability available, is the best measure of deliverable supply. This principle should underscore the CFTC's

decision-making on the ICE's filing as well as any other DCM filings regarding position limits for power futures. The CFTC's decision to adopt this principle will have lasting, impactful effects on end-user commercial power market participants participating in organized power markets across the U.S. Any DCM filing to update position limits would include some measure of available generation capacity and available transmission capability in its analysis, and the CFTC's views as settled upon in the instant proceeding will affect staff's approach to future filings. Therefore, the Joint Associations respectfully request that the CFTC adopt the suggested principle as to the instant filing and future filings, and ensure that necessary hedging opportunities are made available in liquid contract locations for end-users to mitigate commercial risks associated with delivering the power commodity. The CFTC's resources should be focused on reviewing the complexities surrounding the DCM's numeric calculations and granular data/analyses supporting its proposed measurements of generation and transmission, not on debating the fundamentals of the physical electricity delivery system.

(ii) The ICE Deliverable Supply Analysis is Consistent with Electric Market Supply Fundamentals and is Therefore Consistent with the CEA and its Implementing Regulations.

Based on the above-discussed characteristics of electric markets, an accurate view of the total amount of physical energy commodity that stands ready to be delivered requires a closer look at the available transmission capability upon which power futures contracts are based, including imports. In the context of Zone G, ICE has appropriately identified several factors and data points that support its conclusion that transmission capability in Zone G and as provided by imports counts toward the total capacity readily available to make delivery upon which the Zone G power futures contracts are based. Zone G futures activity and the cash marketplace for the underlying power commodity relies heavily on the interconnected nature of transmission infrastructure and the ability of Zone G to serve as gateway to other zones within New York and externally to other regions outside the RTO. Zone G is a popular, dense trading hub because contract prices in the zone closely reflect the underlying liquidity of the physical marketplace – which is directly supported by the full capability of the transmission interties at Zone G to stand ready to deliver the power commodity. In other words, the importance of Zone G to commercial hedgers is tied more to its physical location within the regional transmission grid and less to the generation and load profile within the zone itself.

The Joint Associations emphasize that an accurate estimate of Zone G electricity quantity available for delivery pursuant to futures activity in the zone must account for TTC, <u>including interfacing transmission</u>. Zone G is known in trading circles as the "gateway to Manhattan" and is a preferred and densely interconnected trading point in which the contracts subject to the Zone G filings are among the most liquidly traded instruments for downstate and inter-ISO trading and hedging in the NYISO market. As such, Zone G is also a proxy <u>for all of the NYISO's transmission and load profile</u>. Other physical factors supporting Zone G as a proxy price point and primary hub for NYISO include:

(i) Significant hedging of physical forward bilateral deals within NYISO with Zone G Swap Futures;
(ii) Compared to the rest of NYISO, Zone G has the largest concentration of transmission – a 345kv network that connects to other NYISO zones;
(iii) Zone G has two external TTCs that connect to major northeast ISO/RTOs (ISO-NE and PJM);
(iv) Zone G has a diverse set of intake points to multiple load-serving entities within the zone, including National Grid, Central Hudson Gas and Electric, NYSEG, Orange and Rockland Utilities, and Consolidated Edison;
(v) NYISO Zone G is a primary proxy price for peripheral points for Zone F, H, I, J and K.

Given these factors, Zone G contracts are relied upon by wholesale power market participants to manage risks in New York and surrounding regions in a liquid, efficient and reliable marketplace that facilitates price discovery. Transmission capability is a critical component of the underlying structure supporting this contract market, because Zone G's transfer capabilities are heavily utilized pursuant to these contracts to allocate physical electricity supply outside the zone – with import and export transferability to ISO-NE Mass Hub, PJM West Hub, New York City, Western New York, Buffalo, and IESO Canada. These characteristics of Zone G demonstrate that transmission capability should be clearly accounted for in deliverable supply estimates for Zone G futures contracts. These characteristics also demonstrate that observations made in the CFTC Questionnaire comparing Zone G contract activity to only usage and generation in the NYISO should not be taken to conclude that Zone G futures limits should only reflect physical settlement within New York.[13]

