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Public Service Commission

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July 14, 2017

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. AD17-11-000 – State Policies and Wholesale
Markets Operated by ISO New England Inc., New York
Independent System Operator, Inc., and
PJM Interconnection, L.L.C.

Dear Secretary Bose:

For filing, please find the Post-Technical Conference Reply Comments of the New York State Public Service Commission in the above-entitled proceeding. The parties have also been provided 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 (212)-417-3173.

Very truly yours,

Scott A. Weiner

Scott A. Weiner
Deputy, Markets & Innovation

Attachment
cc: Service List

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

State Policies and Wholesale)	
Markets Operated by ISO New)	
England Inc., New York)	Docket No. AD17-11-000
Independent System Operator,)	
Inc., and PJM)	
Interconnection, L.L.C.)	

**POST-TECHNICAL CONFERENCE REPLY COMMENTS OF THE
NEW YORK STATE PUBLIC SERVICE COMMISSION**

INTRODUCTION

On May 1-2, 2017, the Federal Energy Regulatory Commission (FERC or the Commission) held a technical conference on the interplay between State policies and wholesale markets operated by ISO New England Inc., New York Independent System Operator, Inc. (NYISO), and PJM Interconnection, L.L.C. On May 23, 2017, FERC issued a notice (May 2017 Notice) inviting post-conference comments on several matters and establishing June 22 and July 7, 2017, as the deadlines for initial and reply comments, respectively. The Commission subsequently extended the reply comment deadline to July 14, 2017.¹

The New York State Public Service Commission (NYPSC) hereby submits its reply comments in response to the Notice of Extension of Time.² These reply comments address several key matters. Please note, however, that the NYPSC's silence on other issues should not

¹ Docket No. AD17-11-000, State Policies and Wholesale Markets, Notice of Extension of Time (issued June 30, 2017) (Notice of Extension of Time).

² The views expressed herein are not intended to represent those of any individual member of the NYPSC. Pursuant to Section 12 of the New York Public Service Law, the Chair of the NYPSC is authorized to direct this filing on behalf of the NYPSC.

be construed as assent to the comments expressed by others concerning such issues. Based on the volume of initial comments filed and the substantial number of positions advanced in those comments, it is impossible to address all positions advanced therein within the time and page limitations set forth in the May 2017 Notice.

DISCUSSION

I. The Commission’s Goal Should Be To Harmonize Wholesale Markets With Legitimate State Policy Objectives

The Commission’s evaluation of integrating State policies within wholesale markets should not be viewed as a substitution for, or replacement of, State policies. The goal instead should be to harmonize the two so that wholesale markets remain competitive without impeding the implementation of State policy initiatives. Market changes should not be viewed as a replacement for State policies. Market-based solutions must work in conjunction with State policy initiatives, not against them or in place of them. The NYPSC emphasized in its pre- and post-technical conference statements the critical need to harmonize the interactions between wholesale markets and legitimate State policy objectives.

This point – and a related point – bear repetition here to address initial comments that either directly opposed this goal, or ambiguously suggested such opposition. First, the NYISO, for instance, described certain State policy initiatives as a mere “bridge” until such time that others considered a potential market-based mechanism to implement public policy.³ The

³ Docket AD17-11, supra, Post-Technical Conference Comments of the New York Independent System Operator, Inc. (dated June 22, 2017) at 2 (NYISO Comments). The NYPSC described in its Initial Comments its qualified support for this initiative. (See, Docket AD17-11-000, supra, Post-Technical Conference Comments of the New York State Public Service Commission (dated June 22, 2017) at 11-12.

NYPSC understands from discussions with the NYISO that it intends the mechanism, if implemented, to complement, but not replace, other State policies addressing carbon or other policy objectives such as certain local externalities, local reliability, and fuel diversity, to name a few. Although it remains unclear whether the NYISO will propose a market-based mechanism to internalize the cost of carbon, the NYISO and the New York State Department of Public Service have engaged in preliminary discussions on how to harmonize potential market rule changes and the legitimate State policy objective. Such a mechanism can be valid and appropriate if, and only if, it is an effective instrument for implementing State carbon policy goals.

