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VIA HAND DELIVERY AND EMAIL

Mr. Michael Bemis
Chairman of the NYISO Board of Directors
c/o Mr. Bradley C. Jones
President and CEO
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144

Re: Motion in Opposition to Appeal by IPPNY of October 26, 2016 MC Action

Dear Chairman Bemis:

Pursuant to Section 4.01 of the Procedural Rules for Appeals to the New York Independent System Operator, Inc. ("NYISO") Board of Directors ("Board"), Multiple Intervenors, the City of New York, and the New York State Energy Research and Development Authority (collectively, "Consumer Parties") hereby jointly submit this Motion in Opposition to the appeal filed by the Independent Power Producers of New York, Inc. ("IPPNY") of the October 26, 2016 decision of the Management Committee to phase-in the methodology developed to address a market inefficiency that was identified by the Market Monitoring Unit associated with capacity exports from import constrained localities.

The Consumer Parties take no position on the need for oral argument on IPPNY's Appeal. If the Board determines that oral argument is appropriate, the Consumer Parties respectfully request the opportunity to participate in any such oral argument.

A copy of this Motion in Opposition has been transmitted to NYISO staff via e-mail for circulation to all Management Committee members.

Sincerely,

COUCH WHITE, LLP

Kevin M. Lang

Kevin M. Lang

Enclosure
cc: Mark Seibert

PRELIMINARY STATEMENT

Multiple Intervenors, the City of New York, the New York State Energy Research and Development Authority, and Consumer Power Advocates[1] (collectively, the "Consumer Parties") hereby submit to the New York Independent System Operator, Inc. ("NYISO") Board of Directors ("Board") this Motion in Opposition to the appeal by the Independent Power Producers of New York, Inc. ("IPPNY") challenging the October 26, 2016 decision by the Management Committee ("MC") to approve, with limited modifications, NYISO Staff's locational export capacity proposal (hereinafter, the "Appeal"). For the reasons set forth herein: (a) it is essential that the NYISO remedy an existing capacity market design flaw as soon as possible, but by no later than June 1, 2017; and (b) the Appeal should be denied in all respects.

BACKGROUND

The background relevant hereto is not in dispute.[2] Briefly, Roseton Generating LLC ("Roseton"), located in the Lower Hudson Valley ("LHV") capacity region (*i.e.*, NYISO Load Zones G-J), committed to sell 511 MW of capacity into the Forward Capacity Auction administered by ISO New England Inc. ("ISO-NE") for the 2018/2019 Capability Year (which starts on June 1, 2018). In response thereto, the Market Monitoring Unit ("MMU") identified a significant flaw in the NYISO's capacity market design with respect to the exporting of capacity from a constrained Locality. Because of that design flaw, all capacity exported by Roseton would be treated by the NYISO as a supply reduction when calculating the LHV and the New York Control Area ("NYCA") spot market clearing prices (*i.e.*, as if the facility had been deactivated).

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[1] Consumer Power Advocates is a regulatory advocacy organization whose members include New York University, Fordham University, Mount Sinai Medical Center, Beth Israel Health Care System, Memorial Sloan-Kettering Cancer Center, and Refined Sugars, Inc.

[2] *See* Management Committee Presentation by NYISO Staff entitled, "Locational Export Capacity Proposal," (dated October 26, 2016) at Slides 2-9 (setting forth the relevant background).

Such an outcome would produce inefficient price signals and impose substantial financial harm on consumers. This fact was recognized by the MMU, NYISO Staff, and virtually all stakeholders. NYISO Staff concluded that: "The pricing outcomes under the current market design construct will not produce efficient market signals in the Locality."[3] It further concluded that:

> Given that the generator supporting the export continues to operate in the Locality the market signals should reflect that the generator still helps satisfy the capacity requirements. Therefore, there is not a need to send a price signal equivalent to that of a generator Mothballing or that Retires.[4]

NYISO Staff estimated the potential harm to consumers as a result of the existing capacity market design flaw to be "*at least* $144 million per year."[5]

The urgency associated with remedying this design flaw increased markedly when ISO-NE filed with the Federal Energy Regulatory Commission ("FERC") proposed amendments to its Forward Capacity Market ("FCM") rules that would allow Roseton to participate in ISO-NE's 2017/2018 reconfiguration auction. Such amendments, which were approved by FERC on October 18, 2016, over protests by the NYISO, the Consumer Parties, and other NYISO market participants, may allow Roseton to begin exporting capacity into ISO-NE as early as June 1, 2017.[6] Consequently, remedying the capacity market design flaw now is a matter of the utmost urgency.