Further, ICE correctly reasoned that electricity derivatives contracts are based on hubs or zones where both transmission and generation capacity *together* contribute to efficiency, liquidity and reliability of those hubs or zones. Given the direct relation of physical delivery capabilities of the grid infrastructure at large, including both transmission and generation, it is inappropriate to limit a deliverable supply estimate to only a measure of available generation. It is also inappropriate to make adjustments to TTC to account for demand, transmission or node constraints, such as by using a "flowgate model" as proposed in the CFTC Questionnaire. As spot month limits need to be static, utilizing a flowgate model – where network configurations effectively change daily – would prompt erratic activity in the NYISO futures markets and create a dynamically changing spot month limit. This would be very disruptive to the futures market. Finally, as TTC is the capability for power to flow from one zone or control area to another (in

[13] *See* CFTC Questionnaire, at 1 (stating that "[a]ctivity in these contracts has been at or near these levels over the previous two years and represents significantly more electric power then (*sic*) is generated or used in the entire ISO").

this case, in or out of Zone G) it would not be appropriate to reduce other NYISO Zones as suggested in the CFTC Questionnaire.

Finally, ICE has proposed a reasonable approach to verifying that the TTC estimates are not "double-counting" transmission capability, looking both at publically available forecast data and real-time data for cross-verification of how much transmission is truly readily available. As indicated by ICE, there is verifiable information provided by electricity market participants, ISOs and other regulatory agencies that provides an accurate reflection of the electricity markets. In general, as to the wholesale power markets, the Commission could also utilize several publicly available data points, including, but not limited to, FERC's market-based rate market share analysis, FERC Form 1 submittals, daily RTO/ISO reports, data posted pursuant to NERC requirements[14] and the Energy Information Administration's ("EIA") Form 923.[15] In FERC's market-based rate share analysis, FERC continuously monitors the electricity markets to ensure participants lack (or have adequately mitigated) market power. FERC's monitoring includes assessing the market power of the market participant and any of its affiliates that own generation and assessing the available generation in the relevant market. An electric utility also publicly reports its generation capacity annually through FERC Form 1 and supplements the information quarterly through Form 3-Q.[16]

Additionally, each RTO/ISO must publish daily the amount of generation that is available in each hub or zone. If a generator were unavailable, the report would reflect the decreased generation capacity at the location. For example, publicly available reports by the ISO reflect changes in generation capacity due to routine maintenance that cause a portion of a market participant's generation fleet to be offline for a period of time. The transfer capability available to a hub or zone is constantly expanding, as FERC requires the ISOs and its market participants to update existing transmission infrastructure to develop an interregional transmission planning process.[17] In other regulation, NERC's "Modeling, Data, and Analysis" standards define the reason for and methods of calculating total transfer capability.[18] Similarly, NERC requires

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[14] "Section 1600 – Request for Data or Information," *Rules of Procedure for the North American Electric reliability Corporation* (Oct. 4, 2013), available via NERC website.

[15] U.S. Energy Information Administration, *Form EIA-923: Power Plant Operations*, available via EIA.gov website.

[16] *FERC Form No. 1: Annual Report of Major Electric Utilities, Licensees* and *Others*, and *FERC Supplemental Form 3-Q: Quarterly Financial Report*, (Dec. 31, 2014) (Web Update March 9, 2015) available via FERC.gov website.

[17] FERC Order 1000, 18 C.F.R. § 35, 136 FERC ¶ 61,051 (July 2011), available via FERC.gov website.

[18] North American Electric Reliability Corporation, "Available Transmission System Capability: R4-R6" – Standard MOD-001-1a (Apr 1, 2011), Web. 9 Mar. 2015, available online.

Transmission Providers to post the total transfer capability of a posted path in its publicly available daily reports.[19]

The Operating Studies cited in the Zone G Filings provide reliable analysis of the power grid's thermal transfer limits, as represented in the studies by detailed modeling of forecasted load conditions for peak summer and winter conditions throughout the three-year average look-back period.[20] Further, the NYISO has available actual intertie flow data every five minutes, effectively in real-time, on its system website, which permits a cross-check to determine whether the TTC numbers arrived at in the NYISO Operating Studies are an adequate estimation of actual power flow that occurs at any given interface into Zone G. To the extent that the ICE Supplement Zone G Filing[21] points to total actual tie flow in max hours at each interface to Zone G of 98% of the TTC listed in the Operating Studies, there is no reasonable basis to contend that TTC is not representative of readily available physical delivery capacity.

