

October 20, 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 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. As you may recall, Multiple Intervenors previously submitted its recommended criteria for the NYISO’s consideration (a copy of Multiple Intervenors’ previously-submitted comments are attached hereto as Attachment A for your convenience).

In reviewing the ever-changing criteria that NYISO staff has proposed over the past two months, Multiple Intervenors has become increasingly concerned that NYISO staff has shifted its focus from the development of appropriate criteria in the abstract to the development of criteria necessary to achieve a predetermined outcome – the consideration of a new capacity zone in the Lower Hudson Valley (i.e., NYISO Load Zones G-I).¹ Accordingly, Multiple Intervenors urges NYISO staff to conduct a comprehensive reevaluation of its most recently-proposed criteria to ensure that such criteria would lead to appropriate outcomes regarding the further consideration of developing any given hypothetical new capacity zone, consistent with the underlying purpose of the demand curves and the capacity markets administered by the NYISO.

Multiple Intervenors acknowledges that NYISO staff’s previously-proposed criteria relating to deliverability requirements may address Multiple Intervenors’ proposed criteria relating to the presence of persistent transmission constraints. However, NYISO staff’s most

¹ Multiple Intervenors contends that the Market Monitoring Unit’s apparent preoccupation with the creation of a Lower Hudson Valley capacity zone calls into question its impartiality with respect to this matter. Moreover, the blatant failure to at least acknowledge the significant and insurmountable market power concerns associated with the creation of a Lower Hudson Valley capacity zone in its repeated recommendations regarding same impugns the credibility of the Market Monitoring Unit and its capability to properly perform its duties to protect consumers by identifying market design flaws and market power issues.

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recent proposal fails to adequately address Multiple Intervenors' additional recommended criteria. Specifically, the most recent proposal fails to ensure that further consideration of a new capacity zone is rooted in economic considerations. The fundamental purpose of the demand curves is to provide appropriate economic signals regarding investment in new capacity resources, when needed, from a reliability perspective. Multiple Intervenors fails to comprehend how the abject failure to include criteria requiring the identification of persistent cost differentials can ensure a proper outcome that is consistent with the underlying purpose of the demand curves.

Additionally, Multiple Intervenors contends that criteria failing to consider the overall potential market impacts of creating a new capacity zone is a fundamental mistake. The purpose of developing a new capacity zone should be to further the development of a more robust, competitive market in New York. Accordingly, paramount issues, such as market power concerns, must be considered from the outset. In certain circumstances, it may be possible to address some level of market power concerns with appropriately designed mitigation measures. In other circumstances, however, the overwhelming concentration of market power that would exist in a potential new capacity zone alone could and should be grounds to abandon further consideration of such a capacity zone. For instance, in the Lower Hudson Valley, three suppliers currently control more than 95 percent of the market. Multiple Intervenors contends that under no circumstances can such an extreme concentration of market power be overcome through the implementation of mitigation measures. Market power concentrations of that or comparable magnitude should foreclose a region from further consideration as an independent capacity zone.

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

Garrett E. Bissell

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cc: Peter Lemme (via E-mail)

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ATTACHMENT A

June 19, 2009

VIA E-MAIL

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

Re: Criteria for Considering the Development of New Capacity Zones

Dear Dave:

Pursuant to your request, Multiple Intervenors submits these comments regarding the criteria that should be considered when assessing whether the development of one or more new capacity zones is warranted. New capacity zones should be considered only when the creation thereof is fundamental to fostering a more competitive, robust capacity market.

In evaluating the possible creation of any new capacity zone, the New York Independent System Operator, Inc. ("NYISO") should examine the following criteria:

1. whether the creation of the proposed new Locality would foster the development of a more competitive, robust capacity market by ensuring adequate liquidity within such Locality and avoiding the creation of significant market power issues within such Locality and/or any existing capacity zone;
2. whether actual, persistent transmission constraints in the New York State Transmission System significantly limit the deliverability of power from the remainder of the capacity zone in which the proposed new Locality currently is located into such Locality; and
3. whether the net cost of new entry in the proposed new Locality is significantly and persistently higher than the net cost of new entry in the capacity zone in which such Locality currently is located.

Inasmuch as the NYISO has administered the same three capacity zones since its inception, and there is no evidence that those zones have led to any shortage of needed capacity, Multiple Intervenors believes that the threshold to justify the development of one or more new capacity zones is extremely high.

Market Liquidity

The importance of critically examining the potential liquidity and opportunity for market power issues within any proposed new Locality cannot be overstated. New capacity zones that are unlikely to promote sufficient liquidity to ensure a properly functioning market within such Locality will not foster the development of a more competitive, robust capacity market – the principal rationale for considering any new capacity zone. Thus, any proposed new Locality must be fully examined to ensure that its creation would, in fact, foster the development of a more competitive, robust capacity market. Accordingly, the NYISO must critically examine all relevant factors, including the quantity of load, available capacity, number of unaffiliated suppliers, and relevant concentration of capacity held by such suppliers within the proposed new Locality.

Transmission Constraints

New capacity zones only should be considered on the basis of actual transmission constraints that significantly limit the deliverability of power from the remainder of the capacity zone in which the proposed new Locality currently is located into such Locality. While the results of the new “deliverability” test may be relevant, such information should not be dispositive because the test was not designed to represent a realistic case and, therefore, its results may not be accurate. Thus, while the results of the deliverability test may identify potential transmission constraints, only actual transmission constraints observed under realistic conditions should form the foundation for the consideration of developing any new capacity zones.

Cost Differential

The cost of building new generation within any proposed new Locality must be demonstrated to be significantly and persistently higher than the same cost within the remainder of the capacity zone in which such Locality currently is located. This criterion ensures that new capacity zones only are considered, if at all, on the basis of significant cost differences that have existed for a continuous period of time and are likely to continue into the foreseeable future.

Multiple Intervenors is aware that certain market participants have advocated for the consideration of developing a new Locality consisting of Load Zones G-I. Examination of the above recommended criteria will be critical in performing a proper assessment of whether the creation of such a new Locality is warranted.

Based on our review of the 2009 Load & Capacity Data report (the “2009 Gold Book”), Multiple Intervenors has significant concerns that the creation of such a new capacity zone would lead to unjustifiable market power issues. In fact, it appears that

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approximately 96 percent of the total unforced capacity in Load Zones G-I would be controlled by only three suppliers. Such a concentration of market power, alone, may warrant rejection of any proposals to create a new capacity zone consisting of Load Zones G-I.

If you have any questions regarding these recommendations 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

Garrett E. Bissell

GEB/dap

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