COMMENTS OF TRANSCANADA CORPORATION ON A RECENT STATUTORY CHANGE TO THE NEW YORK CITY INDUSTRIAL AND COMMERCIAL INCENTIVE PROGRAM ("ICIP") AND ITS SIGNIFICANT IMPACT ON THE INSTALLED CAPACITY DEMAND CURVES FOR NEW YORK CITY

INTRODUCTION

TransCanada Corporation ("TransCanada"), through a wholly owned affiliate TransCanada Power Marketing Ltd. has been a member of the New York Independent System Operator, Inc. ("NYISO") Management Committee since 1999 and is a member of the Independent Power Producers of New York ("IPPNY"). TransCanada also will be an active market participant in the New York City market upon closing of its acquisition of the 2480 MW Ravenswood generating station, located in New York City, from National Grid. As such, TransCanada has a direct and substantial interest in the effect of the elimination of the Industrial and Commercial Incentive Program real property tax exemptions in New York City for utility property ("ICIP Exemption") on the adequacy of the New York City Demand Curves price signal.

As a member of IPPNY, TransCanada fully supports IPPNY's July 31, 2008 comments on this issue, and joins IPPNY in requesting that the NYISO determine that there are exigent circumstances associated with the change in law which eliminated the ICIP Exemption, which requires immediate revision of the NYC Demand Curves for the remainder of the 2008-2009 Capability Year and the 2009-2010 and 2010-2011 Capability Years. As a recent investor in the New York competitive electricity market, TransCanada wishes to provide additional comments to highlight its reliance on the NYISO to continue to guide the New York markets in the right direction towards efficiency of markets, including taking corrective actions when necessary and as called for in light of the elimination of the ICIP Exemption.

COMMENTS

Two fundamental assumptions supporting any investments in generation infrastructure in an organized RTO regional electric market regulated by the Federal Energy Regulatory Commission ("Commission" or "FERC") are that (i) the RTO will respond to and adapt its rules as necessary to address material changes to the market and its inputs and (ii) FERC will fulfill its continuing oversight obligations to ensure that market operations and outcomes continue to be just and reasonable. It is an RTO's continued responsibility to develop market mechanisms to provide effective price signals and to ensure adequate resources to support reliability. In turn, it is the Commission's obligation to ensure the competitiveness of organized wholesale markets.[1] The Commission recently noted that with respect to organized wholesale markets "effective competition protects consumers by providing greater supply options, encouraging new entry and innovation, and encouraging demand response and energy efficiency."[2]

The Commission has taken numerous actions over the last few decades to implement Congressional policy to expand the wholesale electric power markets to facilitate entry of new generators and to support competitive markets.[3] Such actions include acting on proposals developed by RTOs to ensure that adequate price signals exist in the market for both short-term and long-term electric power transactions.[4] To that end, the Commission has approved a demand

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[1] *Wholesale Competition in Regions with Organized Electric Markets*, 122 FERC ¶ 61,167, at P 1 (2008) (Notice of Proposed Rulemaking).

[2] *Id.* The Commission has stated that it "is aware of the need to vary the mix of regulation and competition based on the circumstances of the time, taking into account advances of technology, changes in economies of scale, and *new state and federal laws that affect the energy industry*." *Id.* at P 12.

[3] *Id.* at P13

[4] *Id.* at P 20.

curve for NYISO's capacity markets. These actions were designed, in large part, to encourage new investment in generation.[5] To continue to ensure that the FERC-approved NYC Demand Curve conveys an adequate and accurate price signal, which in turn will encourage market investment, the NYISO must now review the demand curves in light of the elimination of the ICIP Exemption.

The competitive markets in New York and adjacent regions have been subject to tremendous scrutiny of late, such as FERC's recent investigation into the justness and reasonableness of the NYISO's in-City Installed Capacity ("ICAP") market.[6] TransCanada commends the NYISO for remaining, throughout the ICAP proceedings, focused on finding, to the greatest extent possible, market based solutions to address the electric reliability needs of New York. As noted by IPPNY in this instant matter, and as articulated by others, the demand curve approach to pricing ICAP is a compromise. At its root, it compromises the reality that supply of ICAP cannot respond immediately to need, with the fact that ICAP is a planning tool that is necessary to ensure reliability over the medium to longer term. Prices under the demand curve are established by proxy and as such are difficult to set. However, there can be no dispute that the statutory elimination of the ICIP Exemption increases the cost of doing business for new generators in New York City. Therefore, to ensure the stability of the competitive markets, the NYISO must take immediate corrective action to adjust the proxy price for ICAP under the NYC Demand Curves.

There is little doubt that costs in our economy, particularly energy related costs, are increasing at an alarming rate. However, increasing energy costs do not justify ignoring

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[5] *Id.*

[6] *New York Independent System Operator, Inc.*, 118 FERC ¶ 61,182, at P 17, *reh'g denied*, 118 FERC ¶ 61,251 (2007) (FERC Docket No. EL07-39-000).

efficiency in markets and the underlying need for accurate price signals. Neither FERC nor an RTO can ignore a material change in the market, such as a state or federal law that affects generation costs, that further increases energy costs. Here, the legislators in New York have decided to eliminate the property tax exemption for generation assets in New York. As the NYISO's consultants opined, this ICIP Exemption has historically had a dramatic effect on the cost of new generation in New York City, to the tune of a 38% delta in costs. In light of this significant change, the NYISO must observe its obligation to monitor its markets and to take corrective actions as necessary to continue to send adequate and accurate pricing signals.

CONCLUSION

TransCanada, by its acquisition of Ravenswood, is making a substantial investment in energy infrastructure in New York. In addition to the initial investment, TransCanada and other generation owners must continue to invest money to improve the reliability, the emissions profile, and the thermal efficiency of the existing generation fleet. To ensure continued investment in new and existing energy infrastructure, the NYISO may not ignore the increase in generation costs resulting from the elimination of the ICIP Exemption.

For the foregoing reasons, TransCanada respectfully requests that the NYISO's Board of Directors determine that there are exigent circumstances associated with the change in law which eliminated the ICIP Exemption and caused the administratively determined Net CONE to no longer reflect the actual Net CONE in New York City. These exigent circumstances require immediate revision of the NYC Demand Curves for the remainder of the 2008-2009 Capability Year and the 2009-2010 and 2010-2011 Capability Years. TransCanada joins IPPNY and others in respectfully requesting that the Board expeditiously seek FERC approval under FPA §205 of the revised NYC Curves that result from the elimination of the ICIP Exemption.

Respectfully submitted,

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