

November 2, 2010

VIA E-MAIL

Mr. David J. Lawrence
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144

Re: Criteria for Considering the Possible Development of New Capacity Zones

Dear Dave:

Pursuant to the request of the New York Independent System Operator, Inc. (“NYISO”), Multiple Intervenors hereby submits these comments regarding the criteria that should be considered when assessing whether the development of one or more new capacity zones is warranted, and the process for making such determination.¹ As further described below, Multiple Intervenors disagrees with the process proposed by the NYISO for addressing this matter. In addition, Multiple Intervenors continues to believe that the initial screening criterion proposed by the NYISO is woefully inadequate.

At the October 29, 2010 Installed Capacity Working Group meeting, the NYISO proposed to utilize a single factor to identify a potential new capacity zone for further consideration. Moreover, once such a capacity zone is identified, the NYISO proposed what it described as an abbreviated version of the demand curve reset process to determine whether the creation of such a capacity zone is warranted, thereby circumventing the normal stakeholder process. While the current stakeholder-approved process utilized for the triennial demand curve reset may be appropriate for that circumstance, it, and especially an abbreviated version thereof, is wholly inadequate for determining whether the creation of a new capacity zone is warranted. While the demand curve reset process is lengthy and contentious, it essentially is a data-driven process consisting of a discrete number of factors for consideration.

By contrast, while the decision of whether to create a new capacity zone involves data-driven factors, such decision is heavily influenced by a multitude of important policy and market development considerations that do not lend themselves to adequate consideration in a process similar to that utilized for the demand curve reset. Rather, such significant policy and market

¹ Multiple Intervenors previously submitted comments to the NYISO regarding this matter on June 19, 2009 and October 20, 2010, which are incorporated herein by reference.

development considerations are more appropriately decided within the context of the NYISO's existing shared governance structure.²

Moreover, the prognostication by certain market participants that the development a particular new capacity zone (*i.e.*, a Lower Hudson Valley capacity zone), heavily promoted by such market participants, would be unlikely to gain the requisite votes necessary to approve the development of such a capacity zone does not constitute a sound or sufficient basis upon which to circumvent the NYISO's normal stakeholder process.³ Although it is possible that the normal stakeholder process may require more time than the abbreviated process proposed by the NYISO, any such additional time is critical to ensuring that decisions, with impacts as significant as the possible creation of new capacity zones may have on the NYISO markets, are carefully and adequately examined prior to any final determination on their merits.

Furthermore, Multiple Intervenors continues to maintain that the single initial selection criterion currently proposed by the NYISO is inadequate. The resources, both in terms of time and dollars, to adequately assess whether the development of a new capacity zone is warranted will be substantial. In an effort to guard against the unnecessary expenditure of such resources, Multiple Intervenors contends that additional screening criteria are necessary in order to dispense with the need to further consider identified capacity zones the development of which would be inconsistent with maintaining robust, competitive markets. Accordingly, Multiple Intervenors recommends that the NYISO include additional, preliminary screening factors relating to economic considerations, based on analyzing price differentials on a net cost of new entry basis, and the existence of substantial market power concerns.

² Given that the NYISO and its Board of Directors repeatedly have lauded the shared governance structure as a cornerstone to the NYISO's success, Multiple Intervenors fails to comprehend why the NYISO would propose to circumvent this critical feature of its market design in addressing fundamentally important issues, such as the possible development of new capacity zones. In the event that the NYISO is unwilling to modify this aspect of its current proposal, Multiple Intervenors is prepared to pursue more formal action to force the issue.

³ The contention by such market participants that this matter should not be subject to the normal stakeholder process because it is a "pocketbook" issue fails to provide any significant credence to such contention. There are few, if any, issues upon which stakeholders vote which do not constitute "pocketbook" issues with financial implications to market participants. Thus, potential "pocketbook" impacts resulting from the decision of whether or not to create a new capacity zone form an inadequate basis to remove such decision from the normal stakeholder process (*i.e.*, similar to other "pocketbook" issues voted on routinely by stakeholders). Moreover, the normal stakeholder process includes the right to appeal an unfavorable decision to the NYISO Board of Directors, thereby providing a "check" on the reasonableness of that process and its outcome.

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While Multiple Intervenors acknowledges that certain levels of market power may be capable of being addressed through the development of appropriate market mitigation measures, there are potential cases of extreme market power that are not capable of being similarly addressed. In the event that a potential new capacity zone would give rise to such extreme market power issues, an appropriate screening criterion would properly recognize that further consideration such a capacity zone, on its own, is unwarranted.⁴

If you have any questions regarding these comments or would like to discuss them further, please do not hesitate to contact me directly. Thank you in advance for your prompt attention to, and consideration of, this matter.

Respectfully submitted,

COUCH WHITE, LLP

Garrett E. Bissell

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GEB/dap

Enclosure

cc: Peter Lemme (via E-mail)

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⁴ As Multiple Intervenors consistently has maintained in its comments regarding this matter, the consideration of a Lower Hudson Valley capacity zone – where three suppliers control more than 95 percent of the capacity within such zone – represents a zone that would suffer from such an extreme concentration of market power. The NYISO’s apparent continued consideration of the possible establishment of such a zone – notwithstanding the obvious and insurmountable market power concerns – is extremely troubling. Moreover, such continued consideration appears inconsistent with both the NYISO’s recent modifications to its mission statement to expressly recognize that providing benefits to consumers is a core function of the NYISO, and the recently espoused focus on consumer impacts.