To its credit, NYISO Staff developed, on an extremely-expedited basis, a proposal to address the capacity market design flaw. Basically, the proposal strives to calculate the amount of the exported capacity that must be replaced within the constrained Locality and the amount that can be replaced with capacity from the Rest-of-State ("ROS") region while maintaining the same

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3 *Id.* at 9.

4 *Id*.

5 *Id.* at 8 (emphasis added).

6 *ISO New England Inc. and New England Power Pool Participants Comm.*, 157 FERC ¶ 61,025 (2016).

level of reliability.[7] In this case, NYISO Staff determined that the relevant "Locality Exchange Factor" ("LEF") is 47.8%, meaning that 52.2% of Roseton's exported capacity would be removed from the LHV capacity market.[8]

Following extended discussions, the MC passed a motion (Motion #2) at its October 26th meeting that: (a) adopts NYISO Staff's proposed methodology immediately; (b) directs that the methodology would be phased-in over a single Capability Year to reduce the unanticipated and substantial impacts on consumers in the LHV; under this phase-in, in the 2017-2018 Capability Year, only 80% LEF would be applied (meaning that 20% of Roseton's exported capacity would be removed from the LHV capacity market); (c) starting with the 2018-2019 Capability Year and continuing thereafter unless and until an alternate methodology is approved by FERC, the full LEF would be applied; and (d) memorializes the NYISO's commitment to "work with Stakeholders further on this issue in 2017."[9]

Importantly, Motion #2 recognizes explicitly that: (a) there has been insufficient time to analyze adequately NYISO Staff's proposed methodology for resolving the capacity market design flaw; (b) further analyses of that methodology and possible alternatives thereto need to be undertaken; and (c) ISO-NE's rule changes will produce sudden and very large impacts on New York consumers.[10]

Motion #2 was approved by the MC with 63.62% of the weighted vote, including whole or partial support from four of the five stakeholder sectors. Thereafter, the Appeal was filed.

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[7] "Locational Export Capacity Proposal" at Slides 11-23.

[8] *Id.* at Slides 14, 22-23. Under NYISO Staff's proposal, 100 percent of the exported capacity would be removed from the NYCA capacity market. *Id.* at 22. This aspect of the proposal has not been altered or challenged.

[9] *See* MC Meeting, October 26, 2016, Final Motions.

[10] *Id.* at 1 and 2.

In the Appeal, IPPNY does not challenge: (a) the conclusion that the NYISO's capacity market design is flawed; or (b) NYISO Staff's methodology for remedying that flaw. Rather, the Appeal is limited to challenging the MC's decision to phase-in the methodology via the use of an 80% LEF for the 2017/2018 Capability Year.

ARGUMENT

A. The Board Should Take Any and All Actions Necessary to Ensure That the Capacity Market Design Flaw Is Remedied Effective No Later Than June 1, 2017

NYISO Staff advanced a proposal to remedy an identified flaw in the NYISO's capacity market design. The Consumer Parties commend the NYISO for its diligent work in advancing its proposal on an expedited basis. That proposal, in concept, has broad stakeholder support, although there also is widespread recognition that (i) additional analysis should be undertaken, and (ii) the results of that analysis may warrant additional revisions to the NYISO's tariffs. The Consumer Parties note that the vast majority of market participants, including suppliers, support implementing NYISO Staff's methodology as soon as possible, and by no later than June 1, 2017 (*i.e.*, when Roseton becomes eligible to export capacity into ISO-NE).[11]

Moreover, as part of its work on this matter, the NYISO conducted a consumer impact analysis of the potential impacts of the capacity market design flaw.[12] That analysis indicated that, depending upon the assumptions utilized, the inefficient costs to consumers associated with failing to remedy the flaw could reach well into the hundreds of millions of dollars annually.[13]

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[11] This assertion is supported by the results from the vote on the methodology at the October 20, 2016 Business Issues Committee ("BIC") meeting. Only two market participants voted against use of that methodology.

[12] *See* BIC Presentation "Consumer Impact Analyses: Capacity Exports from Localities," (dated September 19, 2016).

[13] *Id.* at Slides 16-17.

Irrespective of how the Board ultimately resolves the Appeal, it should take any and all actions necessary to ensure that the capacity market design flaw is remedied effective no later than June 1, 2017.

B. The Board Should Deny IPPNY's Appeal

In the Appeal, IPPNY advances several arguments in opposition to the MC-approved phase-in of NYISO Staff's proposal. Those arguments lack merit, and none form a basis for the Board to set aside the decision of the MC. Rather, the Board should approve and direct the immediate filing with the FERC of tariff amendments consistent with Motion #2 to minimize the risk that consumers are forced to bear hundreds of millions of dollars in unjust and unreasonable costs.

