UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.	**)**	**Docket Nos. ER04-449-003**
	)	**ER04-449-007**
	)	**ER04-449-008**
	)	**ER04-449-014**

PROTEST AND COMMENTS OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC. ON THE COMPLIANCE FILING OF THE NEW YORK TRANSMISSION OWNERS

On June 7, 2006, pursuant to the Orders issued by the Federal Energy Regulatory Commission ("Commission" or "FERC")[1] all in the above-captioned proceeding, certain of the transmission owners in New York State[2] ("TOs") submitted a compliance filing ("TO Compliance Filing") calling for the development and implementation, by the end of this year, of a new generation capacity deliverability requirement that would force substantial modifications to current interconnection and cost allocation procedures, and to functioning locational capacity markets, in New York.[3] This Protest demonstrates that the Commission should reject the relief requested in the TO Compliance Filing.

Also on June 7, pursuant to the same Orders, the New York Independent System Operator, Inc. ("NYISO") submitted a compliance filing and motion for further extension of time ("NYISO Compliance Filing") to request additional time, through June 2007, to complete its studies and

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[1] *New York Independent System Operator, Inc., et al.,* 108 FERC ¶ 61,159 ("August 6, 2004 Order"), *order on reh'g, New York Independent System Operator, Inc., et al.,* 111 FERC ¶ 61,347 (2005) ("June 2, 2005 Order"). See also *New York Independent System Operator, Inc., et al., Notice of Extension of Time,* Docket Nos. ER04-449-003, *et al.*

[2] Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation, but not including the New York Power Authority.

resolve with its market participants how best to reconcile the concept of generation capacity deliverability with the unique characteristics of NYISO administered markets.[4] On June 8, 2006, the New York Power Authority submitted a filing in support of the NYISO Compliance Filing.[5]

Pursuant to Rules 212 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.214 (2005), the NYISO hereby protests and comments on the TO Compliance Filing.

I. COMMUNICATIONS

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[3] *See Compliance Filing of the New York Transmission Owners* at 6-8 (June 7, 2006).

[4] *See Compliance Filing and Motion of the New York Independent System Operator, Inc. for a Further Extension of Time* (June 7, 2006).

[5] *See Motion for Leave to File Compliance Filing Statement One Day Out of Time and Compliance Filing Statement of the New York Power Authority* (June 8, 2006).

[6] The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2005) to permit service on counsel for the NYISO in both Washington, D.C. and Richmond, Virginia.

II. INTRODUCTION AND SUMMARY OF NYISO COMMENTS

The NYISO fully supports the Commission's goal, expressed in its Interconnection Orders,[7] to facilitate the development of robust competitive wholesale electricity markets by ensuring that market participants and new market entrants have comparable open access to non-discriminatory interconnection services that will facilitate market entry, expedite the development of new sources of supply and encourage needed infrastructure investment. The NYISO also appreciates the flexibility that the Commission has afforded independent entities such as the NYISO to develop variations from the *pro forma* provisions of the Interconnection Orders to accommodate its unique characteristics.[8]

As stated in the NYISO Compliance Filing, the NYISO has worked diligently with its market participants to reconcile the requirements of the Commission's Interconnection Orders with the unique characteristics of the New York markets, including the locational capacity markets. The issues associated with such a reconciliation are numerous and complex. Despite "the diligent efforts of the New York stakeholders over the last 2½ years"[9] the NYISO has proposed a revised work plan for resolution of the remaining open issues over the next year.[10] As discussed in the NYISO Compliance Filing, the NYISO's proposed work plan and timeline is appropriate and responsible, given the numerous and complex issues that must be thoughtfully analyzed and resolved, and the serious adverse consequences for NYISO markets and market participants that

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7 *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. P 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. P 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. P 31,171 (2004), *order on reh'g*, Order No. 2003-C, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats. & Regs. P 31,190 (2005) ("Interconnection Orders").

8 *See* Order No. 2003 at PP 822-827.

9 TO Compliance Filing at 1.

10 *See* NYISO Compliance Filing and attached work plan.

could otherwise result from an ill-considered change in rules. Given the time included in its proposed work plan, and with substantial additional work, the NYISO believes that a consensus, including some or all of the TOs, can be reached on the open issues.