Consistent with CFTC precedent, the ICE proposal utilized this abundance of empirical data and applied a three-year look back.[22] Accordingly, the Joint Associations request that the Commission conclude that the Zone G Filings and underlying ICE Analysis are consistent with relevant provisions of the CEA and CFTC rules regarding position limits, deliverable supply and DCM Core Principles.

B. The Commission Should Acknowledge that Generation Capacity Can Be Appropriately Determined by Nameplate Capacity Ratings.

As a threshold matter, the CFTC should acknowledge that daily or real-time demand-side measurements of generation or a historical look-back to power that was delivered (as opposed to power that is deliverable) are anachronistic for the purposes of calculating deliverable supply estimates for the power grid's generation and transmission capabilities in the present. The CFTC should also conclude that the Zone G Filings appropriately include generation capacity determined by nameplate capacity ratings as a measurement of supply that the grid stands ready to deliver as per the CFTC's definition of deliverable supply.

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[19] "Information to be posted on the OASIS," 18 CFR § 37.6(b)(1)(vi) (2008), available online.

[20] *New York Independent System Operator*, Operating Studies, Summer 2012, Winter 2012-13;Summer 2013; Winter 2013-14; Summer 2014; Winter 2014-15; as noted in the ICE Zone G Filings, the Commission has approved of a three-year lookback period as the appropriate time period to reflect the period of time that is representative of the underlying wholesale power commodity's actual pattern of consumption. *See also* CFTC Rule 38 Appendix C (b)(1)(i)(C).

[21] ICE, Supplemental Filing, at p. 2, available online.

[22] NYISO Web Links: Zone G Generation; NEPOOL Imports; PJM Imports and Zone F to G, Zone E to G.

In response to the CFTC Questionnaire on this topic, the Joint Associations note that deliverable supply should be exactly that – a measure of the supply which the grid's supply infrastructure stands ready to deliver. A measure of "standing ready" to deliver energy from the grid does not equate under any reasonable circumstances to the grid's historically delivered power or to reduction based on real-time or daily demand-side load management or load constraints that are directly managed by the grid system operator. Importantly, deliverable supply estimates are a measure of current capacity for deliverability of the power commodity, and the currency of these estimates is intended to support spot month limits and all-month levels which themselves should be static for *one to three years* forward to support the futures market. An abrupt and anachronistic application of reductions to deliverable supply estimates based on either historically delivered power, or real-time physical changes that are managed by the grid operator's balancing functions, would disrupt the orderly application of position limits by the exchanges and obstruct a clear view of physical and financial market conditions which inform commercial market participants' hedging strategies.

The ICE proposal to use nameplate ratings meets the above-discussed standard for measuring generation capacity that is readily available to make deliveries: by contrast, a measure of "historic capacity" data or "average load" data[23] are inapplicable to a determination of currently available generation capacity that can be readily available for delivery. Capacity essentially reflects what is deliverable, because it is a fully committed commodity in and of itself. In other words, any capacity contracted for is also readily available for delivery. By contrast, a demand-side measurement such as average load does not provide an estimate of the supply of electric power available for delivery over a given time period. Therefore, the Commission should not require the demonstration of any specific relationship between quantifiable generation capacity and either historic capacity or average load in order for the capacity to be considered "readily available for delivery." In response to the CFTC Questions, the Joint Associations also note that the definition of the "applicable market region" associated with the location of the market is a critical factor for determining which NPC should be incorporated toward deliverable supply. For the same reasons as TTC would include interfacing transmission, *e.g.* TTC from PJM into/out NYISO and NEPOOL into/out NYISO, Zone G NPC could also be demonstrated to include NPC for Zone F, G, H, I, J, and K.

