

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

PUBLIC SERVICE COMMISSION

GARRY A. BROWN

Chairman

PATRICIA L. ACAMPORA

MAUREEN F. HARRIS

JAMES L. LAROCCA

GREGG C. SAYRE

Commissioners



PETER MCGOWAN

General Counsel

JEFFREY C. COHEN

Acting Secretary

May 21, 2013

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. ER13-1380-000 - New York Independent
System Operator, Inc.

Dear Secretary Bose:

For filing, please find the Notice of Intervention and Protest of the New York State Public Service Commission in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 473-8178.

Very truly yours,

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

David G. Drexler
Assistant Counsel

Attachment

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System) Docket No. ER13-1380-000
Operator, Inc.)

NOTICE OF INTERVENTION AND PROTEST
OF THE NEW YORK STATE
PUBLIC SERVICE COMMISSION

NOTICE OF INTERVENTION

On April 30, 2013, the New York Independent System Operator, Inc. (NYISO) filed proposed tariff revisions to establish a New Capacity Zone (NCZ) (NCZ Filing). The New York State Public Service Commission (NYPSC) hereby submits its Notice of Intervention and Protest in the above-captioned proceeding pursuant to the Federal Energy Regulatory Commission's (FERC or Commission) Combined Notice of Filings #1, issued on May 1, 2013, and Rule 208 (18 C.F.R. §385.214) of the Commission's Rules of Practice and Procedure.

Copies of all correspondence and pleadings should be addressed to:

David Drexler
Assistant Counsel
New York State Department
of Public Service
Three Empire State Plaza
Albany, New York 12223-1350
david.drexler@dps.ny.gov

William Heinrich
Manager, Policy Coordination
New York State Department
of Public Service
Three Empire State Plaza
Albany, New York 12223-1350
william.heinrich@dps.ny.gov

BACKGROUND

The NCZ Filing explains that the NYISO identified a Highway deliverability constraint that drives the need to create an NCZ in NYISO Load Zones G, H, I, and J.¹ The purported purpose of this NCZ is to "send more efficient price signals, enhance reliability, mitigate potential transmission security issues, and serve the long-term interests of all consumers in New York State."²

The NCZ Filing also requests that FERC accept the NYISO's previously proposed market power mitigation rules applicable to the NCZ. The NYISO seeks to implement the NCZ by May 1, 2014, to coincide with the start of the 2014/2015 Capability Year.

DISCUSSION

The NYPSC is opposed to the NCZ as proposed by the NYISO in the NCZ Filing. While NCZs have the potential to send appropriate price signals to retain existing generation resources and to encourage the entry of new resources, the NYISO's proposal is unjust and unreasonable for several reasons.

¹ Capitalized terms that are not otherwise defined herein have the meaning set forth in the NCZ Filing, the NYISO Services Tariff, or the NYISO Open Access Transmission Tariff.

² NCZ Filing, p. 1.

In particular, the NYISO fails to recognize the significant efforts currently underway by the NYPSC to address the constraints that are purportedly driving the need for an NCZ in the first place. These efforts raise serious doubts regarding the effectiveness of creating an NCZ at this time, while requiring ratepayers to pay hundreds of millions in additional Installed Capacity costs within the NCZ with no concomitant benefits to consumers.

In addition, the NYISO's proposal does not include a mechanism for determining when the NCZ is no longer necessary and should be eliminated. Such a mechanism should be an integral part of the NYISO's tariff, in the same way that current tariff provisions automatically trigger the identification of a need for creating a new NCZ. Finally, the NYISO seeks to impose unreasonable mitigation measures on new entrants in this NCZ, which will likely have the effect of deterring new entry, which the NCZ is designed to incent. It is ironic that the NYISO has identified the need for new entry in the NCZ but insists upon applying mitigation measure that will have the effect of deterring this new entry.

For these reasons, which are discussed more fully below, the NYPSC is opposed to the creation of the NCZ at this time. Accordingly, the NYPSC respectfully requests that the

Commission either reject the NYISO's NCZ Filing, or direct the NYISO to address the deficiencies identified herein.

I. The Commission Should Find That There Is No Need To Implement An NCZ At This Time, And That the NCZ Will Result In Unjust and Unreasonable Rates

The NCZ Filing fails to consider the State's on-going efforts to address reliability matters and transmission constraints. The NCZ Filing ignores the fact that the NYPSC has recently undertaken two important proceedings that will result in the construction of major new transmission facilities in the 2016-2018 timeframe, representing a ratepayer investment of close to \$2 billion in New York's transmission infrastructure.³ One of the specific goals of these efforts is alleviating the congestion that the NYISO has identified as causing the deliverability issues that triggered the need to create the NCZ.⁴

For example, in one case the NYPSC has solicited proposals for new generation and transmission projects that could be placed in-service by the summer of 2016 in the event that the Indian Point nuclear units are not relicensed.⁵ In the

³ See, Energy Highway Blueprint, http://www.nyenergyhighway.com/Content/pdf/Blueprint_FINAL.pdf

⁴ Case 12-T-0502, Alternating Current Transmission Upgrades, Order Instituting Proceeding (issued November 30, 2012).

⁵ Case 12-E-0503, Generation Retirement Contingency Plans, Order Instituting Proceeding and Soliciting Indian Point Contingency Plan (issued November 30, 2012).

other, the NYPSC is seeking to secure approximately 1000 MW of AC transmission upgrades to address constraints on the Upstate New York-Southeast New York and Central-East interfaces, and to place such upgrades in-service by 2018.⁶ The resource additions arising out of these initiatives will substantially eliminate the system limitations giving rise to this NCZ proposal.