The Commission should reject the TO Compliance Filing for at least five reasons. First, the TOs misstate the Commission's Orders as requiring what the Commission has explicitly declined to do: prejudge the outcome of a productive stakeholder process. Second, the TOs mischaracterize important aspects of the discussions the NYISO has conducted with market participants, and they mischaracterize the current status of those discussions. Third, the TOs gloss over the complexities and significance of the issues that must be resolved. Their proposal is simplistic and premature, and their timeline is unrealistic. Fourth, the TOs ignore the extent to which existing NYISO market mechanisms may already address issues of capacity resource deliverability. Fifth, the TOs propose a course of action that would disrupt the NYISO interconnection process, could raise barriers to market entry, and even increase the future cost of capacity for customers.

The NYISO work plan offers a more thoughtful approach that is more likely to reconcile successfully the requirements of the Commission's Interconnection Orders with the unique characteristics of the New York markets.

III. NYISO COMMENTS

A. The TO Compliance Filing Misstates The Commission's Orders In This Proceeding

The TO Compliance Filing[11] asserts that the Commission Orders in this proceeding clearly require that (i) the NYISO offer both *pro forma* Energy Resource Interconnection Service ("ERIS") and Network Resource Interconnection Service ("NRIS") interconnection service options, (ii) that a new generator must interconnect under the NRIS service option in order to participate in the NYISO

[11] TO Compliance Filing at 4-8.

capacity markets, and (iii) such a generator must pay 100% of the cost of the transmission system upgrades required to make the new capacity deliverable.

In fact, the Commission's June 2, 2005 Order[12] explicitly declines to do precisely what the TOs now ask the Commission to do, *i.e.*, prejudge the outcome of an ongoing, productive stakeholder process that is working diligently to fully respond to the requirements of Order No. 2003 while taking careful account of the functioning interconnection processes and locational capacity markets of the New York Control Area ("NYCA").

In Order No. 2003, the Commission described the intended purpose of NRIS:

> Network Resource Interconnection Service is intended to provide . . . an interconnection of sufficient quality to allow the Generating Facility to . . . be treated in the same manner as . . . [other generating Facilities] for purposes of assessing whether aggregate supply is sufficient to meet aggregate load within the . . . Control Area, or other area customarily used for generation capacity planning. Thus, with Network Resource Interconnection Service, the Interconnection Customer would be eligible to obtain . . . . network access service under the tariff of an RTO or ISO, without the need for additional Network Upgrades.
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> . . . . Network Resource Interconnection Service does not necessarily provide the Interconnection Customer with the capability to physically deliver the output of its Generating Facility to any particular load on the system without incurring congestion costs . . . . Network Upgrades required under Network Resource Interconnection Service integrate the Generating Facility into the Transmission System in a manner that ensures aggregate generation can meet aggregate load while satisfying regional reliability criteria and generation capacity planning requirements. However, these upgrades do not necessarily eliminate congestion.
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> . . . . In general, . . . [a single interconnection option that meets only a minimum interconnection standard] . . . would not provide an interconnection that meets the standard that the Transmission Provider uses to interconnect its own generators. The Commission notes, however, that in regions where the Transmission System is operated by an independent entity, the Commission allows

[12] *New York Independent System Operator, Inc., New York Transmission Owners*, 111 FERC ¶ 61,347 (2005) ("June 2 Order").

> flexibility. . . . For example, an independent entity may determine, subject to Commission approval, that the designation of Network Resources is not necessary. . . ."[13]

In response to Order No. 2003, the NYISO and TOs made a joint compliance filing[14] that proposed a single interconnection product, Network Access Interconnection Service ("NAIS"), ". . . to enable the New York State Transmission System to receive electric energy and capacity from the Large Generating Facility or Merchant Transmission Facility at the Point of Interconnection. . ."[15] The NYISO and TOs jointly proposed Large Facility Interconnection Procedures with interconnection studies that apply a variety of established control area reliability criteria, but no specific deliverability test or deliverability requirement.[16]

In describing the proposed NAIS and relating the service to Order No. 2003, as well as to established features of the NYISO administered markets, the NYISO and TOs noted the following:

> . . . a number of the NYISO's market participants have expressed the view that the NYISO should adopt locational or regional deliverability requirements for installed capacity resources in the New York Control Area. While there is not universal agreement among the NYISO's stakeholders regarding this issue, sufficient interest has been expressed on this topic such that the NYISO has agreed to work within its existing committee process to analyze the implications of locational and regional deliverability requirements in New York. Both the NYISO and its stakeholders recognize that this would be a substantial change in its current practice and that issues such as the impact on existing resource adequacy procedures, cost and cost allocation issues, and the need for grandfathering provisions must be thoroughly investigated and resolved.[17]

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[13] Order No. 2003 at PP 768-770.

[14] *See Joint Compliance Filing of the NYISO and the New York Transmission Owners,* Docket No. ER04-449-000 (Jan. 20, 2004) ("Joint Compliance Filing").