[23] *See* CFTC Questionnaire, at nos. #6, #7 ("Is the use of historic capacity electric power data appropriate for the estimation of deliverable supply? Or should historic flow data for that zone be used, where available? How does NPC and/or TTC relate to historical electric power flows?").

C. The Commission Should Encourage DCMs to Submit Deliverable Supply Analyses that Include a Tailored Approach to Measuring Total Generation and Transmission Capabilities in Light of Regionally or Locally Unique Power Market Characteristics.

The framework for CFTC review of position limits for power contracts should be receptive to filers submitting case-based, tailored analyses to explain how their proposed approach to measuring generation capacity, *and* total transmission capability, is appropriate towards a position limits increase in a specific zone or region. Where the filer provides unique information and/or supportive data regarding liquidity in the cash markets or other defining features of the localized power market, that information and the related expertise of the filer should be given appropriate deference in the CFTC staff's review.

Accordingly, in the case of the Zone G Filings, CFTC staff should carefully consider and give deference to the wealth of information that has been relied on by ICE to arrive at its Analysis, much of which is distinctively available through the NYISO. ICE has presented a record that includes direct reference to the scope and breadth of commercial hedging activity in Zone G that is uniquely representative of the entire New York region. Additionally, the Operating Studies provided by ICE are cross-referenced by an appropriate real-time analysis of actual power generation and power flows on the basis of information available from the NYISO.

Additionally, the CFTC staff should adopt a review framework for such filings that acknowledges the substantial diversity within and between regional wholesale power markets. Regulatory reviews should give appropriate credence and deference to special expertise, granular data, or information about the localized or regional constraints and regulatory climate that could impact the amount of infrastructure that is readily available to deliver power. By taking these steps, the Commission should encourage the exchanges to file necessary rule amendments for power contracts listed in other RTO regions where outdated deliverable supply estimates are unduly constraining hedging opportunities for the Joint Associations' members and other commercial market participants. The Commission should approve the ICE request, which seeks to establish position limit that will free up necessary hedging opportunities and increase price discovery at an important and liquid trading location used by Joint Associations' members to manage risk associated with their commercial delivery of power to dense population centers within and surrounding the New York region.

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V. Responses to CFTC Questions for Commenters

The Joint Associations provide the following responses to the additional questions posed in the CFTC Questions document accompanying the request for public comments.

1. When estimating deliverable supply is nameplate capacity ("NPC") appropriate to reflect the structure of the cash market for the underlying commodity?

Nameplate Capacity, as proposed by ICE, is an appropriate proxy for determining total generation capacity available, or 'standing ready' to deliver the physical electricity commodity to the ultimate delivery points. However NPC alone is not sufficient. NPC, along with a measure of TTC, appropriately reflects the structure of the underlying commodity cash market activity when the subject zone or hub's deliverability is viewed on the basis of the whole market region that stands to benefit from the readily available generation capacity. As noted in comments above, for the same reasons as TTC should include interfacing transmission (like ISO-NE and PJM), conceptually Zone G NPC would also include NPC for Zone F, G, H, I, J, and K. Importantly and relatedly, Zone G is also a primary proxy price for peripheral points for these other Zones.

2. Since all generating units do not operate throughout the day and supply must always equal demand to maintain an electric power systems (*sic*) operations how can these two factors be accounted for in a deliverable supply estimate?

Indeed, all generating units within Zone G, and throughout the New York ISO, may vary their operational schedule in *real-time*, throughout the electric day due to either market forces, reliability management considerations, or physical grid pressures like offsets from generation that comes online external to the zone in real-time. While the real-time energy market's daily settlement of demand and supply through operational changes reflect supply that is delivered, it does not have a meaningful bearing on how the Commission should view deliverable supply. TTC into Zone G, and an appropriate metric for total available generation standing ready to make physical delivery such as NPC, constitute together the appropriate metrics to reflect the structure of the cash market for the underlying power commodity. As noted in the comments above, deliverable supply estimates are intended to support spot month limits and all-month levels, which should be static for *one to three years* forward to support the futures market. An abrupt and anachronistic application of reductions to deliverable supply estimates based on real-time physical changes would disrupt the orderly application of position limits by the exchanges and obstruct a clear view of physical and financial market conditions which inform commercial market participants' hedging strategies.

