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Memorandum

To: Dr. Nicole Bouchez
From: Chris LaRoe
Date: 3/11/10
Re: IPPNY Comments on Revised ROS Mitigation

IPPNY appreciates the opportunity to comment on the NYISO's revised proposed mitigation measure as presented to the 2/25/10 Market Issues Working Group. We appreciate that the NYISO's latest proposal has attempted to address two major flaws in the initial proposal, specifically: (i) the ability of a transmission owner (TO) to manipulate the SRE or DARU procedures to dispatch a specific unit and constrain it to the much lower mitigated bid threshold levels by claiming that the unit was the sole unit that could meet a local reliability need on the system when, in fact, two or more suppliers could have met the identified reliability need; and (ii) in instances where the proposed mitigation measures would apply, the inability of a unit that is limited by such measures to recover its full costs, which include a return on, and of, its investment notwithstanding the fact that the unit is needed to meet reliability requirements.

It should be noted that the comments included herein are intended solely to address the most recent changes to the NYISO's proposal and should not be interpreted as agreement by IPPNY or its members to the other elements of the NYISO's proposal. For instance, we continue to have serious concerns in a number of areas, not the least of which is the appropriateness of the threshold levels established by the NYISO in its proposal and the apparent lack of analysis to substantiate that such levels are sufficient for full variable cost recovery.

In addition, IPPNY has new concerns stemming from recent NYISO statements that the NYISO is interested in running generators on a more flexible basis under the new procedures to help accomplish its goal of reducing uplift. Generators must be consulted by the NYISO about the operating parameters of units, especially with respect to their ability to procure sufficient gas. This is an important issue that should be addressed in future MIWG discussions but is not the focus of this document.

NYISO Proposal:

TO Notification to NYISO of Reliability Supplier

- Proposed Resolution:
 - Increase the transparency of local reliability commitments via DARU or SRE
 - Implement a standardized process that identifies the reliability reason for which the generator was committed.

- The level of detail that can be made transparent is currently under review and we will report back at the next MIWG.
- This process would be under the control of the ISO.

IPPNY Comments:

IPPNY strongly supports and encourages transparency in NYISO procedures, policies, etc., where possible, and we support the NYISO's attempts to provide more transparency to the local reliability commitments via DARU or SRE. However, the level of detail that will be made available to market participants is a critical but yet-to-be defined element of this proposal. Identifying the reliability reason for the call alone is not likely to be sufficient information for market participants to determine whether there were additional resources that could have responded to the identified reliability need. Assuming that sufficient information was made available for either the called unit or another unit to question whether additional resources could meet the need, the burden of "calling foul" and challenging whether the proposed mitigation measures should have been applied should not fall on the shoulders of the generators. Rather, given that it is the actions of a TO that, if this new measure is implemented, would trigger it and directly impact the payment to a generator, the TO must be required to provide sufficient information to the NYISO for the NYISO to determine whether additional resources, including demand response, could meet the identified reliability need. Providing information to the NYISO, such as the basis for the need and the identification of other resources, will better inform the NYISO to address the immediate call as well as future calls.

IPPNY is not taking the position that the TO should not have the right to call a unit if a reliability need is identified; this is a question of the appropriate compensation in those instances.

Additionally, should the NYISO find that a TO is utilizing the SRE or DARU procedures to inappropriately identify a unit as the only unit to meet a reliability need so that the unit will be subject to the proposed tighter mitigation thresholds when other suppliers could have met the need, the NYISO must set forth penalty provisions in its Services Tariff to address this market manipulation. The issues that must be addressed in the tariff filing include: (i) What process will be available to a generator to recover its bid price? (ii) What repercussions will there be for such manipulation? (iii) How will the NYISO monitor for this behavior?

NYISO Proposal:

Interim Payments to Generators Needed to Meet Reliability Needs

- Proposed Resolution – Concept:
 - The NYISO proposes an interim payment stream for Generators that have announced their retirement and that are needed for reliability.
 - The proposed interim payment is intended to provide a interim source of cash flow to the unit until a rate can be established. It is not intended to cover the full fixed costs of the unit or to be a substitute for a rate.
 - A Generator formally declares its intent to retire to the PSC and NYISO per TB 185,
 - 90 days notice for generators between 2 MW and 79 MW, and 180 days notice for generators 80+ MW

A generator will be eligible for the interim payment if one of the following conditions are met:

- The generator has submitted its retirement notice to the PSC and the NYISO has determined that the unit is needed for **NYCA Reliability**.