[15] *See* NYISO Open Access Transmission Tariff ("OATT"), Attachment X at Section 1 (definition of NAIS).

[16] *See id.* at Section 3.2 (describing the NAIS product) and Section 1 (definition of Minimum Interconnection Standard).

[17] *See* Joint Compliance Filing, Transmittal Letter at 9.

Recognizing the need to analyze the numerous issues related to possible deliverability requirements for installed capacity resources, the NYISO and TOs committed to ". . . work with stakeholders in good faith to explore the implications of maintaining the status quo or adopting a locational or regional deliverability requirement."[18]

In their Joint Compliance Filing, the NYISO and TOs also proposed to retain the "but for" process previously approved by the Commission for allocating interconnection costs among TOs and "Class Year" groups of power project Developers[19] that is set forth in Attachment S of the NYISO OATT. Contrary to the suggestion in the TO Compliance Filing that Developers are responsible for all the costs of transmission system interconnection upgrades,[20] the rules in Attachment S allocate to each Developer responsibility only for the cost of the net impact of the interconnection of its project on the reliability of the transmission system. The Developer is responsible for the cost of the interconnection facilities that would not be needed "but for" its project. The Developer is not responsible for the cost of facilities that are required anyway, without its project, to maintain transmission system reliability. The cost of these "anyway" facilities is borne by Transmission Owners. The net cost impact of a Developer's project is determined by comparing the results of two annual studies conducted by the NYISO.[21]

In its Order of August 6, 2004, the Commission conditionally accepted the joint interconnection compliance filing of the NYISO and the TOs. The Commission accepted the proposal to retain the rules in OATT Attachment S to allocate interconnection costs. As to the issue of interconnection service, the Commission noted that having a transmission provider offer

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18 *Id.* at 10.

19 Capitalized terms not defined in these Comments shall have the meaning specified in Section 1.0 or Attachment S or Attachment X of the NYISO OATT.

20 *See* TO Compliance Filing at 4.

21 *See generally* Attachment S to the NYISO OATT.

generators both the *pro forma* ERIS and NRIS was a crucial component of Order No. 2003. "However, . . . the New York Control Area, presents regional circumstances that make developing a second level [NRIS in addition to ERIS] difficult. . ."[22] The Commission noted that the proposed "NAIS is a different service than either NRIS or ERIS; it combines elements of both . . . while NAIS does allow the Interconnection Customer's power to flow on the New York State Transmission System, it does not address where on the New York System the power can go."[23] The Commission accepted the proposed NAIS but directed the NYISO and TOs to study the *pro forma* NRIS concept, and to develop a plan and tariff modifications to address the purposes of NRIS, and to integrate the *pro forma* concept into the NYISO's existing market-based congestion management system and locational installed capacity requirements.[24] The Commission agreed with the NYISO and TOs ". . . that the NYISO's collaborative stakeholder process should be allowed to determine how to integrate a deliverability component into its interconnection service."[25]

Following the August 6 Order, the Long Island Power Authority requested clarification that the August 6 Order required that the NYISO modify its tariff to include a level of interconnection service with a deliverability requirement for capacity resources.[26] The NYISO and other Transmission Owners requested clarification that by its August 6 Order, the Commission did not

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[22] *New York Independent System Operator, Inc., New York Transmission Owners*, 108 FERC ¶ 61,159 at P 24 (2004) ("August 6 Order"). Order No. 2003 allows the NYISO to seek independent entity variations from the *pro forma* provisions of the Final Rule based on regional circumstances. *See* Order No. 2003 at PP 822-827.

[23] August 6 Order at P 25.

[24] *Id.* at PP 26-27.

[25] *Id.* at P 28.

[26] *See Request for Clarification of the Long Island Power Authority and LIPA*, Docket No. ER04-449-000, et al. (Sept. 7, 2004); *see also Answer of Niagara Mohawk Power Corp., a National Grid Company, to Requests for Clarification and/or Rehearing*, Docket Nos. ER04-449-000, et al. (Sept. 22, 2004).

intend to prejudge the results of the deliverability study process and related stakeholder deliberations.[27] As the NYISO and Transmission Owners explained:

> One possible outcome of that study process may be a recommendation to the Commission that a deliverability requirement as the Commission has described it is not necessary or appropriate in the interconnection products for the NYISO administered markets . . . . (emphasis added)
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> . . . the NYISO could conclude that its existing interconnection process provides for a sufficient deliverability requirement in light of its locational based marginal pricing ("LBMP") energy market and its locational installed capacity market and that the NYISO's process is entitled to be considered a legitimate regional difference or variation.[28]

