

**COMMENTS OF MULTIPLE INTERVENORS ON
COST ALLOCATION/COST RECOVERY ISSUES
PERTAINING TO RELIABILITY UPGRADES**

In response to the December 29, 2003 request by the New York Independent System Operator, Inc. (“NYISO”), Multiple Intervenors hereby submits its Comments on cost allocation and cost recovery issues arising from “regulated” reliability upgrades that are undertaken pursuant to the NYISO’s Comprehensive Transmission Planning Process.¹ Multiple Intervenors is an unincorporated association of approximately 55 large commercial and industrial energy consumers with manufacturing and other facilities located throughout New York State.

“Regulated” Reliability Upgrades

In general, in the restructured New York electric markets, absent exigent circumstances “regulated” reliability upgrades should be undertaken as a last resort, after all market solutions have failed. Initially, the process for identifying the reliability problem must be based on accepted measurement criteria and sound load projections. The NYISO must take great care to ensure that its analytical processes are accurate, and that they do not identify “false” reliability problems that spawn unnecessary responses. In addition, in assessing the information, the NYISO must focus on identifying true reliability problems, and resist labeling a desired economic project as a reliability problem. Any evaluation of transmission infrastructure requirements must proceed deliberately, with full consideration of the potential effects on New York’s nascent marketplace and on consumers.

¹ Because of the content of the NYISO’s request, these Comments do not address the cost allocation/cost recovery aspects of potential “regulated” economic upgrades, except to say that the “hold harmless” principle espoused herein applies with even greater force if projects such as transmission upgrades are proposed for economic purposes.

Once a true reliability problem is identified by the NYISO, absent exigent circumstances, the market should be the preferred method for solving the problem and market participants should be accorded every opportunity to make the necessary investment. Of course, if a market participant willingly undertakes an infrastructure project, that entity would pay the costs associated with the project.

To the extent that the market does not solve the potential problem and it persists, the focus for solving the problem should shift to the New York State Public Service Commission (“PSC”). It is incumbent upon the PSC to identify the least cost “regulated” solution. To do so, the PSC should institute an open proceeding that would allow interested market participants to submit proposals to solve the persisting reliability problem.²

Importantly, potential transmission projects must be evaluated on a level playing field with other alternatives, such as new generation and unsubsidized demand response initiatives, to determine which option is the least cost option for consumers. And, any “regulated” solution should be limited to the recovery of the costs incurred, plus a just and reasonable rate of return, as identified by the PSC. Inasmuch as the “regulated” solution would ensure cost recovery and a regulated return, no additional incentives should be paid for the investment. Finally, the applicant would be responsible for obtaining necessary permits or certificates from the appropriate regulatory bodies.

Cost Allocation and Cost Recovery Issues

Initially, as mentioned above, any market-based response to a reliability problem identified by the NYISO should be funded by the market participant undertaking the

² Actual cost recovery authorization for regulated transmission owners may involve the Federal Energy Regulatory Commission.

project. In the event that the PSC identifies a least-cost “regulatory” solution to a reliability problem that the market does not solve, the “cost” of that solution must be allocated to, and recovered from, the beneficiaries of the investment to the greatest extent possible. For purposes herein, the “cost” allocated to the beneficiaries would include the cost of the investment, as well as payments that would hold nonbeneficiaries harmless from any adverse price impacts.³ For example, consumers on the unconstrained side of a constrained system should not be required to pay for the cost of transmission upgrades that will provide no offsetting benefit, nor should they be saddled with higher prices resulting from the “regulated” reliability upgrade. To do otherwise would penalize nonbeneficiaries and, by adding socialized costs indiscriminately across the State, disrupt the very market signals that the LBMP model is designed to produce.

With respect to the identification of beneficiaries of a “regulated” reliability solution, Multiple Intervenors submits that, in most cases, the beneficiaries should be easy to identify. By definition, a “regulated” reliability upgrade will not be identified by the PSC unless the NYISO’s deliberative process identifies a potential violation of one or more reliability criteria in a specific zone or sub-zone. Once the problem and the solution are identified, the total “cost” of implementing the solution should be allocated to those benefiting from it. This “cost causation” principle should be the norm, and, therefore, the NYISO should resist other arbitrary methods of allocating costs (e.g., using an arbitrary percentage sharing or a voltage level cut-off to distinguish “regional” vs. “local” benefits).

³ Because the cost of a particular “regulated” solution may be incurred by one transmission owner to the benefit of consumers of another transmission owner, the NYISO’s tariff structure may have to be utilized to ensure that beneficiaries pay the appropriate costs.

While the August 14, 2003 blackout served as an important reminder that the reliability of State's bulk power system is critically important and needs to be preserved, how "regulated" capital investment in transmission infrastructure should be handed in unregulated markets, and who should pay for it, are very complex issues. Any decision to mandate a "regulated" reliability expenditure should take into consideration that unregulated electricity prices in 2003 were the highest since the NYISO began operations. These high prices are having an adverse impact on the competitiveness of New York businesses and the State's economy as a whole. Accordingly, the processes established by the NYISO through the work of the Electric System Planning Working Group must ensure that prudent decisions are made and that the costs resulting from those decisions, including the increased prices that nonbeneficiaries may incur, are paid by the beneficiaries of those decisions.

Dated: January 8, 2004
Albany, New York

Respectfully submitted,

s/Robert M. Loughney
Robert M. Loughney, Esq.
Attorneys for Multiple Intervenors
540 Broadway
P.O. Box 22222
Albany, New York 12201-2222
(518) 426-4600

Of Counsel:
Robert M. Loughney, Esq.
Michael B. Mager, Esq.