The interim payment will end:

- The earlier of:
 - The determination by the NYISO that there no longer is an Imminent Threat to Reliability
 - The establishment of a reliability must run arrangement with a given Generator

in accordance with the provisions of applicable state law or in a FERC tariff.

- One year after the proposed retirement date in the notice provided to the PSC.

[The same criteria apply to local reliability needs, with the Local TO making the threat determination]

IPPNY Comments:

First, a clarification is required. The title of Slide 12 states that an interim payment will be available if one of the following conditions are met. However, the criteria that are then listed are set forth cumulatively (i.e., “and”, not “or”). Thus, it appears both criteria must be met. If that is not the NYISO’s proposal, the NYISO must revise the presentation to delineate the alternatives that must be met to qualify for this interim payment mechanism.

As stated in earlier comments to the NYISO, one of the most significant flaws with the NYISO’s proposal is that there is no way currently to trigger a reliability evaluation for a unit unless that unit puts in a retirement notice. A retirement notice is an extreme action that has repercussions with the community, shareholders, etc. Depending upon credit structures, it may even trigger debt covenants. Therefore, another mechanism is needed to allow a unit that is needed for reliability to enter into a cost-based contract, and, based on the NYISO’s latest proposal, initially to be eligible for some form of an interim payment. In instances where the proposed mitigation measures have been applied to a unit either by the TO to meet a local reliability need or by the NYISO to meet a statewide reliability need on a consistent basis, there should be a de facto finding that a reliability need exists and the unit should be eligible for the interim payment immediately.¹ In contrast, in instances where a unit believes it is needed for reliability (i.e. to meet LOLE requirements) but it is no longer economic (i.e., its projections of energy, ancillary services and capacity payments are not sufficient to meet its expected costs), the generator can request that the NYISO conduct an additional reliability analysis on its behalf. If this analysis identifies a reliability need, the NYISO should independently confirm such need. Once confirmed, the generator should be eligible for the interim payment immediately. It is important to remember that under these scenarios, it is always the Transmission Owner who decides a unit is needed to address a problem and that it is the only unit that can mitigate the reliability issue. Accordingly, the problem is being created by a deficiency within the transmission and/or distribution system. It should not be the responsibility of a generator to submit a retirement notice, rather it should be the responsibility of the Transmission Owner to explain how it will mitigate the regularly occurring reliability problem. One such mitigation might be a short term or longer term contract with a generator to address the problem.

In addition to the triggering mechanism, IPPNY also has concerns with the one-size-fits-all interim payment approach that the NYISO appears to be proposing. Although intended to be an interim payment, the level of fixed cost recovery that will be required will vary among generators based on such factors as fuel type, size and location. Thus, the NYISO should engage in a consultation with the generator to set the interim payment for that generator using a process that is akin to the process that is used to establish reference prices. While this payment must be determined on a generator-specific basis, IPPNY concurs with the NYISO’s proposal to remit this payment on a kW-month basis.

Additionally, it is unclear what will happen should one year elapse (thereby ceasing the interim payment), but there remains a reliability need that can only be solved by the generator in question but no RMR type payment has been arranged. If the process is stalled (e.g. a TO drags its feet conducting a reliability analysis) causing the one year expiration date to occur, the only party potentially harmed would be the generator. A better incentive to ensure the reliability analysis and the cost recovery process move forward in a timely

¹ Consistent with our earlier comments, the de facto trigger could be triggered by the amount of reliability calls for a generator (e.g. number of calls in a defined time period, percentage of operating hours as a result of calls, etc.)

manner would be for the interim payment to automatically increase after one year's time. If the generator that is needed for reliability is somehow being compelled to run under the proposed mitigation measures, and thus, does not recover its costs, that appears to constitute a "taking" of the facility and certainly is inappropriate.

Lastly, Slide 10 of the presentation references an "interim source of cash flow," explicitly stating that the interim payment is not intended to cover the full fixed costs of the unit. The NYISO has not provided a list specifying which costs would be excluded. Nor has the NYISO provided any support for its underlying premise that full fixed cost recovery is somehow not required. In instances where a resource is required to meet an identified reliability need, it must be permitted to recover its full costs. This is particularly true where, as here, the NYISO has proposed that a generator receiving this interim payment must meet all the obligations of an Installed Capacity Supplier. Additionally, this interim payment would be superseded retroactively to the effective date for any rates established by FERC. It can take several months for FERC to evaluate and rule on an application for cost recovery. While it is appropriate for the generator in question to receive the interim payment during this FERC process, it is also appropriate for FERC to make its rate retroactive to the date of the rate application filing.