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**NYISO Management Committee Meeting Minutes****May 28, 2014****10:00 a.m. – 1:30 p.m.**

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**1. Introductions, Meeting Objectives, and Chairman's Report**

Mr. Alan Ackerman (Customized Energy Solutions), the Chair of the Management Committee (MC), called the meeting to order at 10:00 a.m. and welcomed the members of the MC. Participants introduced themselves and their affiliations. There was a quorum. Mr. Ackerman reviewed the agenda items and explained that at today's meeting a procedural change would be in effect for agenda items 5 and 6 whereby no friendly amendments would be allowed and all amendments would be acted upon.

**2. Approval of the Meeting Minutes - April, 2014.****Motion #1:**

The Management Committee (MC) approves the April 2014 meeting minutes.

***The motion passed by show of hands with an abstention***

**3. President and COO Report**

Mr. Steve Whitley (NYISO) thanked stakeholders for their hard work discussing the mitigation issues through the working groups. The NYISO wanted a solution that was good for the market and that removed barriers for entering the market especially while the market is getting shorter.

Mr. Rick Gonzales (NYISO) reviewed the Market Performance Highlights and the Operations Report. He explained there was a new chart that illustrated all components that drove statewide uplift. The chart would provide a 13 month rolling trend of uplift. Mr. Whitley added that during cold snaps, the NYISO had lessons learned meetings with neighboring ISOs to identify the cause of the huge spike in uplift for those other ISOs that experienced these; it appeared that scheduling gas over the long weekend and gas availability after holiday weekends were key drivers.

Mr. Gonzales briefed the MC on the NYISO's summer readiness program; NYISO staff visited generating plants to ensure they were ready for the summer. This year, the NYISO audited over 30 sites and over 20,000 MWs of capacity. The NYISO asked about cold weather experiences, environmental limitations, follow-up on Hurricane Sandy, and spoke with plant operators about any other concerns they have.

**4. TCC Markets – Revisions to OATT Attachment L**

Ms. Lisa Travalay (NYISO) reviewed the presentation included with the meeting material. Mr. Garrett Bissell (Multiple Intervenors (MI) and the City of NY) asked when the NYISO would file with FERC. Ms. Mollie Lampi (NYISO) explained filings are made within 45 days of Board approval.

**Motion #2**

The Management Committee (MC) approves amendments to the NYISO's OATT Section 18 as described in the presentation entitled "TCC Markets OATT ATT L Revisions", made to the MC on this date, May 28, 2014 and recommends that the NYISO Board of Directors authorize the NYISO staff to file these under Section 205 of the Federal Power Act.

***Motion passed unanimously with an abstention.***

**5. Proposed ICAP Buyer-Side Mitigation Modifications – Repowering & Increased CRIS**

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Mr. Randy Wyatt (NYISO) reviewed the presentation included with the meeting material. The proposal would establish a different buyer-side mitigation test for repowering existing capacity in a mitigated capacity zone, and for new projects that replace existing capacity in a mitigated capacity zone but lack the qualifications of a repowering, and rules by which the NYISO would evaluate requests for increased CRIS for existing facilities.

Mr. Howard Fromer (PSEG) asked if the entirety of the proposal was identical to what was presented at the Business Issues Committee (BIC) on May 12<sup>th</sup>. Mr. Wyatt said there were ministerial, non-substantive changes to sections 23.2 and 23.4, but otherwise the tariff sheets and the presentation was the same. Mr. Fromer stated a history of the stakeholder process was not mentioned and noted that the proposal was presented at BIC and failed. He asked why it was on the MC agenda for action when the BIC did not recommend MC approval. Mr. Rana Mukerji (NYISO) stated the NYISO took it to the MC because the NYISO wanted to conclude the stakeholder process.

Mr. Paul Tartaglia (NYPA) asked if the proposal prevents the re-use of equipment. Mr. Wyatt said it did not prevent the re-use of equipment. Mr. Bob Boyle (NYPA) asked how re-used equipment would be valued in a mitigation test. Mr. Wyatt said it would be valued as new as far as unit net cost and that the NYISO did not want to double down on an exemption.

Mr. Bissell stated the City of NY strongly supported the rules for repowering several years ago. The City of NY continued to support the concept, absent the clause that would allow the re-use of equipment. Mr. John Flumerfelt (Calpine) said public policy encourages retro-fitting and the proposal's implications were fairly broad which prevented competition with incumbent generators and as such was bad market policy. Mr. Rich Miller (Con Edison) said that Con Edison believed that with a Competitive Entry Exemption (CEE), the Repowering exemption would not be necessary and both incumbents and new entrants would compete on an equal basis. Ms. Doreen Saia (Entergy) said she appreciated the NYISO for listening to concerns about developing the Economic Viability Test (EVT). When the proposal was introduced, it lacked an EVT test. She said the purpose of the EVT was to ensure that older units went away and newer units replaced them when it made sense. However, the re-use of equipment provisions undercut the proposal.

