

April 2, 2012

VIA E-MAIL

Ms. Kathy Whitaker
Manager, Auxiliary Market Operations
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144

Re: Draft Technical Bulletin No. 217

Dear Kathy:

Pursuant to the request of the New York Independent System Operator, Inc. (“NYISO”) at the March 29, 2012 Joint Installed Capacity Working Group (“ICAPWG”) and Price Responsive Load Working Group (“PRLWG”) meeting, Multiple Intervenors hereby submits these comments in response to Draft Technical Bulletin No. 217 relating to the participation of distributed generation resources in the Special Case Resource (“SCR”) program. As further described herein, Multiple Intervenors has substantial concerns regarding the procedure the NYISO is attempting to utilize to adopt certain modifications to the rules and/or past practices associated with the SCR program through the use of Draft Technical Bulletin No. 217, as well as the precedential nature of such actions. Accordingly, Multiple Intervenors respectfully requests that the NYISO immediately withdraw Draft Technical Bulletin No. 217 in order to facilitate the expeditious consideration and resolution of this matter through the normal stakeholder process.

From the outset, it is critically important to recognize the limited purpose of technical bulletins. As the NYISO has recognized from its earliest days, technical bulletins are intended to merely clarify and/or explain stakeholder-approved market rules and/or establish administrative procedures relating to such rules. Technical bulletins are not and never have been intended as a vehicle for enacting, repealing or otherwise modifying stakeholder-adopted rules; rather, such actions are appropriately reserved for the NYISO’s shared governance process. In fact, the NYISO has specifically acknowledged that technical bulletins “are intended to explain and/or clarify policies, not set or change policies.”¹ In this instance, the NYISO has blatantly disregarded the very narrow purpose of technical bulletins and is attempting to circumvent its own shared governance process. Such disregard for the foundational tenets of the NYISO’s

¹ NYISO, *NYISO Business Issues Committee Meeting: Minutes of the Meeting* (March 15, 2001) at 2.

operations must not be countenanced and must be remedied immediately by the withdrawal of Draft Technical Bulletin No. 217 to facilitate completing the development of any necessary market rules changes to comprehensively address this matter in an expeditious manner through the normal stakeholder process.

Distributed generation resources have long participated in the SCR program, and such participation is permitted under the program rules. However, in July 2010, NYISO staff disclosed to stakeholders at the PRLWG that certain tariff changes related to the implementation of the Demand Side Ancillary Services Program resulted in the creation of an inadvertent restriction on the participation of distributed generation resources in the SCR program. Specifically, by amending the definition of “Special Case Resource” in the Market Administration and Control Area Services Tariff to include the defined term “Local Generator,” the NYISO restricted participation of distributed generation resources to an amount no greater than the applicable baseline value of the respective host loads associated with such resources.² In making this disclosure, NYISO staff indicated that the restriction was an “unintended consequence” and pledged to rectify this error expeditiously before the end of 2010.³

Despite such assurances and discussing the NYISO’s proposed resolution at the ICAPWG subsequent to the July 30, 2010 PRLWG meeting, the NYISO failed to correct its prior, inadvertent error. Consequently, certain stakeholders pushed for action with respect to this issue. As a result of such efforts, the Business Issues Committee (“BIC”) adopted a motion at its January 12, 2011 meeting, directing the NYISO to discuss the matter at the January 19, 2011 ICAPWG meeting and proceed with addressing this issue on an expedited basis. Consistent with the BIC’s directive, the NYISO proceeded to discuss the matter and proposals to resolve same at ICAPWG meetings on January 19, 2011, January 24, 2011, February 8, 2011 and May 16, 2011. During the last formal discussions with respect to this matter at the May 16th ICAPWG meeting, the NYISO indicated its intent to finalize a proposal to address this matter during June 2011 and seek stakeholder approval thereof in July 2011.⁴

Again, as it had in 2010, the NYISO failed to fulfill its commitment to stakeholders. Despite discussing this matter with stakeholders for nearly two years, rather than conduct any

² Prior to the NYISO’s inadvertent error, Section 4.12.2 of the Installed Capacity (“ICAP”) Manual permitted claiming of capacity from distributed generation resources in excess of the applicable host load provided that certain conditions set forth in the ICAP Manual were met.