Second, it is also important to emphasize the point that harmonizing the interactions between wholesale markets and legitimate State policy objectives means, in part, that States may continue to pursue their legitimate policy objectives by market measures, including contracts, without being confined to the NYISO's wholesale markets. This includes, but is not limited to, carbon policy objectives, and means that harmony cannot be achieved if it requires States to be forced to solely rely on the NYISO's wholesale markets as the only means of accomplishing its objectives.

Finally, as the NYPSC has advocated previously in this proceeding, "market-based solutions" in the context of this discussion must include all markets. Distributed solutions and other technologies are becoming increasingly economic and may require new competitive markets, and/or new market rules, to adequately support their participation. This will require market rules that support the creation of the grid of the future rather than merely fine-tuning the grid of the past. Market-based solutions, therefore, must not be limited to NYISO's "traditional" wholesale energy, capacity, and ancillary services markets, and must include distributive market

solutions, retail markets, contractual markets and other emerging markets. Market rules that exclude distributed resources and other non-traditional resources from potential consideration as market-based solutions inappropriately favor incumbent market participants, are inherently anti-competitive, and ultimately will slow the development of markets needed to accommodate innovation.

II. The Commission Should Support, And Not Interfere With, Discussions Between RTOs/ISOs And Their Stakeholders That Address Complex Matters Of Public Policy

Initial comments submitted by incumbent market participants and their interest group representatives attempt to create a false urgency and demand Commission actions – at least within the NYISO markets - that advance their self-interests, rather than improve market competition. For instance, the Independent Power Producers of New York, Inc. (IPPNY) urge immediate Commission action (after a quorum is restored) directing the NYISO to file proposals that (i) internalize the cost of carbon in the wholesale market, and (ii) vastly expand the application of buyer-side mitigation (BSM) rules by applying them throughout New York State.⁴ Similarly, NRG Energy, Inc. (NRG) advocates that the Commission should pursue an aggressive agenda in the initial days after a quorum is restored, including the affirmation of a commitment to a “strong [Minimum Offer Pricing Rule]” (i.e., BSM).⁵ The actions that NRG recommends, however, seem designed to protect its pecuniary interests rather than addressing the higher-level issues that are fundamental to this proceeding.

⁴ Docket AD17-11-000, supra, Initial Post-Technical Conference Comments of Independent Power Producers of New York, Inc. (dated June 22, 2017) at 2 (IPPNY Comments).

⁵ Docket AD17-11-000, supra, Initial Post-Technical Conference Comments of NRG Energy, Inc. (dated June 22, 2017) at 6, 17 (NRG Comments).

These – and any similar – arguments should be categorically rejected by FERC. This proceeding should instead remain focused on the collaborative discussions necessary to enable the broader goal of harmonizing wholesale markets and the implementation of legitimate State policy objectives. This effort requires broad-based stakeholder input and the careful design of rule changes in the context of a complex and highly-technical competitive market. Any rule changes emerging from this process must preserve market competition without impeding the State’s ability to pursue legitimate policy objectives. IPPNY and NRG instead recommend unilateral NYISO action and hasty market design changes that would impede State policy implementation.

Moreover, IPPNY and NRG advocate that State action should be countered by the aggressive expansion of BSM in New York. This proposal is unwarranted, unnecessary, and inappropriately distorts the BSM rules by using them to address more than potential monopsony power. The proposal also continues the inappropriate transformation of BSM into a biased, “missing money” feed-in tariff for incumbent generators that also interferes with legitimate State policy objectives. The BSM rules should instead be refocused on their intended purpose – *i.e.*, limiting the anti-competitive exercise of monopsony power in discrete capacity zones in New York State.