IPPNY's assertion that there is no analysis supporting use of the 80% LEF reflected in Motion #2 is inapposite.[14] Based on its collective judgment, the MC approved a phase-in due largely to the expedited manner in which this issue has been addressed and the widespread recognition (as demonstrated by the second paragraph of the motion) that more consideration of the issue is necessary. This is not intended to be a criticism of NYISO Staff, which acted with expediency and professionalism throughout the deliberations on this issue.

The existence of a capacity market design flaw, and the pressing need to remedy that flaw, is unquestioned. Whether NYISO Staff's recommended LEF methodology is an appropriate and/or the optimal solution, however, is less certain. The phase-in balances this concern with the need for the NYISO to act expeditiously.

In its recent Protest, the NYISO argued to the FERC that: (i) this "issue is extremely complex;" (ii) "an appropriate solution must address a range of issues;" (iii) "the underlying details

[14] Appeal at 4-5.

and measures to address the problem are extremely complex;" (iv) a schedule addressing this issue in time for June 2018 (as opposed to June 2017) would be "aggressive but achievable;" and (v) "[d]eveloping market rule changes for implementation by the 2017/2018 capacity year would substantially limit the potential solutions that can be considered, and the opportunity for shareholders to provide input."[15] The NYISO's own statements provide further proof that the approach adopted by the MC was a reasonable and appropriate interim step. Indeed, the MC's determination to utilize a phase-in for the 2017/2018 Capability Year "due to the lack of sufficient time to adequately analyze the NYISO's methodology and pending further analysis of the methodology and possible alternatives"[16] is fully consistent with the NYISO's own position to the FERC that more time is needed to fully consider the appropriate final solution.

IPPNY further argues that the MC-approved phase-in should be rejected "because it will lead to inefficient market outcomes and harm reliability."[17] Such arguments should be rejected. It is not disputed that failing to remedy the capacity market design flaw would result in "inefficient market outcomes" at substantial expense to consumers. IPPNY's assertion that the one-year phase-in would do likewise assumes that the NYISO's recommended methodology is perfectly accurate – an assumption that is not yet shared by a majority of stakeholders, including many IPPNY members (as demonstrated by the discussions during the MC and BIC meetings).

Moreover, the decision by Roseton to export capacity into ISO-NE will lead to significant capacity price increases to consumers. NYISO Staff has estimated that, using a 50% LEF (which is very close to the 47.8% LEF that it ultimately recommended), the loss of Roseton's capacity

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[15] Docket No. ER16-2451-000, *ISO New England Inc. and New England Power Pool Participants Comm.*, Motion to Intervene and Limited Protest of New York Independent System Operator, Inc. (dated September 9, 2016) at 3, 9 and 10.

[16] MC Meeting, October 26, 2016, Final Motions at 1-2.

[17] Appeal at 5.

would result in increased capacity costs to consumers of $319 million in the 2017/2018 Capability Year, of which $144 million is considered inefficient..[18] Given this analysis, it was reasonable for the MC to approve a limited phase-in as a means of ensuring that consumers are not harmed inappropriately by the interim methodology that was developed in a highly compressed time frame and which has not been subjected to sufficient scrutiny. Put another way, the phase-in approved by the MC is more moderate than the one-year deferral sought by the NYISO in its Protest (which would have been equivalent to utilizing a 100% LEF for the 2017/2018 Capability Year).

The Consumer Parties also question IPPNY's reliance on so-called market efficiency to oppose the MC-approved phase-in. Due to the very-limited nature of the phase-in (*i.e.*, modifying the recommended LEF from 47.8% to 80% for the 2017/2018 Capability Year only), the Consumer Parties are highly skeptical that it will influence any decisions at all by developers or market participants, such as whether or when to develop or deactivate a generation project. Rather, the primary effect of the phase-in is that it will limit, modestly, the financial windfall that will be realized by existing generation owners located in the LHV region due solely to Roseton's decision to export capacity under a short-term agreement.[19] The Consumer Parties surmise that developers, investors, and others will see this matter for what it is – a unique, short duration solution to a sudden market flaw that is designed to balance the interests of consumers and generators while not inhibiting generator decisions or actions (*e.g.*, the efficient decision to sell capacity in a higher-priced market). Importantly, no generator will "lose" any money or suffer any financial harm.