In its June 2 Order, the Commission responded to the requests for clarification and/or rehearing of the August 6 Order. The Commission clarified as follows:

> . . . there are two competing principles at work. The first is that offering a second level of interconnection service with a component of deliverability is a crucial component of Order No. 2003. The second is that the NYISO is a distinctive region and New York's stakeholders should have the flexibility to craft a system appropriate to its specific needs. . . . The Commission declines to prejudge the outcome of those efforts. . . . we will allow the various stakeholders to address the issues . . . and make a future filing with the Commission. We expect the stakeholders in New York to continue working towards the goal of offering two levels of deliverability services. However, we also recognize that each independent system operator faces unique challenges that require unique solutions.[29] (emphasis added)

Thus, the Commission has left the door open for the NYISO to address the deliverability issue in a way that effectively reconciles the requirements of Order No. 2003 with the unique characteristics

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[27] *See Request for Clarification or, in the Alternative, Rehearing of the New York Independent System Operator, Inc. and New York Transmission Owners,* Docket No. ER04-449-003, at 3-4 (Sept. 7, 2004).

[28] *Id.* at 1, 4.

[29] June 2 Order at PP 13-14 (2005). The TO Compliance Filing refers to the June 2 Order, but purports to discuss it by quoting, or misquoting, extensively only from the August 6 Order. *See* TO Compliance Filing at 5-6.

and requirements of established New York markets. The Commission has not, as the TOs assert, ordered the NYISO to implement the *pro forma* ERIS and *pro forma* NRIS. Nor has the Commission prejudged the implications of the New York deliverability solution for capacity resource eligibility rules, upgrade cost allocation rules, or any other aspect of the established New York markets.

B. The TOs Mischaracterize The NYISO's Work With Market Participants

The TO Compliance Filing describes the NYISO's past work with market participants as an effort ". . . to develop a second deliverable interconnection product . . . [and] . . . a debate as to whether a second product is appropriate for the NY marketplace."[30] The TO Compliance Filing goes on to assert that ". . . a majority of the stakeholders (including the New York Transmission Owners) have coalesced on the position that a second product is needed."[31] The TOs' description of the discussions to date is incorrect because the NYISO's work has been focused on studying the deliverability of capacity on New York's existing system and because it suggests a level of consensus around a particular course of action that may not exist.

Far from debating the philosophy of deliverability as the TOs wrongly imply, the NYISO has been working intensively with its staff, advisors and market participants to develop a definition of capacity deliverability that is tailored to the New York markets[32] and to develop a test methodology to measure capacity deliverability that is technically sound and consistent with the definition of deliverability.[33] Rather than wasting time, this work lays the foundation of any future

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30 TO Compliance Filing at 1-2.

31 *Id.* at 2.

32 *See New York Independent System Operator*, ER04-449-011, Deliverability Method Development and Testing Report (March 3, 2006) ("March 3 Status Report"). The NYISO filed a corrected Deliverability Method Development and Testing Report on March 28, 2006.

33 *See* March 3 Status Report, Transmittal Letter at 3-6.

deliverability work efforts because any deliverability scheme must be built on a proper definition, test methodology and deliverability base case model that is specific to New York.

The NYISO has spent a great deal of time and effort, and incurred considerable expense, to thoroughly evaluate five different alternative test methodologies. The TOs themselves, and other market participants, have consistently supported this extended evaluation of alternative test methodologies.

As discussed in the March 3 Status Report, the application of the five alternative test methodologies to a working definition of deliverability has revealed no reliability criteria violations resulting from capacity delivery constraints over the 2004-2009 period studied.[34] This study work does reveal that some individual capacity resources may be "bottled," *i.e.*, not deliverable to all loads at all times, depending on system conditions and, importantly, depending on the particular test methodology used.[35]

Moreover, the TOs understate the constructive nature of the work that has been done. Following the March 3 Status Report, the TOs themselves stated that the report provided an excellent foundation to continue stakeholder discussions based upon an empirical foundation. The stakeholders are coalescing around a definition of deliverability in the New York Control Area, as follows:

> At the transmission system-wide level, deliverability means the ability of the aggregate of generation to serve the aggregate of load to meet resource adequacy criteria. From a capacity resource perspective, deliverability means the capability of the transmission system to transmit the aggregate of generation that is in surplus (after due allowance for the randomness of facility outages and load uncertainty) to that aggregate of load that is in deficiency (after the same due allowance) under capacity emergency conditions, without causing reliability criteria violations.

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34 *See* March 3 Status Report, Transmittal Letter at 6-7.

