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September 21, 2015

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

VIA ELECTRONIC SUBMISSION

Re: Solicitation of Comments Regarding the ICE Futures U.S., Inc. Futures Contracts in New York Independent System Operator ("NYISO") Electric Power for Zone G

Dear Secretary Kirkpatrick:

I. INTRODUCTION.

On behalf of The Commercial Energy Working Group (the "**Working Group**"), Sutherland Asbill & Brennan LLP hereby submits this letter in response to the Commodity Futures Trading Commission's (the "**CFTC**" or "**Commission**") request for comment[1] on ICE Futures U.S., Inc.'s ("**IFUS**") methodology for estimating deliverable supply underlying its Submission Nos. 15-101 and 15-101s, which seek Commission approval of proposed rule amendments to IFUS' Rulebook increasing speculative spot month position limits and single and all-month combined accountability levels for eight financial power futures contracts (the "**IFUS Rule Amendments**").[2]

The Working Group is a diverse group of commercial firms in the energy industry whose primary business activity is the physical delivery of one or more energy commodities to others, including industrial, commercial, and residential consumers. Members of the Working Group

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[1] *See* CFTC, *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), *available at* http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/icefuturessubmission070715.pdf ("**Solicitation of Comments**").

[2] *See* IFUS, *Amendments to Resolution No. 2 of Chapter 18 – Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6(a),* Submission No. 15-101 (May 11, 2015), *available at* https://www.theice.com/publicdocs/regulatory_filings/15-101_Amndmnts_to_Res_No%20_2.pdf; IFUS, *Supplement to Amendments to Resolution No. 2 of Chapter 18 – Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6(a),* Submission No. 15-101s (June 23, 2015), *available at* http://www.cftc.gov/filings/ptc/ptc070215iceusdcm001.pdf ("**IFUS Supplement**").

are producers, processors, merchandisers, and owners of energy commodities. Among the members of the Working Group are some of the largest users of energy derivatives in the United States and globally. The Working Group considers and responds to requests for comment regarding regulatory and legislative developments with respect to the trading of energy commodities, including derivatives and other contracts that reference energy commodities.

The Working Group supports the IFUS Rule Amendments and IFUS' methodology for determining deliverable supply and believes the IFUS Rule Amendments are consistent with the Commodity Exchange Act ("**CEA**"). The Working Group therefore urges the Commission to withdraw its stay[3] and allow the IFUS Rule Amendments to go into effect. The Working Group appreciates the Commission's consideration of the comments set forth herein as it makes its determination on this matter.

II. COMMENTS OF THE WORKING GROUP.

A. The Commission Should Adopt a Deliverable Supply Methodology That Accurately Reflects Current Market Circumstances.

As a general matter, the Working Group believes speculative position limits should be carefully tailored and established at appropriate levels that prevent excessive speculation in the commodity derivatives markets without harming legitimate commercial hedging activity and liquidity in energy commodity markets. In this regard, deliverable supply estimates that serve the basis for establishing speculative position limits must be updated frequently to accurately reflect market realities and account for dynamic market conditions.

The CFTC defines deliverable supply as the "amount of a commodity that can ***reasonably be expected to be readily available*** to short traders to make delivery at the expiration of a futures contract."[4] Pursuant to this guidance, the Working Group submits that the methodology for calculating deliverable supply that accurately reflects market circumstances and the amount of power reasonably expected to be readily available at a particular zone or hub is the sum of (i) generation capacity at the hub or zone and (ii) transmission of power available into the

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[3] *See Notification of Stay: ICE Futures U.S. Inc. Submission No. 15-101, dated May 11, 2015*, Division of Market Oversight, CFTC (May 26, 2015) (the CFTC stayed IFUS Submission No. 15-101, contending the submission provided an inadequate explanation of the subject rule amendment and potentially was inconsistent with the CEA).