³ NYISO, *SCR Generation in Excess of Host Load* (presented at the July 30, 2010 PRLWG meeting) at 4-5.

⁴ NYISO, *Distributed Generation as SCRs* (presented at the May 16, 2011 ICAPWG meeting) at 15.

additional discussions with respect to this matter with stakeholders, the NYISO took the unprecedented procedural tactic of issuing Draft Technical Bulletin No. 217 in an attempt to circumvent the shared governance process and implement certain aspects of the rule changes previously discussed with stakeholders relating to the participation of distributed generation resources in the SCR program.

Contrary to the NYISO's professed position, Draft Technical Bulletin No. 217 is not a mere clarifying document. Instead, it represents an apparent departure from past practice and directly contradicts the express authorization in the ICAP Manual for certain base load distributed generation to potentially qualify for participation in the SCR program, subject to specified conditions and limitations. Specifically, Section 4.12.4.4 of the ICAP Manual allows distributed generation that was in operation at the time of the NYISO's system peak to participate in the SCR program only if the capacity requirement of the host load associated with such generation is grossed up to account for such operation during the peak.⁵ Because Draft Technical Bulletin No. 217 directly contravenes current stakeholder-approved rules and would result in a change in the rules, procedures and/or practices related to the SCR program, the use of a technical bulletin in this instance is wholly inappropriate.⁶

The procedural tactic the NYISO is attempting to employ in this case is extremely frustrating and concerning. If countenanced, the NYISO's actions would significantly denigrate the value and importance of the shared governance system, which has been hailed on numerous occasions by NYISO Senior Management, the NYISO Board, stakeholders and independent consultants as a cornerstone of the NYISO's success.⁷ Moreover, given the procedural history noted above and the length of time during which the NYISO has discussed

⁵ While Section 4.12.4.4 of the ICAP Manual is intended to prevent potential "double counting" of capacity, it is important to note that Multiple Intervenors is opposed to any actual double counting that may be occurring under the current rules for the SCR program. Accordingly, it is critically important to address this matter through the normal stakeholder process expeditiously and, to the extent double counting is occurring, develop appropriate, stakeholder-approved market rule changes to eliminate such activities.

⁶ The Federal Energy Regulatory Commission ("FERC") has previously determined that independent system operators and regional transmission organizations do not have unfettered authority to modify existing, stakeholder-approved market rules and structures. In fact, in a similar situation in which PJM Interconnection, L.L.C. ("PJM") attempted to unilaterally modify program rules related to one of its demand response programs, FERC held that PJM was not authorized to simply ignore its normal procedures in order to adopt certain desired market rules changes in an expeditious manner. (*EnerNOC, Inc.*, 134 FERC ¶ 61,158 at P 18-20 (2011).)

⁷ See, e.g., NYISO, *2008 Annual Report* at 1; NYISO, *Lighting the Way – A Decade of Progress: 1999 – 2009* at 2 and 9; NYISO, *2010-2014 Strategic Plan* at 7; and Analysis Group, Inc., *The New York Independent System Operator: A Ten-Year Review* (April 12, 2010) at 56-57.

this matter (and yet failed to fulfill its commitment to stakeholders, Multiple Intervenors perceives no compelling need to resolve this matter in a truncated manner, as the NYISO has attempted to do with the issuance of Draft Technical Bulletin No. 217. Instead, consistent with the BIC's directive and the normal course for developing market rule changes, the NYISO should return to the stakeholder process to complete discussions related to its May 16, 2011 proposal and the comments/feedback received from stakeholders relating thereto in order to expeditiously proceed with seeking stakeholder approval of a comprehensive proposal to address this matter.

To facilitate compliance with the normal process for developing and implementing market rule changes and promptly remedy the NYISO's vexing course of action with respect to this matter, Multiple Intervenors respectfully requests that the NYISO immediately withdraw Draft Technical Bulletin No. 217 and establish a schedule for addressing this matter through the normal stakeholder process in an expeditious manner.

If you have any questions regarding these comments, please do not hesitate to contact me.

Respectfully submitted,

COUCH WHITE, LLP

Garrett E. Bissell

Garrett E. Bissell

GEB/dap

cc: Tariq Niazi (via e-mail)
Kate Hockford (via e-mail)
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