Motion 3 was moved by Mr. Bissell and seconded by Mr. John Borchert (Central Hudson). Mr. Bissell proposed an amendment that would remove the re-use of equipment. It was seconded by Mr. Shaun Johnson (NRG).

Motion 3a:

Motion to amend motion 3 as follows:

The Management Committee ("MC") hereby recommends that the Board of Directors authorize the NYISO to file with the Federal Energy Regulatory Commission, pursuant to Section 205 of the Federal Power Act, the proposal and accompanying tariff provisions regarding the NYISO's ICAP Market Power Mitigation Measures for repowering, replacement, and increased CRIS, as presented at the MC on May 28, 2014, **except that references to the re-use of the prime mover are removed. Instead, a requirement will be added requiring the owner of the repowered or replaced unit to certify that the former prime mover equipment will be dismantled and either sold for scrap or disposed of in a landfill or similar facility.**

***Motion failed with 52.23% affirmative votes.***

After the vote, there were no other amendments and the MC voted on the original motion.

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**Motion 3:**

The Management Committee (“MC”) hereby recommends that the Board of Directors authorize the NYISO to file with the Federal Energy Regulatory Commission, pursuant to Section 205 of the Federal Power Act, the proposal and accompanying tariff provisions regarding the NYISO’s ICAP Market Power Mitigation Measures for repowering, replacement, and increased CRIS, as presented at the MC on May 28, 2014.

***Motion failed with 32.97% affirmative votes.***

**6. Proposed ICAP Buyer-Side Mitigation Modifications- Competitive Entry Exemption (CEE), Offer Floor Change, Renewable Generator Exemption, and Municipal Utilities/Coop Exemption**

Dr. Nicole Bouchez (NYISO) reviewed the proposal included with the meeting material. The NYISO is proposing a CEE/Merchant Exemption, a modified default Offer Floor of 90%, a Renewable Generator Exemption, and a Municipal Utility/Coop Exemption. The NYISO did not propose to include in this proposal an exemption for reliability and will explore the possibility of this exemption at a later date. The proposed effective date of the modifications is for Examined Facilities in Class Years subsequent to Class Year 2012.

Mr. Fromer asked if the proposal was the same that was presented and defeated at the BIC. Dr. Bouchez said that was correct. Mr. Fromer said that MC members should be made aware that the BIC did not recommend MC approval and the NYISO was presenting the proposal to the MC to complete the stakeholder process.

Mr. Fromer asked, if the PSC modified the eligibility for the Renewable Portfolio Standard (RPS), would that tie the NYISO’s hands, and gave an example of a very large hydro unit. Dr. Bouchez explained that a hydro unit less than 50 MW would qualify under the proposal. Any units over 50 MW would be ineligible for an exception regardless of whether RPS eligibility was changed, unless it was wind or solar. Mr. Frank Francis (Brookfield) asked for clarification regarding hydro units. Ms. Erin Hogan (NYSERDA) noted that the RPS language for hydro units was limited in terms of incremental upgrades. Ms. Gloria Kavanah (NYISO) said that should the RPS be modified to allow larger hydro units, the NYISO tariff would still limit eligibility for the exemption to 50 MW. Mr. Bissell asked if the 50 MW limitation applied to the nameplate rating. Dr. Bouchez said all of the entire nameplate, ERIS, and CRIS ratings would have to be less than 50 MW. In response to a question, Dr. Bouchez said the NYISO limited the technology to wind and solar because of their lower capacity factor and the NYISO arrived at 50 MW to achieve a balance for small and large units in the capacity market.