35 *Id.*

The NYISO and the market participants have also made significant progress in coming to agreement on a single deliverability test methodology. As discussed in the NYISO Compliance Filing, the NYISO is working with its advisors and market participants to finalize a single deliverability test methodology.[36] The NYISO will use this method to conduct additional testing to determine whether there are, in fact, capacity bottling issues on the New York system through the study period. The NYISO will report the results of this study in a Supplemental Final Study Report. The work plan calls for this study to be completed and filed at the Commission within three months of the date of its compliance filing, or about September 7, 2006. Once the nature of the problem, if any, has been objectively determined, the NYISO will be in a position to develop and implement an effective solution.

The TO Compliance Filing would short circuit this study, by proposing a specific solution to be applied in a particular fashion, to a problem that has not yet been empirically defined. The matter of capacity deliverability, and the need to reconcile the requirements of the Commission's Interconnection Orders with the New York markets, must be addressed in a logical, sequential manner. The NYISO's approach would first define the deliverability concept. The deliverability measurement methodology follows next. Those first two steps will allow the NYISO to determine if a capacity deliverability problem exists and the exact nature of that problem. Rationally, only then can a complete solution be crafted to the deliverability issue that is effective and appropriate for New York. The TO Compliance Filing plan would disrupt and truncate this logical process by imposing a solution before identifying a problem.

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[36] *See* the work plan attached to the NYISO Compliance Filing.

C. The TOs Gloss Over The Complexities Of The Issues

1. The Pro Forma NRIS Is Not Specific Enough To Implement an "Equivalent" Interconnection Service In New York

The TO Compliance Filing calls for the implementation of a ". . . second deliverable interconnection product equivalent to Order No. 2003's Network Interconnection Resource Service . . . by the end of 2006."[37] The TOs seem to suggest that the issue is simply about the activation of a type of interconnection service that can easily be plugged into existing NYISO markets and procedures. In fact, the *pro forma* NRIS is not specific enough to simply implement as the TOs propose.[38] The term "equivalent" does not provide direction. On the contrary, it simply begins to suggest the many issues with which the NYISO has been grappling as it seeks to reconcile the requirements of the Commission's Interconnection Orders with the New York markets.

Even the TOs' reference to a "second" type of interconnection service understates the complexities involved. NRIS is part of a pair of interconnection service options in the *pro forma* interconnection procedures and agreement. The other *pro forma* interconnection service option is ERIS. As noted by the Commission, the NYISO's NAIS is not like either *pro forma* service option. Indeed, NAIS combines elements of both ERIS and NRIS.[39] Thus, if the NYISO's interconnection service is to be modified, it would involve the elimination of the existing NAIS and its replacement by a new service or services that have not been reconciled with New York's interconnection procedures and market mechanisms.

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[37] TO Compliance Filing at 1.

[38] *See* Order No. 2003, Section 3.2.2 of the *pro forma* Large Generator Interconnection Procedures, and Article 4.1.2 of *pro forma* Large Generator Interconnection Agreement.

[39] August 6 Order at P 25.

2. The Appropriateness of Imposing Deliverability Requirements On Some, But Not All, Future Participants Must Be Considered

The TO Compliance Filing proposes the "prospective" application of an interconnection deliverability standard as a requirement for participation in the New York locational capacity markets.[40] The TOs' proposal ignores at least two significant issues. First, the upcoming NYISO study work, applying the finalized definition of deliverability and the finalized test methodology, could reveal that some current capacity is not fully deliverable. Modifying interconnection criteria prospectively will not address and remedy such a problem. If current capacity is found not to be deliverable, the issues of how to treat the existing undeliverable resources must be addressed, including whether grandfathering of those resources is appropriate and whether upgrades should be made to make the current system deliverable (and, if so, who should pay for those upgrades).

Second, the TOs' proposal of addressing deliverability solely through the interconnection process would allow certain types of capacity resources to avoid deliverability analysis. The types of capacity resources currently eligible to enter the New York capacity markets and participate as suppliers include several entities, such as External System Resources and Special Case Resources (interruptible loads), that can enter the capacity markets without ever filing an Interconnection Request and going through the NYISO interconnection process.[41] Therefore, a deliverability test only applied as part of the interconnection process would be applied to a subset of eligible capacity resources.

Any effective solution to address the capacity deliverability issue must fully consider the appropriateness of such a result. The TOs' proposal to impose new capacity market eligibility

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[40] TO Compliance Filing at 2-3.

[41] *See* Sections 5.9 through 5.16 of the NYISO Market Administration and Control Area Services Tariff for a description of the current rules relating to the New York installed capacity markets.

requirements on only some new capacity suppliers in the future does not reflect a full evaluation of whether this approach ensures continued access to NYISO markets by all participants on a comparable basis.

