

# STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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February 27, 2014

SENT VIA ELECTRONIC FILING  
Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Room 1-A209  
Washington, D.C. 20426

Re: Docket No. ER14-500-000 - New York Independent  
System Operator, Inc.

Dear Secretary Bose:

For filing, please find the Request for Rehearing of the New York State Public Service Commission in the above-entitled proceeding. The parties have also been provided with a copy of this filing, as indicated in the attached Certificate of Service. Should you have any questions, please feel free to contact me at (518) 473-8178.

Very truly yours,



David G. Drexler  
Assistant Counsel

Attachment  
cc: Service List

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System        )     Docket No. ER14-500-000  
Operator, Inc.                         )

REQUEST FOR REHEARING OF THE NEW YORK STATE  
PUBLIC SERVICE COMMISSION

INTRODUCTION

On November 29, 2013, the New York Independent System Operator, Inc. (NYISO) filed amendments to its Services Tariff, proposing updated Installed Capacity (ICAP) Demand Curves for the three upcoming Capability Years (i.e., 2014/2015, 2015/2016, and 2016/2017) (November 2013 NYISO Filing). The NYISO proposed, among other matters, to phase-in the Demand Curves for Zones G through J (i.e., the Lower Hudson Valley New Capacity Zone (NCZ)) in order to mitigate the price impacts on consumers.

On January 28, 2014, the Federal Energy Regulatory Commission (FERC or Commission) accepted various provisions in the November 2013 NYISO Filing, but rejected the proposal to phase-in the Demand Curves in the NCZ (January 2014 Order).<sup>1</sup> The Commission concluded that a phase-in would adversely affect incentives to supply new capacity. The New York State Public

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<sup>1</sup> Docket No. ER14-500-000, NYISO, Order Accepting Tariff Filing Subject to Condition and Denying Waiver, 146 FERC ¶61,043 (issued January 28, 2014) (January 2014 Order), at ¶¶162-65.

Service Commission (NYPSC) hereby requests rehearing, pursuant to Rule 713 of the Commission's Rules of Practice and Procedure, to the extent the January 2014 Order rejected a phase-in for the Lower Hudson Valley NCZ.<sup>2</sup>

As discussed more fully below, the NYPSC continues to oppose the creation of the NCZ, but, in the alternative, supports the phase-in of the Demand Curves for the NCZ to ensure ICAP prices remain just and reasonable for consumers in the Lower Hudson Valley. The NYPSC maintains that the evidence clearly supports a conclusion by the Commission that a phase-in approach is needed to ensure ICAP prices are just and reasonable. We estimate that the price impacts may be over \$230 million per year, and well over half a billion dollars over the three-year Demand Curve reset period. The delay or phase-in of the NCZ Demand Curves would avoid these unreasonable price impacts on consumers within the NCZ, while not interfering with the Commission's objective of sending appropriate price signal to attract new entry in the NCZ. The NYPSC has sought rehearing of the Commission's August 2013 Order in a separate proceeding, based on similar grounds, although the NYPSC's request for

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<sup>2</sup> 18 C.F.R. §385.713.

rehearing is still pending.<sup>3</sup> We urge the Commission to act on the NYPSC's requests for rehearing of the August 2013 Order and the January 2014 Order, and find, in the absence of postponing the NCZ, that a phase-in approach is warranted for the NCZ for the reasons discussed herein.

### REQUEST FOR REHEARING

#### I. STATEMENT OF ISSUE

Whether FERC's decision rejecting the phase-in of the New Capacity Zone Demand Curves would result in unjust and unreasonable prices, and was otherwise arbitrary, capricious, inconsistent with reasoned decision-making, an abuse of discretion, or otherwise not in accordance with law.<sup>4</sup>

#### II. DISCUSSION

The Commission's Decision Rejecting the NYISO's Proposal to Phase-In the New Capacity Zone Demand Curves Results in Unjust And Unreasonable Prices and is Otherwise Inconsistent With the Law

The Commission's January 2014 Order rejected the NYISO's proposal to phase-in the ICAP Demand Curve for the NCZ

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<sup>3</sup> Docket No. ER13-1380-000, NYISO, Order Accepting Proposed Tariff Revisions and Establishing a Technical Conference, 144 FERC ¶61,126 (issued August 13, 2013) (August 2013 Order), at ¶¶25-26. (finding that a phase-in would delay the capacity market's ability to send more efficient investment price signals to attract and maintain sufficient capacity to meet local demand).

<sup>4</sup> In reviewing agency determinations, courts shall "hold unlawful and set aside agency action, findings, and conclusions found to be...arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,...or, unsupported by substantial evidence." 5 U.S.C. §706; see also, Farmers Union Cent. Exchange, Inc. v. F.E.R.C., 734 F.2d 1486 (D.C. Cir. 1984).

based on a finding that "a phase-in will not ensure that market-clearing prices will guide efficient investment decisions to add or retire capacity resources and meet reliability needs in this region."<sup>5</sup> The Commission noted that it previously concluded in its August 2013 Order that a phase-in would delay the capacity market's ability to send more efficient investment price signals to attract and maintain sufficient capacity to meet local demand.<sup>6</sup> The Commission's determinations in its Orders erroneously rejected the evidence provided by the NYPSC.

As the NYPSC has repeatedly demonstrated in its filings, there are new State transmission initiatives underway that will address the deliverability constraint identified by the NYISO as the basis for establishing the NCZ. In particular, two programs that address recommendations made by New York Governor Andrew Cuomo's Energy Highway Task Force will result in the addition of major transmission facilities in the corridor identified in the NCZ Filing as congested.<sup>7</sup> The first of these sought transmission solutions that can be constructed by the

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<sup>5</sup> January 2014 Order, at ¶162.