Efforts to harmonize State policy and wholesale market rules require collaboration and deliberation among interested parties, not hasty unilateral action by Regional Transmission Organizations and Independent System Operators (RTOs/ISOs). There is a strong need to achieve this harmonization, but there is no need for immediate regulatory action. The reckless pace urged by IPPNY and NRG is more likely to result in a flawed outcome than a market improvement.

FERC staff immediately should convene discussions with State regulators, as discussed in the NYPSA's prior statements in this docket. Continuing discussions should drive towards harmonizing markets and State public policy initiatives, where overlap exists.

III. The Commission Should Expressly Recognize The Legitimate State Interests In Pursuing Public Policies

The United States Supreme Court has recognized that: (1) the Federal Power Act (FPA) apportions Federal and State regulatory authority to the wholesale and retail markets, respectively; (2) the two markets are inextricably linked; and (3) Federal and State powers under the FPA are complementary.⁶ Regulatory actions in one market may impact the other without violating the FPA's delegations of authority, provided that the action does not exceed jurisdictional limits.⁷ FERC thus "cannot take an action transgressing" its limited wholesale rate jurisdiction "no matter how direct, or dramatic" the wholesale rate impact arising from a State program or action in the retail market.⁸

"[T]he regulation of utilities is one of the most important of the functions traditionally associated with the police power of the States."⁹ The Commission has recognized the States' "broad powers...to direct the planning and resource decisions of utilities under their jurisdiction."¹⁰ Further, States "may order utilities to purchase renewable generation" and promote renewable and other supply resources through means such as accounting for

⁶ FERC v. Elec. Power Supply Ass'n, 136 S. Ct. 760, 775-76, 780 (2016) (citations omitted).

⁷ Id. at 776 (citations omitted).

⁸ Id. at 775.

⁹ Ark. Elec. Coop. Corp. v. Ark. Pub. Serv. Comm'n, 461 U.S. 375, 377 (1983).

¹⁰ Docket Nos. EL95-16-001, et al., Southern California Edison Company, Order on Requests for Reconsideration, 71 FERC ¶ 61,269, 62,080 (issued June 2, 1995).

environmental costs, or providing tax credits or direct subsidies.¹¹ This precedent and, more broadly, the FPA, are consistent with the States’ sovereign authority to protect the health and welfare of their citizens via regulations that impact the energy industry (e.g., to reduce air pollution).¹²

It is important to recognize that State action is compatible with market competition. Coordination across jurisdictional lines can enable legitimate State policy initiatives under market rules that promote competition. The Regional Greenhouse Gas Initiative (RGGI), for example, may serve as a model of how to devise policy solutions that promote competition. RGGI is a joint initiative among nine states, including New York, to cap and reduce carbon dioxide emissions from the power sector.¹³ Its development required collaboration and close coordination among member states.

The Commission should expressly acknowledge the legitimate State interests in pursuing public policies and, under relevant law and precedent, such policies may have incidental effects on the wholesale market. The collaborative process that the NYPSC advocates is a constructive path forward to address the complex intersection of wholesale markets and legitimate state policy objectives.

¹¹ Id.

¹² See, e.g., Huron Portland Cement Co. v. City of Detroit et al., 362 U.S. 440, 442 (1960) (explaining that “states and their instrumentalities may act, in many areas of interstate commerce..., concurrently with the federal government”) (citations omitted); Allco Fin., Ltd. v. Klee, 2017 U.S. App. LEXIS 11484, *37-38 (2d Cir. June 28, 2017).

¹³ See Regional Greenhouse Gas Initiative at <https://www.rggi.org/>.

CONCLUSION

For the reasons explained in the NYPSC's pre- and post-technical conference statements and herein, the Commission should facilitate collaborative discussions focused on harmonizing the overlap between wholesale markets and legitimate State policy interests. The Commission should reject the narrow and rushed process recommended by certain market participants.

Respectfully submitted,

Paul Agresta

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of the State of New York

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Dated: July 14, 2017
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
July 14, 2017

Alan T. Michaels
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