3. The TOs' Proposal Would Allocate The Entire Cost Of Deliverability Upgrades Needed For Reliability To New Generators

The TO Compliance Filing implies that the Developer of a new power project pay the entire cost of any transmission system upgrades needed to make the capacity of that project deliverable.[42] This approach glosses over the fact that the NYISO OATT currently contains a number of different mechanisms to allocate the cost of transmission system upgrades under different circumstances. Any new proposal to assign responsibility for the cost of capacity delivery system upgrades must take these existing mechanisms carefully into account.

As discussed above in these comments, Attachment S to the NYISO OATT allocates the cost of transmission system upgrades needed to support NAIS among project Developers and Transmission Owners on a "but for" basis. The Developer is responsible only for the cost of the transmission system upgrades that would not be needed but for the interconnection of its project. TOs are responsible for the cost of transmission system upgrades that would be needed "anyway" to maintain transmission system reliability. In suggesting that all the costs of deliverability upgrades simply be assigned to new Developers electing NRIS, the TOs ignore the many technical and economic factors that were carefully considered in the development of Attachment S, and which would have to be considered again in the context of the deliverability discussions. Should a Developer pay, for example, if the deliverability upgrade to the transmission system was going to be made "anyway"?[43]

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[42] *See* TO Compliance Filing at 4, 7.

[43] The interconnection and cost allocation criteria and procedures in Attachment X and Attachment S of the NYISO OATT take into account the reliability impacts of a proposed project (continued…)

Attachment Y to the NYISO OATT describes the process that the NYISO, TOs and market participants are to follow for planning to meet the Reliability Needs of the New York Bulk Power Transmission Facilities. Transmission System upgrades made pursuant to Attachment Y to respond to Reliability Needs could, as a technical matter, increase capacity deliverability. The TOs' proposal nowhere accounts for the treatment of upgrade costs that they should bear and recover in rates as the TOs responsible for maintaining safe and adequate electric service in New York.

Attachment Y cost allocation principles and methodologies specifically exclude the cost of the interconnection upgrades covered by Attachment S.[44] Nevertheless, because upgrades implemented under Attachment Y could increase the deliverability of capacity resources, the potential interplay of the cost allocation mechanisms in Attachment S and Attachment Y need to be taken into account. If one market participant pays under Attachment Y for an upgrade that improves the deliverability of another market participant interconnecting under Attachment X and Attachment S, that situation, as well as the obverse situation, must be reconciled.

Sections 19.0 and 32.0 of the NYISO OATT include provisions, based on the Commission's *pro forma* OATT, that allow an Eligible Customer to ask the NYISO to conduct a System Impact Study and Facilities Study to identify and estimate the cost of transmission system upgrades that could be installed to create incremental transfer capability and reduce the congestion costs that the Customer might otherwise incur in the LBMP energy markets. Such studies provide the Customer with upgrade cost estimates that it can compare to the alternative cost of Congestion Rent and

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that can be mitigated by redispatch and other operational means. This approach might be appropriate for projects shown to be not deliverable only during limited periods of time.

[44] *See* Section 10.3 of Attachment Y to the NYISO OATT.

Transmission Congestion Contracts ("TCCs").[45] The Customer can ask the NYISO to initiate the studies at any time, not just at interconnection.

If the Customer elects to proceed with the installation of transmission upgrades to reduce its congestion costs, it will enter into a construction agreement with the appropriate TO or TOs, and the Customer will be responsible for its "appropriate share" of the cost of the upgrades.[46] When the upgrades are completed, the NYISO will calculate the incremental TCCs, if any, created by the upgrades, and award them to the Customer.

Even a summary review of the various system upgrade cost allocation mechanisms currently in place makes it clear that any new system upgrade cost allocation mechanism, such as one to allocate the cost of deliverability upgrades, needs to be carefully evaluated to avoid both unintended adverse consequences, or windfalls, to market participants operating under one of the established cost allocation methodologies. The TO Compliance Filing fails to even address these issues.

D. Existing New York Markets May Address NRIS And Capacity Resource Deliverability

The TO Compliance Filing ignores the extent to which existing NYISO procedures, services and market mechanisms may already address the issue of capacity resource deliverability, and at least some of the Commission's policy goals related to NRIS. The extent to which these existing procedures, services and mechanisms address deliverability should be reviewed and considered as envisioned in NYISO's proposed work plan.