[4] *See Position Limits for Derivatives*, Notice of Proposed Rulemaking, 78 Fed. Reg. 75,680, at 75,728-29 (Dec. 12, 2013) (emphasis added) (citing Appendix C to Part 38 of the CFTC's regulations, which states: "In general, the term 'deliverable supply' means the quantity of the commodity meeting the contract's delivery specifications that ***reasonably can be expected to be readily available*** to short traders and salable by long traders at its market value in normal cash marketing channels at the contract's delivery points during the specified delivery period, barring abnormal movement in interstate commerce. Typically, deliverable supply reflects the quantity of the commodity that ***potentially could be made available*** for sale on a spot basis at current prices at the contract's delivery points. For a non-financial physical-delivery commodity contract, this estimate might represent product which is in storage at the delivery point(s) specified in the futures contract or ***can be moved economically into or through such points*** consistent with the delivery procedures set forth in the contract and which is available for sale on a spot basis within the marketing channels that normally ***are tributary to the delivery point(s)***") (emphasis added).

hub or zone.[5] Additionally, given physical commodity markets often make certain amounts of supply subject to long-term agreements available to the spot market, the Working Group submits that deliverable supply estimates should not be reduced by supply committed under long-term supply agreements.[6]

In contrast, the Working Group believes that deliverable supply estimates should not be constrained by load. Deliverable supply is a function of the quantity that can be reasonably expected to be readily available at a particular delivery point. Because load represents the demand for electricity, it is not an accurate reflection of the quantity of power that can be reasonably expected to be readily available for delivery in a particular zone or hub. By way of example, if load/demand were 5,000 megawatts ("**MWs**") within a zone and the sum of Nameplate Rating ("**NPR**")[7] generation and the Total Transfer Capability ("**TTC**")[8] equaled 10,000 MWs, load/demand would not affect the total 10,000 MWs of available deliverable supply. If load/demand increased to 7,500 MWs, deliverable supply still would be 10,000 MWs, or the amount reasonably capable of being delivered.

If the Commission adopts a deliverable supply definition or methodology that excludes the relevant measurements described above, *i.e.*, generation in and transmission of power into a hub or zone without reduction for supply subject to long-term power agreements, speculative position limits may be established at artificially low levels, which will constrain commercial hedging activity and increase risk in energy commodity markets.

B. The Commission Should Approve the IFUS Rule Amendments.

As described in Section II.A, above, the Working Group supports the use of a deliverable supply methodology that includes both electric generation in a hub or zone and the transmission of power into the hub or zone. Therefore, given IFUS employs this methodology to calculate deliverable supply for NYISO Zone G (as further described below), the Working Group recommends that the Commission approve the IFUS Rule Amendments.

IFUS proposes to establish speculative spot month position limits for each NYISO

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[5] As it pertains to the natural gas markets, the Working Group believes the methodology for calculating deliverable supply that accurately reflects the amount of natural gas reasonably expected to be readily available at a particular delivery point is the natural gas pipeline capacity at the physical delivery point.

[6] *See In the Matter of Cox, et al.*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,786, at 34,062-65 (July 15, 1987) (The CFTC found that where a commodity was "committed irrevocably," such as where the commitment was to come due not far off into the future, it could not be included in deliverable supply calculations. In contrast, the CFTC noted that a sufficient time interval between the due dates on prior commitments and the futures delivery date could allow commercial holders of the commodity an opportunity to make it available for delivery on the futures contract and subsequently to replenish existing stocks with other sources of the commodity, thereby honoring prior commitments as well).

[7] IFUS notes that the Energy Information Administration ("**EIA**") defines "Nameplate Rating" as the "capacity determined by the generator's manufacturer and indicates the maximum output a generator can produce without exceeding design thermal limits." *See IFUS Supplement* at page 3.

[8] IFUS defines "Total Transfer Capability" as the amount of electric power that can be moved from one area to another. *See IFUS Supplement* at page 2.

Zone G contract at 25% of its deliverable supply estimate. In calculating deliverable supply, IFUS determined to sum the capacity of generation in NYISO Zone G and transmission into NYISO Zone G based on data published by NYISO. More specifically, IFUS calculated the quantity of generation capacity in NYISO Zone G using the NPR of generators in NYISO Zone G. IFUS notes that, as reflected by EIA Form No. 860,[9] Total Net Winter Capacity for generators in New York was 98% of NPR, and 27% of generators had a Net Winter Capacity greater than NPR. Additionally, IFUS included in its deliverable supply estimate transmission of power into NYISO Zone G based on TTC along interfaces into NYISO Zone G. Importantly, because these interfaces have an overlapping path flow, IFUS states that the same resources were not double counted. IFUS further states that NYISO intertie flow data and Operating Studies demonstrate that the total actual tie flow during max hours at each interface into Zone G was 98% of TTC.