Mr. Fromer asked for the NYISO to explain why raising the offer floor was limited to 90% when the Market Monitoring Unit (MMU) recommended raising the offer floor to 100%, which was also consistent with PJM. He opined that it seemed as if the NYISO attempted to seek positive votes for the proposal by lowering it to 90%. Dr. Bouchez noted the proposal has changed over the course of a year and the 90% represented a good balance of interests and opinions. Mr. Fromer asked how governmental entities outside NY are defined as being a competitor. He said a foreign government does not have investor dollars at risk but rather tax dollars. Dr. Bouchez explained the purpose of Buyer-side Mitigation and said that foreign governments do not have an interest in lowering capacity prices. Mr. Fromer disagreed. Mr. Flumerfelt added that the proposal was a solution in search of a problem. He noted it was possible that outside entities would have an incentive to suppress prices and he has witnessed it in other markets. Mr. Miller said it was incorrect to state that the NYISO exemption was only available to a generator that put investor money at risk with no tax support, because it did provide, as FERC approved the PJM competitive entry exemption, that if an entity was receiving industrial economic incentives, it may qualify for the exemption and NY generators have taken advantage of NYS tax incentives when they built their generation units in NY. Mr. Fromer said there was a

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fundamental disagreement on whether a foreign government with tax dollars was truly a competitive entrant.

In response to a question, Mr. Tom Rudebusch (NYAPP) said that there were 51 municipalities in NY. In response to a question, Dr. Bouchez said there were no municipalities in the current mitigated capacity zones. Ms. Saia noted that the municipality exemption did not apply to any current municipality and asked why was such an exemption was being proposed. She said it seemed the NYISO was including it in anticipation of a problem arising in the future. Dr. Bouchez said there was a request to include it when the NYISO was examining the potential NCZ boundary proposed in 2103 and the NYISO thought it made sense. Mr. Fromer said the NYISO had requests from stakeholders to include in the package a proposal dealing with statewide uneconomic retention and the NYISO refused to engage in a discussion. Mr. Bissell stated there were other items suggested that were also not included.

Mr. Bissell said that the renewable exemption was an important component and the City of NY and Environmental sector would proceed to bring it for a vote at the BIC and MC action in June if the proposal failed at the MC today.

Ms. Saia asked if a project was in Class Year 2012, but chose not to accept costs and is in the next class year, would that project then be eligible to qualify for the exemptions. Ms. Kavanah said it would be.

Mr. Bart Franey (National Grid) stated that rather than exempting resources from an economic test, National Grid urged the NYISO and the Board of Directors to develop more robust markets for products that would incentivize specific desirable generation attributes, improve the economic viability and sustainability of new technologies, and encourage competition.

Ms. Hogan, on behalf of the NY Department of State Utility Intervention Unit (UIU), said the UIU intended to abstain on the main motion because, while the renewable exemption would encourage fuel diversity during times of stress on the system to alleviate price increases, the motion is deficient because it does not include the self supply and reliability exemptions that would complete the package and benefit consumers.

Ms. Saia said she had repeatedly raised concerns with CEE proposal and its failure to effectively mitigate market power on the buyer side. Therefore, Entergy cannot support it.

Mr. Miller noted that recent PJM auction results showing that 6,000 MW of new generation cleared in a market with a competitive entry exemption and all 6,000 MW were not required to undergo a unit cost test and they all cleared as merchant capacity. It is clear that PJM's CEE helped facilitate that entry and Con Edison would support a CEE in the NYISO market where many have raised the question whether the NY market could support new entrants without an out of market contract. Ms. Saia said it was important to understand that the PJM tariff differed from NYISO's proposal because the PJM market cannot have a contract with any governmental entity.

Motion 4 was moved by Mr. Miller and seconded by Ms. Hogan.

Mr. Bissell, on behalf of MI, proposed an amendment that would allow conceptual approval of a reliability exemption added to the proposal and direct the NYISO to work with stakeholders to develop the necessary details and tariff languages to implement one by the end of 2014. Mr. Bissell, as proxy for Natural Resources Defense Council, seconded the amendment. In response to a question, Mr. Bissell said that the language was not meant to bind stakeholders in voting for the development of a reliability exemption, and once the exemption was developed, stakeholders could vote again and perhaps differently. Mr. Bissell said MI did

not believe the proposal was complete without a reliability exemption, but wanted to move CEE forward and develop the reliability package. Ms. Saia noted it should be clear that the conceptual approval clause of Mr. Bissell's amendment differed from previous conceptual approvals. Mr. Miller said Con Edison supported a narrow reliability exemption and would be willing to give conceptual approval with the understanding that the vote could be different in the future if the exemption was broader than what Con Edison anticipated.

Ms. Saia asked for NYISO counsel's to comment on whether MC motions were binding to the NYISO. Mr. Whitley said the NYISO would try to make a commitment to develop a proposal centered on reliability and set a schedule to bring it for a stakeholder vote by the end of the year. Mr. Rob Fernandez (NYISO) added the motion is not binding to the NYISO, but the NYISO would live up to the spirit of the MC's request.