As discussed above, the Commission has noted that the NYISO's NAIS contains "elements" of NRIS.[47] In Order No. 2003, the *pro forma* NRIS is described as interconnection service intended

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45 *See*, *e.g.*, Sections 19.1 and 32.1 of the NYISO OATT.

46 Sections 19.4 and 32.4 of the NYISO OATT.

47 August 6 Order at P. 25.

". . . to integrate the Large Generating Facility . . . in the same manner as all other Network Resources. NR Interconnection Service allows the . . . Facility to be designated as a Network Resource . . . on the same basis as all other existing Network Resources . . ."[48] A Network Resource is defined as a generating facility that is ". . . integrated with the Transmission Provider's Transmission System, designated as a Network Resource . . . and subject to redispatch directives. . . ."[49] It is certainly the case that, under NYISO's independent administration of its tariffs, all generators are interconnected, integrated and dispatched on a fully comparable, non-discriminatory basis.

Furthermore, the NYISO's fully developed and functioning multi-zone locational capacity markets operate to ensure that capacity resources are deliverable on an inter-zonal basis, aggregate resource to aggregate load, in the amounts needed to support applicable reliability criteria and procedures.[50] So, while deliverability is not evaluated under interconnection studies conducted pursuant to Attachment X, the NYISO's existing capacity markets already evaluate deliverability to a certain degree. As noted above in these comments, none of the testing conducted by the NYISO pursuant to this proceeding has revealed any reliability issues related to capacity resource deliverability.[51]

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[48] Order No. 2003, Section 3.2.2.1 of the *pro forma* Large Generator Interconnection Procedures.

[49] Order No. 2003, Section 1. of the *pro forma* Large Generator Interconnection Procedures.

[50] *See NYCA Installed Capacity Requirement For The Period May 2006 Through April 2007*, New York State Reliability Council, at www.nysrc.org/documents/reports. *See also*, *NYISO Revised Locational Installed Capacity Requirements Study Covering The NYCA For The 2006-2007 Capability Year*, at www.nysrc.org/documents/reports.

[51] The TOs argue that ". . . it is imperative that a deliverability requirement be adopted as soon as possible to ensure that proper signals are given to generators as to where to interconnect on the system . . . ." TO Compliance Filing at 7. The locational capacity markets, as well as the LBMP energy markets, already provide clear locational signals to project Developers.

The NYISO stresses that none of its comments in this section should be taken to suggest that the NYISO has concluded that its current procedures, services and market mechanisms fully address all issues of capacity deliverability or all aspects of the Commission's Interconnection Orders. Much work needs to be done and the NYISO is committed to doing it in a manner that resolves all open issues. The point of the comments in this section is simply to point out the procedures, services and market mechanisms that the TOs appear to have overlooked.

E. The TOs Propose A Course Of Action That Would Disrupt The Interconnection Process And Which Could Raise Barriers To Entry And Increase The Cost Of Capacity

The TO Compliance Filing proposes a course of action that would, if followed, thoroughly disrupt the NYISO interconnection process and materially delay the interconnection of many much-needed power projects. The TOs ask the Commission to direct the NYISO to implement a new interconnection service with a deliverability requirement by the end of the year, ". . . to be applied prospectively beginning with the 2006 Class Year."[52]

It is difficult to understand how the TOs can present this as a serious proposal. All the NYISO's current interconnection studies are designed to evaluate the interconnection requirements for reliable NAIS interconnection service. Pursuant to Attachments X and S, none of the NYISO interconnection studies include a deliverability test or a deliverability requirement.[53] Before a deliverability requirement could be applied in any study, including a Class Year Study as the TOs propose, detailed analytical procedures and criteria would first have to be developed, and appropriate tariff modifications would have to be filed with the Commission and approved. The

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[52] TO Compliance Filing at 2.

[53] In this regard, it is important to note that the NYISO and TOs proposed procedures for small generator interconnections, which are currently pending before the Commission, do not include a deliverability test or a deliverability requirement. *See Joint Order No. 2006 Compliance Filing* of the NYISO and the TOs in Docket No. ER06-311-000 (Dec. 8, 2005).

TOs proposal fails to recognize the complexity of the changes that would need to be made to Attachment S in order to incorporate a deliverability test and to allocate costs related to any required deliverability upgrades.

The rules under Attachment S allocate the interconnection facility costs associated with NAIS. Attachment S explicitly excludes from its scope the allocation of deliverability upgrade costs, or the cost of transmission upgrades intended to reduce congestion. In fact, the Minimum Interconnection Standard is a fundamental premise of the cost allocation methodology contained in Attachment S. Accordingly, the technical and economic factors that were carefully considered in the development of Attachment S must be carefully considered again in the context of the deliverability discussions.