Therefore, in accordance with the CFTC's guidance, the Working Group submits that IFUS reasonably could expect that the NPR of generators and TTC would be readily available in NYISO Zone G, and appropriately included the NPR of generators in NYISO Zone G in its deliverable supply estimates for NYISO Zone G. If the CFTC rejects IFUS' methodology, and data involving the electric generation in NYISO Zone G and transmission of power into NYISO Zone G is not included in deliverable supply estimates, speculative position limits for NYISO Zone G will be set at levels that artificially constrain price discovery and commercial hedging practices.

C. The CFTC Should Consider the Working Group's Specific Responses to the CFTC's Questions Presented in the Solicitation of Comments as Provided Below.

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

Response 1. The Working Group submits that NPC (or NPR) is appropriate to reflect the structure of the cash market for the underlying commodity, and, as described in Sections II.A-B, above, should be combined with TTC to calculate the deliverable supply of electricity in NYISO Zone G.

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

Response 2. The Working Group believes these two factors should not be accounted for in calculating deliverable supply estimates. Real-time load/demand is not a measure of deliverable supply. Electricity markets are fluid and operate on a real-time basis, and therefore, deliverable supply estimates should not account for every circumstance, such as ramping capability or line outage/de-rate. Rather, deliverable supply should be based on what is

[9] EIA Form No. 860 surveys operating characteristics of all U.S. generators with a capacity greater than 1 MW to collect generation and NPR data.

"reasonably expected to be readily available." Using 25% of deliverable supply to set speculative position limits provides a substantial adjustment that accommodates the infrequent outages (generation and transmission) that occur on the system.[10]

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

Response 3. As discussed in Sections II.A-B and Response 1, above, the Working Group believes deliverable supply estimates for NYISO Zone G should be the sum of NPC and TTC in NYISO Zone G. This approach provides the best estimate of the quantity that is reasonably expected to be readily available.

Question 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?

Response 4. The Working Group notes that TTC should not be mistaken for generation. TTC represents the capacity to transmit generation from one geographic area to another. Further, the use of the phrase "TTC flows" is an improper characterization, as TTC is a measure of capacity – not a measure of power flows. Given power markets are fluid with electricity moving instantaneously throughout the transmission grid, and the transmission grid currently possesses excess capacity (actual generation), deliverable supply estimates for NYISO Zone G should not be reduced.

Question 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?

Response 5. No adjustments should be made to TTC for demand, transmission, and node constraints. As discussed in Section II.A and Response 2, above, demand/load is not a determinant of deliverable supply. Further, node constraints simply comprise a modeling of economics surrounding power flows and least-price generation and thus are not a determinant of deliverable supply.

Question 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?

Response 6. The Working Group notes that historical flow data should not be used in calculating deliverable supply. Rather, deliverable supply should be based on the current capacity of electricity in NYISO Zone G (generation in and transmission into NYISO Zone G).

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[10] The Working Group submits that deliverable supply is not a necessary measure for setting speculative position limits for financially settled contracts.

As discussed in Section II.A and Response 5, above, deliverable supply should not be reduced by demand, as demand is not a determinant of deliverable supply.

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

Response 7. As stated in Response 6, above, the Working Group notes that historical power flows are not relevant when determining deliverable supply. Rather, given the transmission grid has sufficient generating and transmission capacity to meet load and maintain capacity reserves to ensure reliability of the grid, generation and transmission capacity should be used to determine deliverable supply.

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

Response 8. No. As stated in Section II.A and Responses 5-7, above, the Working Group believes load is irrelevant to deliverable supply estimates and should not be considered when calculating deliverable supply.

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

Response 9. The Working Group recommends that no adjustments be made for historical load data. As stated in Section II.A and Responses 5-8, above, historical load and current load are not relevant when determining deliverable supply.