3. When estimating deliverable supply, is total transfer capability (TTC) appropriate to reflect the structure of the cash market for the underlying commodity?

Yes. As noted above in comments, TTC into Zone G, and an appropriate metric for total available generation standing ready to make physical delivery such as NPC, constitute together the appropriate metrics to reflect the structure of the cash market for the underlying power commodity.

4. Does TTC include or exclude electric power generated to meet demand in the zones outside NYISO Zone G? Would it be appropriate to reduce estimated deliverable supply for zones other

than Zone G where power contributed to the TTC flows comes from those areas?

As discussed in the comments above, TTC is the sum capability for physical power to flow – at any given point in time (*i.e.* standing ready for delivery) – from one zone or control area within or outside of Zone G. As also noted above in comments, it would not be appropriate to reduce other NYISO Zones – for the same reason as observed in the premise of CFTC Question No 2 (stating "all generating units do not operate throughout the day and supply must always equal demand to maintain an electric power systems (*sic*) operations.") In other words, by necessity, attempting to reduce other zones would be illogical in light of the overall system design to stand ready, incorporating TTC and generation capability in Zone G and all other Zones simultaneously, to flow power in and out of a specific zone or control area at any given time. The question which the Commission should be asking is: what supply can be delivered to a location if the market dictates that as much supply as possible is needed at the location?

5. What adjustment to TTC should be made to account for demand, transmission and node constraints? Is the use of a flowgate model appropriate to account for TTC?

As discussed above, spot month limits need to be static. Utilizing a "flow gate model" where network configurations could change daily may prompt erratic activity in NYISO futures. Neither the CFTC nor a DCM platform should impose a dynamically variant spot month limit that attempts to capture real-time operational or demand-side constraints into a model that is supposed to be based on a forward-looking model to support static spot month limits. What has been delivered in the past has no bearing on what is deliverable.

6. Is the use of historic capacity electric power data appropriate for the estimation of deliverable supply? Or should historic flow data for that zone be used, where available?

No to both question parts. As discussed below, the use of a generation capacity metric such as NPC, and TTC inclusive of external TTCs in the case of Zone G (connecting to major northeast ISO/RTOs ISO-NE and PJM), is a more accurate depiction of deliverable supply. As noted above in comments, the appropriate metric for deliverable supply is one that assesses the amount of the power commodity that is deliverable to a location during a time when market signals are dictating that as much supply as possible be delivered to that location. This should be determined not by looking to historic delivered supply, but by looking to the current, physical fundamentals of the electric grid. This would include both generation capacity native to the location, as well as the transmission capacity that can make external supply readily available at the location.

7. How does NPC and/or TTC relate to historical electric power flows?

NPC and TTC should reflect the current capacity of the grid to deliver power: neither measure would require detailed analysis of historical electric power flows.

8. Is the use of average load appropriate to estimate supply of electric power over a period of time at a zone?

No. Please see the comments above for a discussion of this issue.

9. What adjustments if any should be made for historical load data containing periods of exceptionally high or low load for the zone?

Adjustments should not be made in consideration of historical load data, especially historical load data reflecting periods of exceptionally high or low load – by very definition, using data that defines an anomaly, or an "exception" to the typical flow of power, would be a fundamentally flawed basis upon which to construct an appropriate forecast for updated and current deliverable supply estimates intended to support a forward-looking spot month limit. What has been delivered in the past has no bearing on what is deliverable. As discussed in comments, deliverable supply should be determined not by looking to historic delivered supply as represented by historic load data, but by looking to the current, physical fundamentals of the electric grid and its capability to stand ready to make delivery, per the CFTC's own definition of measuring deliverable supply.

10. To what extent do the current ICE deliverable supply estimates for the futures contract for NYISO Zone G electric power contracts reflect seasonality effects on the market?

The deliverable supply estimates do not, and should not, reflect "seasonality effects" on the cash markets for the underlying power commodity. The only seasonal impacts that should apply are if the physical capacity electric grid has seasonal limitations due to weather. This is reflected in the EIA 860 data which provides Nameplate Summer and Winter Capacity Ratings.