**Motion #4a: Motion to amend motion #4 as follows:**

The Management Committee ("MC") hereby approves, and recommends that the Board of Directors authorize the NYISO to file with the Federal Energy Regulatory Commission pursuant to Section 205 of the Federal Power Act, the proposal and accompanying tariff provisions regarding the NYISO's ICAP Market Power Mitigation Measures providing for a Competitive Entry Exemption, Renewable Generator Exemption, Municipal Utilities Exemption, and revisions regarding the Offer Floor, as presented at the MC on May 28, 2014.

As part of approving the above-stated recommendation, the MC hereby also provides conceptual approval for a reliability exemption that would provide an exemption from the buyer-side mitigation rules for a new facility developed in response to a NYISO-determined or NYISO-verified bulk or local system reliability need. The MC hereby directs the NYISO to work with market participants at the Installed Capacity Working Group to develop the details and necessary tariff revisions to implement such a reliability exemption and present tariff language relating thereto for consideration by the Business Issues Committee ("BIC") by the end of 2014.

***The motion failed with 37.83% affirmative votes***

After the vote, Mr. Andrew Antinori (NYPA) proposed an amendment that would defer approval of the CEE proposal until two additional components, a self supply exemption and a reliability exemption, were included in the overall package. Mr. David Clarke (LIPA) seconded the amendment. Mr. Bissell said MI had no objection to delaying it, but the two additional exemptions may be broader than what MI would be willing to support. In response to a question from Ms. Saia, Mr. Antinori said he was amenable to inserting language that would clarify that the CEE package would need to return to the BIC and MC for a vote. Mr. Fernandez asked if NYPA's language would preclude the NYISO Board of Directors from making a Section 206 filing as a matter of law. Mr. Antinori said there was an interpretation that it would preclude the Board from making a Section 206 filing. Mr. Shaun Johnson (NRG) asked if the MMU had opined on the additional components. Mr. Antinori said that NYPA has not heard from the MMU. Mr. Mukerji said the MMU has previously stated that it did not support the two additional components.

**Motion #4b: Motion to amend motion #4 as follows:**

The Management Committee ("MC") hereby ~~approves, and recommends that the Board of Directors authorize the NYISO to file with the Federal Energy Regulatory Commission pursuant to Section 205 of the Federal Power Act, the proposal and accompanying tariff provisions regarding the changes to~~ the NYISO's ICAP Market Power Mitigation Measures providing for a Competitive Entry Exemption, Renewable Generator Exemption, Municipal Utilities Exemption, and revisions regarding the Offer Floor, as presented at the MC on May 28, 2014 ~~(together, the "Proposed ICAP Changes") and the two Additional Exemptions, as defined and discussed below, and to present the full package of proposed amendments to the Business Issues Committee and Management Committee no later~~

than December 31, 2014. For purposes of clarity, the Proposed ICAP Changes will not be sent to the NYISO Board or FERC for approval unless and until the Additional Exemptions have been fully developed and included in this package.

The additional exemptions shall include: (1) an exemption from the Buyer's Side Mitigation Rules which would allow public entities to build and/or procure generation resources up to the amount of their load serving obligations, plus the applicable required reserve margin, in order to serve that load ("Self-Supply Exemption"); and (2) an exemption from the Buyer's Side Mitigation Rules for facilities that are needed to meet reliability as determined: (i) by the NYISO in response to a bulk system reliability need; or (ii) by an Order of the New York State Public Service Commission ("Reliability Exemption"). The Self-Supply and the Reliability Exemption are collectively defined as the "Additional Exemptions."

***The motion failed with 18.6% affirmative votes***

After the vote, there were no other amendments and the MC voted on the original motion.

#### **Motion #4:**

The Management Committee ("MC") hereby approves, and recommends that the Board of Directors authorize the NYISO to file with the Federal Energy Regulatory Commission pursuant to Section 205 of the Federal Power Act, the proposal and accompanying tariff provisions regarding the NYISO's ICAP Market Power Mitigation Measures providing for a Competitive Entry Exemption, Renewable Generator Exemption, Municipal Utilities Exemption, and revisions regarding the Offer Floor, as presented at the MC on May 28, 2014.

***The motion failed with 32.5% affirmative votes***

#### **7. MC Liaison Discussion**

Mr. Ackerman reviewed the presentation included with the meeting material. The new NYISO Board Chair would like to enhance Board communication with Market Participants (MPs), improve the format of the MC Liaison meetings, and notify MPs what agenda topics would be discussed in advance. Mr. Ackerman said the purpose of the presentation was to suggest ways to improve the meetings and seek initial MP feedback.

