



September 6, 2012

The New York Independent System
Operator Board of Directors
c/o Stephen G. Whitley
President and CEO
10 Krey Boulevard
Rensselaer, NY 12144

Re: Order 1000 Compliance Implementation

Hess Corporation (“Hess”) wishes to thank the Board for reaching out to market participants for their view on the NYISO’s plans to implement Order 1000.¹ While Order 1000 sets out a number of recommendations and guidelines, fortunately the Order is not overly proscriptive as to how it must be incorporated into an existing Open Access Transmission Tariff (“OATT”). It is with this in mind that Hess offers the comments below.

1. Although the Federal Energy Regulatory Commission (“FERC”) in its description of its intent in issuing Order 1000 states that the transmission planning process must : “allow for consideration of transmission needs driven by public policy requirements established by state or federal laws or regulations (Public Policy Requirements),”² Hess is concerned that too broad an interpretation may be read into what solutions are actually being *driven by*, as opposed to *required by* such requirements, and the transmission planning process needs to be explicit when identifying “drivers,” as opposed to requirements. For example, environmental regulations enacted may require the retirement of inefficient, dirty units. This could be perceived as *driving* the need for new generation, but it is not actually a requirement. It seems fairly logical that legislation or regulation passed should be fairly clear on what is the expected outcome. While for planning purposes it is in fact important to identify *drivers*, there needs to be enough precision to distinguish whether something is desirable or a requirement, and how each would play out in the planning process. This is a critical necessity in order to not undermine the efficiency of the NYISO’s markets.

2. The NYISO’s proposed implementation plan does not appear to give due consideration to the fact that Public Policy Requirements can be overturned in court, superseded or repealed in a subsequent administration. The process needs to plan accordingly for such contingencies. Needless to say, regulation in the electric industry has been anything but stable. History is replete with examples of yesterday’s policy being overturned or abandoned as no longer prudent in today’s environment. There

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 136 FERC ¶61,051 (2011) (“Order 1000”)

² Order 1000 at P 2

needs to be a way to retool or terminate any plans that were based on Public Policy Requirements that are no longer in place.

3. While the NYISO plans to evaluate and produce a report on the impact of and proposed solutions to any Public Policy Requirements, the NYISO should have a stronger affirmative obligation to identify independently whether there are other more efficient ways of achieving the public policy initiatives. As way of example, some fixes would be better achieved by the addition of new generation, others by transmission. To ensure the functioning of its wholesale markets, the NYISO should be required to file its studies with the appropriate state agency or governing body, and identify whether more efficient solutions could achieve the outcomes desired by the Public Policy Requirements. While we recognize that the NYISO cannot dictate public policy requirements to legislators and regulators, given its expertise it nonetheless should provide advice and guidance, whether asked for directly or not. And if in the NYISO's judgment the Public Policy Requirement could have an adverse impact on the markets it oversees, it must have an affirmative obligation to notify FERC as such as well. To put it perhaps more bluntly, whatever process NYISO adopts should not provide a "free pass" for any legislation or regulation that comes down the pipeline if in the NYISO's judgment it could impair NYISO markets.

4. The NYISO's current proposal does not seem to give due recognition that NYISO and its markets are under the purview of federal jurisdiction. It is clear that FERC (and the courts) frown upon those state laws that are intended or that inadvertently undermine wholesale markets. Nor should Public Policy Requirements projects result in undue preference to particular market participants or projects. Thus, for example, if legislation were passed mandating a build out of 1000 mws of wind power, it does not necessarily follow that the transmission and interconnection costs should be free for those new projects. The NYISO has an obligation to ensure that its markets are not harmed from potentially anti-competitive influences or behavior. While the NYISO may not be able to prevent the passage of Public Policy Requirements that undermine markets, it is the NYISO's responsibility to ensure the market rules have in-built correctional fixes to ensure its markets are not harmed. One example is the buyer and supplier side market mitigation tests of new in-city generation. If specific circumstances cannot be envisioned at the present time, there still needs to be a process for very quick rule changes to allow the NYISO to preserve market integrity in the event that Public Policy Requirements will undermine market efficiency.

5. Hess would submit that NYISO's existing cost allocation methodology for Regulated Economic Projects, found in Section 31.4.3 of its OATT can and should be applied to Public Policy Requirements projects. The principles behind regulated economic projects are substantially the same for Public Policy Requirements project. The cost allocation principles set out in Section 31.4.3 could easily be modified to include projects resulting from Public Policy Requirements. Order 1000 specifically states:

We also note that a public utility transmission provider together with other public utility transmission providers in a transmission planning region, and an RTO or ISO, which is itself a public utility transmission provider, may have a single cost allocation method for all proposed transmission facilities or different methods for different types of transmission facilities. For example, cost allocation methods may distinguish among transmission facilities that are driven by needs associated with maintaining reliability, addressing economic considerations, and achieving Public Policy Requirements, all of which would be required to be considered in the regional transmission planning process as explained in this Final Rule.³

Thus, there is no reason why Regulated Economic Projects cost allocation methodology could not be applied to Public Policy Requirements projects.

³ Order 1000 at P 689

Again, Hess commends the Board for reaching out to NYISO stakeholders for their input into the implementation of Order 1000. We look forward to working with you, the NYISO and other stakeholders to implement this order effectively.

Very truly yours,

Marji Rosenbluth Philips

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