11. Is it appropriate to calculate two separate estimates of deliverable supply for both peak and off-peak electric power futures contracts?

No. The deliverable supply estimate, if using NPC and TTC as noted above as the correct measure of deliverable supply, should be the same in off-peak and on-peak power hours – whether or not the futures contract in question is tied to a 'peak' demand or an 'off-peak' demand, the *supply capability that underlies* NPC and TTC in order to make such deliveries does not change and those same physical grid resources stand ready to deliver in peak or off-peak hours.

12. What, if any, other factors should be considered by ICE in estimating supply of electric power that would be available at NYISO Zone G in a particular month?

As discussed at length above in responses and comments, the definition of the "applicable market region" upon which TTC and NPC are calculated should be associated with the locations where power supply stands ready and deliverable. For Zone G, supply should include the NPC of Zone F, G, H, I, J, and K, along with the TTC from PJM into/out of NYISO and NEPOOL into/out of NYISO.

13. Is it appropriate to calculate deliverable supply on historical delivered electric power to account for the merit-order curve? Is another method more appropriate?

The Joint Associations believe this question overlaps with earlier questions regarding the appropriateness of using historical power flows toward the deliverable supply calculation. Here, as well, the more appropriate method is to use NPC and TTC.

14. When estimating deliverable supply should there be reductions made for ancillary services (e.g. load following, frequency response, spinning reserve capacity, etc.) given their role in normal grid operations?

Ancillary services vary with load and are a function of demand not deliverable supply. Thus, while these factors impact energy market prices and uplift charges to load, they have no bearing on what supply is readily available for delivery on the electric transmission system. The appropriate method is to use NPC and TTC as discussed above. What has been delivered in the past has no bearing on what is deliverable.

15. How does the methodology of estimating deliverable supply impact the contracts hedging or price-basing utility?

NYISO market participants such as the Joint Associations' members require functional, reliable, transparent and liquid power futures markets that facilitate price discovery to appropriately and adequately mitigate long-term electricity price exposure risks. Position limits can negatively impact access to the market by liquidity providers that transact with market participants like Joint Association members that access the market to hedge and manage risk. Lower liquidity can also increase volatility and reduce the benefits of price transparency at Zone G. Position limits can negatively impact access to the market by liquidity providers that transact with market participants like Joint Association members that access the market to hedge and manage risk. Lower liquidity can also increase volatility and reduce the benefits of price transparency at Zone G. The deliverable supply methodology should be simple to understand, cognizant of the need for status spot-month limits based on a one-to-three years forward period, and reflective of the physical and financial market realities that are at stake in the subject zone, control area, hub or region.

16. How should deliverable supply estimates relate to the speculative position limits and accountability levels for similar contracts traded on other exchanges be viewed?

The deliverable supply estimates as they relate to speculative position limits for *similar* power futures contracts should be consistent in methodology across cash-settled contracts, accounting for the unique information or experience offered up by market participants engaging in hedging activities with such contracts or by the exchange on which those contracts are listed.

17. To what extent should consideration be given to environmental constraints, ramp-rate limits, dynamic constraints, start-up costs, operation scheduling, no-load costs, and pricewise linear cost curves when estimating deliverable supply?

For the several reasons discussed above in responses and comments, no consideration should be given to these factors because these factors represent physical constraints in the real-time energy markets which are managed by the NYISO on both a daily basis and real-time basis.

Spot month limits and all-month/single-month levels for financially-settled futures contracts should be static for one to three years forward.

VI. CONCLUSION

For the aforementioned reasons, the Joint Associations respectfully request that the Commission conclude that the ICE Zone G Filings and Analysis are consistent with relevant Core Principles and provisions of the CEA, and acknowledge in a final determination to ICE, made available to the public, that both total transmission capability and generation capacity are appropriately included toward measuring deliverable supply for electricity derivatives contracts. The Joint Associations thank the Commission for providing an opportunity and sufficient time period for public comments in this proceeding. Please do not hesitate to contact us regarding these comments, at the information below.

Respectfully Submitted,

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