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[18] "Consumer Impact Analyses: Capacity Exports from Localities" at Slides 15 and 17. A substantial portion of those increased capacity costs would be borne by consumers located in the LHV region, who experienced significant capacity cost increases only a few years ago when the new capacity zone was created.

[19] Similar to NYISO Staff's proposal, the phase-in does not impact the effect of Roseton's decision on the NYCA capacity market; its impact is limited to the LHV region.

The result is only that the capacity revenues for one year will not be as inflated for LHV generators as they would have liked.

Furthermore, there is no evidence whatsoever that the phase-in somehow will harm reliability. It would not be rational behavior for a generation owner to deactivate its facility based on the MC's decision when it stands to realize increased capacity revenues – even during the one-year phase-in – due solely to Roseton's decision to export capacity into ISO-NE. Indeed, when the MMU initially proposed what essentially was the equivalent of a 100% LEF (a more extreme outcome than the phase-in approved by the MC), it did not identify any reliability-related concerns associated with that proposal, nor did the NYISO when it sought a one-year deferral of ISO-NE's tariff amendments.

While it is true that the FERC declined to adopt a phase-in when the LHV capacity zone was created, it did approve a phase-in when the Installed Capacity Demand Curves first were implemented, as acknowledged by IPPNY.[20] Significantly, the instant situation differs materially from the creation of the LHV capacity zone. In rejecting a proposed phase-in of that capacity zone, the FERC relied, in material part, on the fact that its establishment was the culmination of a multi-year stakeholder process that purportedly provided adequate notice of the proposed change.[21] Here, ISO-NE's amendments to its FCM rules and the FERC's approval of same are very recent, and stakeholders have not been accorded an adequate opportunity to analyze NYISO Staff's proposal and/or possible alternatives thereto. Given these circumstances, and the enormity

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[20] Appeal at 5-6. *See New York Independent System Operator, Inc.*, 103 FERC ¶ 61,201 (2003) at ¶¶ 6, 44 (describing a phase-in of the implementation of installed capacity demand curves).

[21] *See New York Independent System Operator, Inc.*, 144 FERC ¶ 61,126 (2013) at ¶ 31 (rejecting a phase-in because "stakeholder discussions about the need for a new capacity zone in the Lower Hudson Valley have been ongoing over several years and have provided notice to stakeholders of the need for a new capacity zone" and "these issues have been considered over a seven-year time period with extensive focus placed on them over the past two years and parties have been on notice of these impending market design changes").

of the potential financial impacts to consumers due to a short-term arrangement that involves neither the addition nor the deactivation of capacity, the very-modest phase-in approved by the MC not only is reasonable, but appropriate.

Finally, IPPNY advances its oft-repeated refrain that any time it loses a contested vote, load interests somehow are harming the integrity of competitive markets and/or dominating or abusing the stakeholder process.[22] Such arguments lack merit, but the Consumer Parties offer a brief response thereto for the completeness of the record on the Appeal.

The MC approved Motion #2 with 63.62% of the weighted vote, with whole or partial support from four sectors (on an unweighted basis, there were 30 votes cast in support, 16 in opposition, and 11 abstentions).[23] The Consumer Parties also note that when a more-aggressive, "consumer friendly" proposal was considered at the October 20, 2016 BIC meeting (Motion #1C), it was defeated and garnered only 38.32% of the weighted vote.[24] If IPPNY's allegations had validity, Motion #1C would have passed. The two Committee votes demonstrate that many load interests vote in a manner that represents a balance of competing interests and for a fair and equitable outcome, not simply a pocketbook-based outcome.

CONCLUSION

The MC's decision to adopt a phase-in of the NYISO's methodology in the 2017/2018 Capability Year is justified and appropriate given: (a) the expediency in which the NYISO needs to act to remedy a capacity market design flaw; (b) the lack of opportunity for market participants to analyze fully NYISO Staff's proposal and/or possible alternatives thereto; and (c) the substantial consumer impacts that still will occur under the approved methodology, which may or may not be

[22] Appeal at 9-10.

[23] MC Meeting, October 26, 2016, Final Motions at 1-2, 4.

[24] BIC Meeting, October 20, 2016, Final Motions at 2, 6.

the appropriate solution to the identified flaw. The phase-in also exposes the LHV region to greater capacity price increases than either the MMU's original proposal on this issue or the NYISO's proposed one-year deferral of the amendments to ISO-NE's FCM rules.

For all these reasons, the Consumer Parties urge the Board to: (a) take any and all actions necessary to ensure that the capacity market design flaw is remedied effective no later than June 1, 2017; and (b) deny IPPNY's appeal.

Dated: November 8, 2016
Albany, New York

Respectfully submitted,

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