In response to a question, Mr. Paul Gioia (representing NYTOs) said that in the past, MPs would not raise topics that were under consideration through the committee process, but topics that MPs wanted to bring to the Board's attention.

Mr. Bissell said he had no objection in terms of trying to establish a process for identifying topics in advance, but did not support a formalized process where there was a deadline for MPs to submit topics. He noted that an issue could arise and stakeholders may want to bring an emerging issue to the Board's attention. In addition, he did not support canceling meetings. Mr. Fromer agreed with Mr. Bissell's comments and added that sessions with the Board were important, and given NYISO's unique shared governance process, it was critical that the Board be held accountable to MPs by entertaining questions and reporting recent Board activity. It allows the Board to get a sense of how intense MPs concerns are.

Ms. Kathleen Carrigan (Lyonsdale Biomass) encouraged more participation and suggested that meeting minutes be distributed for the meetings. Mr. Fromer suggested holding more meetings in Albany to boost attendance and make them more productive. He observed that it could be a challenge for MPs to justify traveling to NYC for a brief meeting. Mr. Gioia also suggested allowing full remote participation for MC representatives similar to other NYISO meetings.

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Mr. Miller suggested that the Board should consider identifying its own agenda topics for the meetings based on what they would like to hear from stakeholders, instead of only having agenda topics proposed by MPs.

Mr. Antinori said it would be helpful if the MC Liaison meetings had a firm start time. He also cautioned that stakeholders should not attend the meetings to lobby the Board and there should be protections to prevent a MP from lobbying the Board.

Mr. Ackerman said he would make the presentation again at the June 3<sup>rd</sup> Market Issues Working Group and he would share stakeholder feedback to the NYISO Board Chair, Mr. Mike Bemis. Mr. Whitley agreed that he would also share MP sentiments on the meetings with the Board.

#### **8. New Business**

Ms. Saia asked what the NYISO planned on doing with the mitigation proposals. Mr. Whitley said the NYISO would analyze the MC voting outcomes and discuss next steps internally.

Mr. Whitley raised the topic of FERC Order 745 and asked stakeholder to provide input on their concerns to the NYISO. He noted that Mr. Fernandez would issue a notice to stakeholders describing the Order to stimulate MP thoughts and for the NYISO to receive feedback. Mr. Fernandez clarified that the NYISO asked for stakeholder input, but not for pleadings.

Mr. Fernandez summarized Order 745. In a 2-1 decision, the D.C. Circuit vacated Order 745 and decided that the FERC had overstepped its jurisdiction under the Federal Power Act by impermissibly attempting to directly regulate “retail market activity” in the form of Demand Response (DR). The court also found that the Order was arbitrary and capricious on the merits. For now, the NYISO was not required to take any immediate action until the NYISO heard from FERC or the Court. The Court has to issue a mandate before the ruling is legally binding on FERC. The Court has indicated that it would not issue the mandate until seven (7) days after it is disposed on a timely filed motion for rehearing, which FERC has 45 days to seek rehearing. If FERC seeks rehearing, then the ruling will be on hold until the D.C. Circuit rehears it and comes to the same or another decision. As far as the NYISO was concerned, the NYISO was not yet in compliance with Order 745 and the pending compliance filings would be put on hold for some time. It was not clear how far reaching the implications were in respect to the DR markets at the NYISO.

Mr. Johnson noted that a BPWG meeting was scheduled for May 30 and observed that there are proposed 2015 projects related to Order 745 and asked the NYISO to be prepared to discuss how the court ruling impacted the project sequencing process. Mr. Fromer noted that NYISO efforts should not be devoted to Order 745 projects if it is not the law of the land. Mr. Miller added that, at the May 30<sup>th</sup> BPWG, Mr. Kevin Lang from the City of NY will propose a management audit of the NYISO and he wanted to make the MC aware of the discussion.

Ms. Marji Philips (Hess Energy Marketing, LLC) asked if the NYISO would seek to repeal FERC’s decision on the New Capacity Zone. Mr. Fernandez said there has been no discussion about that.

Mr. Mark Seibert (NYISO) reminded MPs of the Symposium in NYC and the hotel discount would expire soon. In addition, shared governance members would receive a discount on the registration fee.

Mr. Miller said that Con Edison would like to raise a discussion at the next MC Liaison meeting on the lack of prioritization criteria in the MMU’s State of the Market report. There is a mystery on how items are

designated high priority vs. low priority by the MMU and it would be fruitful to have that discussion in front of Board.