The NYPSC is particularly concerned that implementation of the NYISO's proposal at this time would cost ratepayers hundreds of millions of dollars without achieving any benefits. The NYISO estimated the annual impact would have been approximately \$150 million in one year, had the new zone been in place for 2013. Therefore, the "price signal" that this new zone is intended to create could cost ratepayers almost half a billion dollars over a three year demand curve reset period. However, the benefits to ratepayers from implementing this new zone in 2014 are merely speculative, and, for the reasons noted above, are unlikely to materialize as the planned transmission upgrades will come into operation over the same period. Therefore, the Commission should not conclude that establishing an NCZ will be an effective means of attracting new merchant entry in the short-term; rather, the Commission should recognize that the resulting higher ICAP prices would only provide a

⁶ Case 12-T-0502, Alternating Current Transmission Upgrades, Order Instituting Proceeding (issued November 30, 2012).

short-term windfall to some capacity suppliers, and an enormous cost increase to the ratepayers who will also be responsible for the costs of the NYPSC's transmission upgrades.

The NCZ Filing inappropriately places emphasis on Potomac Economics' 2012 State of the Market Report for the proposition that the lack of a price signal in the Lower Hudson Valley (LHV) zones has contributed to a reduction of 1 GW of Unforced Capacity since 2006. Most of this generation, however, was coal-fired generation, and its unavailability should not be attributed to the lack of an NCZ, but rather environmental and economic challenges facing such generation units. In fact, over 800 MW of this LHV generation reduction was due to the retirement of two coal-fired facilities (i.e., Lovett units 3-5, and Danskammer units 1-6). The reason for retirement of the Lovett facilities, as listed in the NYISO 2008 Gold Book, was attributed to "environmental restrictions."

Regarding the Danskammer facility, it was severely damaged by Superstorm Sandy. As stated in Danskammer's notice to discontinue operations, "Dynergy has retained contractors to assess the full extent of the damage at the Facility. Their assessment indicates that the flooding damaged approximately 90% of the motors and 60% of the switchgear in the Facility. Based on this assessment, the estimated costs to repair the Danskammer Facility are significant." There is no evidence to suggest that

higher capacity prices would have retained those resources, especially in light of the current and forecasted natural gas prices. Similarly, there is no evidence to conclude that an NCZ price signal taking effect in the summer of 2014 will attract new resources in the short-term given the pending Energy Highway initiatives.

II. The Commission Should Require A Mechanism For Determining Whether An NCZ Is No Longer Needed

Based on the NCZ Filing, it appears that once the NCZ is created, prices in Load Zones G-J would never again be allowed to equilibrate with Rest-of-State (ROS) prices. Due to the way in which the NYISO's proposal is structured, with no process to eliminate zones when a deliverability issue dissipates, unrealistic levels of excess capacity in the NCZ would be required for prices to ever again equal those in the ROS market. If implemented properly, transmission system improvements, such as those resulting from the NYPSC's on-going proceedings noted above, may eliminate the need for the NCZ. However, the NYISO has failed to develop a process to allow for NCZs to be eliminated, even when transmission system improvements have eliminated the need for them.

In essence, the NYISO's proposal would create a permanent price increase for ratepayers in Load Zones G - I in order to reflect temporary transmission constraints, with no way

to undo that price increase, even if the transmission system has been upgraded to eliminate those constraints. Therefore, the NYPSC strongly encourages the Commission to direct the NYISO to develop a just and reasonable mechanism for determining when the elimination of an NCZ is warranted, and to provide a mechanism to eliminate unneeded zones.

III. The Commission Should Reject The Proposed Mitigation Measures For The NCZ, Which Are Unjust and Unreasonable

The NYISO seeks to apply to the NCZ the same "buyer-side mitigation" rules that were crafted for the particular circumstances facing the New York City market. However, as was stated in the NYPSC's Protest filed on July 20, 2012,⁷ which is incorporated here by reference, the NYISO has not adequately justified the need to impose mitigation upon new entrants in the NCZ. The presumption of mitigation and the uncertainty that it entails will most likely discourage new entry and harm the competitiveness of the NYISO markets.

Under the proposed rules, even a pure merchant entrant would face the risk that it would be precluded from selling into the capacity market, thus effectively receiving a market price of \$0. This risk will inevitably increase the difficulty of

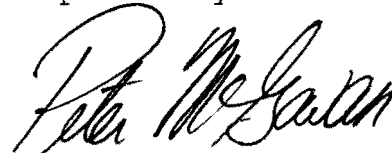
⁷ Docket ER12-360-001, New York Independent System Operator, Inc., NYPSC Notice of Intervention and Protest (filed July 20, 2012).

financing merchant projects, and potentially exclude them from the capital markets altogether. Thus, while the "buyer-side mitigation" rules were intended to encourage merchant entry, their actual implementation will likely have the opposite effect. These rules would likely serve as a barrier to new entry, and act counter to the rationale stated for creating this new zone in the first place (i.e., to encourage the entry of new resources). The application of those rules to the NCZ should therefore be rejected.

CONCLUSION

In accordance with the foregoing discussion, the Commission should reject the NYISO's NCZ Filing, or direct the NYISO to address the deficiencies identified above.

Respectfully submitted,



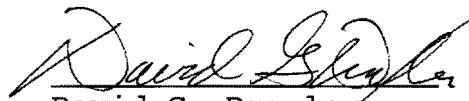
Peter McGowan
General Counsel
Public Service Commission
of the State of New York
By: David G. Drexler
Assistant Counsel
3 Empire State Plaza
Albany, NY 12223-1305
(518) 473-8178

Dated: May 21, 2013
Albany, 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
May 21, 2013



David G. Drexler
Assistant Counsel
3 Empire State Plaza
Albany, NY 12223-1305
(518) 473-8178