Question 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?

Response 10. The Working Group notes that seasonality should not be considered when calculating deliverable supply. As discussed in Section II.A and Responses 5-9, above, load is not a determinant of deliverable supply, and therefore, factors that determine load (*e.g.*, seasonality) should not be considered in calculating deliverable supply.

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

Response 11. The Working Group does not believe it is appropriate to calculate two separate estimates of deliverable supply for peak and off-peak electric power futures contracts. Deliverable supply does not change with peak or off-peak periods if calculated correctly using NPC and TTC.

Question 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?

Response 12. As stated in Sections II.A-B, above, the Working Group believes deliverable supply estimates should be based on the sum of generation in and transmission of

power into NYISO Zone G. No other factors should be considered in estimating deliverable supply for NYISO Zone G in a particular month.

Question 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?

Response 13. The Working Group submits that deliverable supply should not be based on historical delivered electric power, generation, flows, or load. Rather, the Working Group believes deliverable supply should be based on what can "reasonably be expected to be readily available" at the given time. Delivered volumes are irrelevant to deliverable supply calculations for the same reasons load is irrelevant (as described in Sections II.A-B and the Responses above).

Question 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?

Response 14. The Working Group does not believe deliverable supply estimates should be reduced for ancillary services.

The ancillary services identified in Question 14 provide reliability support for normal grid operations. Any generation unit that is committed to provide ancillary services must be operable and able to provide electric power when instructed by NYISO. In other words, supply from these generation units can be reasonably expected to be readily available.

In fact, generation units that provide load following and frequency response produce electricity and respond to NYISO dispatch signals within a matter of seconds. Generation units that provide reserve services must be able to produce additional energy within minutes (typically 10 to 30 minutes). For example, generation units that provide spinning reserves already are synchronized to the grid and likely producing electricity, although not at full capacity since they hold some capacity as reserves. This additional capacity must be available within 10 minutes to produce electricity at NYISO's request.

The process that NYISO utilizes to balance supply and demand while maintaining reliability (*e.g.*, committing units for ancillary services) is an economic optimization process that is separate and distinct from the process of determining deliverable supply. The economic optimization process determines the least cost mix of supply resources to satisfy customer demand while honoring constraints (*e.g.*, reliability needs) at any moment in time. It does not, however, determine or limit deliverable supply, which is a measure of system capability.

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

Response 15. Underestimating deliverable supply lowers the quantity of positions that may be held by a speculator. Unnecessarily reducing speculative activity drains liquidity from the market – such liquidity is fundamental to the structure of the NYISO market and is needed to allow hedgers to offset their risk efficiently and at the best possible price. Denying hedgers the

ability to hedge efficiently and at the best possible price negatively impacts the prices that industrial, commercial, and retail consumers ultimately pay for commodities.

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

Response 16. Once approved by the Commission, deliverable supply for a particular commodity at a particular location should be acceptable for, and apply to, all contracts for that commodity at that location, regardless of the exchange on which the contract trades.

Question 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?

Response 17. The Working Group submits that no consideration should be given to any of the factors referenced in Question 17 when estimating deliverable supply as they are not matters of deliverable supply. Similar to Response 14, above, these items are addressed by NYISO's economic optimization process to balance supply and demand while maintaining reliability. Items such as environmental constraints, ramp-rate limits, start-up costs, no-load costs, and pricewise linear cost curves are factors that provide an economic value for each generation unit that NYISO must consider when determining the least cost mix of resources to meet customer demand while honoring constraints, one category of which is dynamic. They are not deliverable supply considerations.

III. CONCLUSION.

The Working Group appreciates the opportunity to provide the comments herein and requests that the Commission consider these comments (i) in determining whether it should grant approval of the IFUS Rule Amendments and (ii) in finalizing a federal speculative position limits rule. As stated herein, speculative position limits should be based on current deliverable supply estimates that appropriately and accurately reflect market realities and the quantity of the commodity that reasonably can be expected to be readily available at a delivery point, namely, generation in and transmission into a defined hub or zone without reduction for supply committed under long-term agreements.

If you have any questions, please contact the undersigned.

Respectfully submitted,

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