<sup>6</sup> Docket No. ER14-500-000, NYISO, Order Accepting Tariff Filing Subject to Condition and Denying Waiver, 146 FERC ¶61,043 (issued January 28, 2014) (January 2014 Order) (citing NYISO, Order Accepting Proposed Tariff Revisions and Establishing a Technical Conference 144 FERC ¶61,126 (issued August 13, 2013) (August 2013 Order), at 25-26.

<sup>7</sup> See, Energy Highway Blueprint, pp. 37-49, [http://www.nyenergyhighway.com/Content/pdf/Blueprint\\_FINAL.pdf](http://www.nyenergyhighway.com/Content/pdf/Blueprint_FINAL.pdf)

summer of 2016; the NYPSC recently decided that several of the proposed transmission solutions should proceed.<sup>8</sup> The second proceeding solicited alternating current transmission proposals, with the goal of adding at least 1,000MW of transfer capability over the Upstate New York/Southeast New York and Central East interfaces.<sup>9</sup> The Energy Highway Blueprint presented to the Governor calls for construction of the projects selected in this latter process by 2018.<sup>10</sup>

The progress of the State programs raises serious doubts regarding the effectiveness of implementing the full NCZ Demand Curves at this time. In light of the NYPSC's ongoing proceedings, potential new entrants contemplating entry in the Lower Hudson Valley three or four years from now would be ill-advised to look at the prices set in the summer of 2014 as an indicative "long run price signal." Implementing the NCZ in 2014 will provide a misleading price signal to such new entrants, and will only result in a short-term economic windfall for incumbent generators in the Lower Hudson Valley. This

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<sup>8</sup> Case 12-E-0503, Generation Retirement Contingency Plans, Order Accepting IPEC Reliability Contingency Plans, Establishing Cost Allocation and Recovery, and Denying Requests for Rehearing (issued November 4, 2013).

<sup>9</sup> Case 12-T-0502, Alternating Current Transmission Upgrades, Order Instituting Proceeding (issued November 30, 2012). Application materials were submitted to the NYPSC on about October 1, 2013, and are currently being considered.

<sup>10</sup> See, Energy Highway Blueprint, p. 40.

skewed short-term price bears no relation to the long-term price signal the NCZ is intended to produce, and would be completely meaningless for prospective developers.

The Commission's rejection of the NYPSC's arguments supporting the phase-in was apparently based on the "potential for shorter term supply responses, i.e., demand response and repowering options, to meet capacity needs."<sup>11</sup> However, the Commission's new emphasis on short-term supply ignores FERC's rationale for approving the NCZ, which stressed the importance of a long-term price signal.<sup>12</sup> Any supply responses, therefore, should be looking to the long-term price signal, rather than the price signal over the next three years. Accordingly, the Commission should conclude that its goal of creating the NCZ to provide a long-term price signal would be successfully achieved by allowing for the phase-in approach advocated by the NYISO.

The result of the Commission's January 2014 Order is that consumers will be forced to pay hundreds of millions in additional Installed Capacity costs within the NCZ, with no concomitant benefits. The Commission may not lawfully impose

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<sup>11</sup> January 2013 Order, at ¶164.

<sup>12</sup> The August 2013 Order indicated that "creating a new capacity zone is necessary to provide more accurate price signals over the long run to encourage new investment in the new capacity zone when it is needed." August 2013 Order, at ¶25.

such a burden on ratepayers.<sup>13</sup> Current estimates are that the price impacts may be over \$230 million per year, and well over half a billion dollars over the three-year Demand Curve reset period.<sup>14</sup>

Moreover, the Commission erroneously determined that "sufficient notice [was] provided so that a phase-in is not necessary to further address 'rate shock' to consumers."<sup>15</sup> By citing to Entergy's arguments that the price impacts "have been considered extensively throughout a seven-year time period," the Commission failed to recognize that the price impacts were only made available by the NYISO as late as March 2013, and even then were considerably understated.<sup>16</sup> The Commission should therefore recognize the need to protect consumers from an abrupt and unreasonable price increase, and phase-in the NCZ Demand Curves

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<sup>13</sup> This one-sided approach fails to ensure prices to consumers are not excessive, and is impermissible. See, Farmers Union Cent. Exchange, Inc. v. F.E.R.C., 734 F.2d 1486, 1501-02 (D.C. Cir. 1984) (citing FERC v. Pennzoil Producing Co., 439 U.S. 508, 517 (1979); Permian Basin Area Rate Cases, 390 U.S. 747, 797 (1968)); see also FPC v. Natural Gas Pipeline Co., 315 U.S. 575, 585 (1942).

<sup>14</sup> See, Docket No. ER14-500-000, Motion for Leave to Answer and Answer of the New York Transmission Owners, Exhibit A, p. 10 (filed January 10, 2014).

<sup>15</sup> January 2014 Order, at ¶163.

<sup>16</sup> See, New Capacity Zone: Additional Impact Analysis, meeting materials presented by Tariq N. Niazi at NYISO ICAP Working Group on March 28, 2013.



consistent with its prior decisions designed to address rate shock.<sup>17</sup>

CONCLUSION

In accordance with the discussion above, the NYPSC respectfully requests that the Commission grant the foregoing Request for Rehearing.

Respectfully submitted,



Kimberly A. Harriman  
Acting General Counsel  
Public Service Commission  
of the State of New York  
By: David G. Drexler  
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3 Empire State Plaza  
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(518) 473-8178

Dated: February 27, 2014  
Albany, New York

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<sup>17</sup> See, NYISO, 103 FERC ¶61,201, at ¶6 (2003) (recognizing the need to phase-in the ICAP Demand Curves when first implemented in New York).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated: Albany, New York  
February 27, 2014

A handwritten signature in cursive script, appearing to read "David G. Drexler", written over a horizontal line.

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