The NYISO has already begun work on the Class Year 2006 Facilities Study. The eligibility cut-off and study start date for the 2006 Class Year was yesterday, June 27, 2006.[54] Many Developers have executed Class Year 2006 Facilities Study Agreements and other candidate projects are currently in the process of executing those Agreements, submitting study deposits, and submitting updated project information. Currently, over 20 projects are candidates for Class Year 2006, including approximately 15 wind farm projects. These proposed projects represent over 3,000 MW of much needed new capacity for New York.

The Class Year study process set forth in Attachment S normally takes about six months to complete. Thus, on the current schedule for Class Year 2006, the cost allocation process will be significantly completed by the end of this year. This study is moving forward under the currently-effective requirements of Attachments X and S, including the evaluation of upgrades necessary under the Minimum Interconnection Standard. Retroactively applying a yet-to-be-developed

[54] A Project's eligibility to enter a specific Class Year is based on its satisfaction of certain eligibility criteria on or before the start date of the Class Year cost allocation study.

deliverability standard to Class Year 2006, using yet-to-be-developed study procedures, would delay the cost allocation and interconnection process for this substantial group of projects for many months and would essentially require the study to be restarted at a point when it is almost complete. Furthermore, a significant delay in Class Year 2006 could also delay Class Year 2007, which is scheduled to begin on March 1, 2007. Such a delay may also imperil the financial viability of some of these projects, and could hamper the ability of New York to reach the goals contained in its Renewable Portfolio Standard.[55]

Furthermore, the implementation of the TOs' proposal would require changes to the NYISO's existing capacity markets. For example, the capacity markets would need to be modified to limit the eligibility of certain resources to participate and to address such issues as whether a resource can be partially deliverable and whether a resource can later elect to pay for deliverability upgrades in order to become an eligible capacity resource. The timeline proposed by the TOs would not provide adequate opportunity to develop these changes in a way that will not have unintended consequences.

The TOs' proposal should be rejected. The NYISO should not be directed to make a precipitous and ill-advised compliance filing to apply a new set of rules to the Class Year 2006 which has begun, or to any group of market participants, before the rules themselves have been determined through the conclusion of the current NYISO stakeholder process, as previously directed by the Commission.

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[55] The project candidates for Class Year 2006 currently include approximately 15 wind projects. The Renewable Portfolio Standard sets a goal that at least 25% of the electricity sold to consumers in New York State will be generated by renewable resources by 2013. The state will need to add approximately 3,700 MWs of renewable resources to meet the 25% goal. *See Order Approving Renewable Portfolio Standard Policy*, New York State Public Service Commission, Case 03-E-0188 (Sept. 24, 2004).

The TOs imply that 100% of the cost of transmission system deliverability upgrades be assigned to new generators. As discussed above in these comments, such a proposal is simplistic and premature. Also, assigning 100% of the cost of deliverability upgrades to new generator interconnections could raise anti-competitive barriers to future market entrants while increasing the cost of new generation that is built. Higher barriers to entry and incrementally restricted supply, together with higher cost new generation, could increase the future cost of capacity for all load serving entities and their customers, including the TOs and their customers. As a result, the impact of any cost allocation methodology must be fully considered before it is implemented.

IV. CONCLUSION

The NYISO is engaged in a thoughtful and inclusive stakeholder process to study deliverability in the New York Control Area and resolves its potential impacts. The NYISO's work plan proposes to first complete its determination of the facts by completing studies to identify the actual state of the New York system with respect to bottled generating capacity, now and in the foreseeable future. The NYISO has proposed to fully evaluate with its market participants the impacts of a deliverability requirement on the New York's interconnection processes, capacity markets and other market mechanisms. The TOs propose a solution to a problem that has not been defined. Their solution may well have unintended adverse consequences much worse than the

problem they purport to solve. Their filing is premature, ill-advised, and should be rejected. For the reasons set forth herein, the NYISO respectfully asks the Commission to reject the TOs' compliance filing and accept the NYISO's compliance filing and work plan.

Respectfully submitted,

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June 28, 2006

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CERTIFICATE OF SERVICE

I hereby certify that I have on this day caused these Comments and Protest of the New York Independent System Operator to be served upon each party on the official service list compiled by the Secretary. I have also caused to be served electronically a copy of this filing on the official representative of each of its customers, on each participant in its stakeholder committees, and on the New York State Public Service Commission, and on the electric utility regulatory agencies of New Jersey and Pennsylvania.

Dated at Washington, DC this 28th day of June, 2006.

/s/ Arnold H. Quint

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