

143 FERC ¶ 61,012
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 2, 2013

In Reply Refer To:
New York Independent System
Operator, Inc.
Docket No. ER13-1124-000

Gloria Kavanah
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144

Dear Ms. Kavanah:

1. On March 15, 2013, New York Independent System Operator, Inc. (NYISO) filed a request for limited waiver of section 5.16.4 and, to the extent necessary, section 5.16.3 of its Market Administration and Control Area Services Tariff (Services Tariff). First, NYISO seeks a limited waiver of section 5.16.4 of its Services Tariff to give it an extra thirty (30) calendar days, i.e., until April 30, 2013, to comply with the requirement that it report the results of the New Capacity Zone Study (NCZ Study) and submit tariff revisions to “establish and recognize” one or more New Capacity Zones. Second, to the extent necessary, NYISO requests a limited waiver of the March 1 deadline of section 5.16.3 of the Services Tariff for NYISO to determine the Indicative NCZ Locational Minimum Installed Capacity (ICAP) Requirement to permit it to meet such requirement by April 30, 2013. As discussed below, we grant the requested waivers.

2. On August 30, 2012, the Commission accepted NYISO’s proposed revisions to its Services Tariff to provide the timing and sequence of steps required to evaluate and create a new capacity zone.¹ The revisions included a new section 5.16.4 which required NYISO, on or before March 31 of an ICAP Demand Curve Reset Filing Year, to submit the results of its NCZ Study and, if the NCZ Study identifies a constrained Highway interface, propose tariff revisions necessary to establish and recognize the New Capacity

¹ *New York Independent System Operator, Inc.* 140 FERC ¶ 61,160 (2012) (August 30, 2012 Order), *reh’g pending*.

Zone or Zones. If the NCZ Study does not identify a constrained Highway interface, NYISO is required to file with the Commission its determination that the NCZ Study did not indicate that any New Capacity Zone is needed. Section 5.16.4 further states that NYISO must provide an opportunity for the Market Monitoring Unit to review and comment on the NCZ Study and any proposed tariff revisions, consistent with Services Tariff Attachment O section 30.4.6.3.2.

3. The revisions accepted by the August 30, 2012 Order also included a new section 5.16.3 which provides that, for each load zone or groups of load zones identified in the NCZ Study, NYISO shall determine the Indicative NCZ Locational Minimum ICAP Requirement² on or before March 1 of each ICAP Demand Curve Reset Filing Year.

4. On March 15, 2013, NYISO submitted a request for a limited waiver of sections 5.16.4 and, to the extent necessary, 5.16.3 of its Services Tariff.

5. NYISO states that granting the requested waiver of section 5.16.4 will provide NYISO and its stakeholders additional time to review and, if necessary, address technical issues raised during the stakeholder review process, further analyze the potential consumer impacts of establishing a New Capacity Zone, and to further review and discuss with its stakeholders these matters and the possible additional specific tariff revisions needed to establish a New Capacity Zone. NYISO adds that the additional time would also give it the opportunity to address stakeholder comments and to attempt to address concerns and resolve disputed issues.

6. NYISO states that granting the requested waiver of section 5.16.3 would permit it to revise, if necessary, based on the further ongoing technical analyses, the Indicative NCZ Locational Minimum ICAP Requirement. NYISO states that it determined the Indicative NCZ Locational Minimum ICAP Requirement on March 1, 2013, which, according to NYISO, satisfied the Services Tariff section 5.16.3 but it is seeking a waiver to the extent necessary to allow it to revise that March 1, 2013 determination after the section 5.16.3 deadline, if NYISO determines that such a revision is warranted. NYISO adds that if it determines such a revision is appropriate, it will first provide an opportunity for stakeholders to review and comment on the proposed revision and then will establish the revised Indicative NCZ Locational Minimum ICAP Requirement by April 30, 2013.

² The Indicative [Narrow Constrained Area] Locational Minimum ICAP Requirement is defined in the Services Tariff section 2.9 as “[t]he amount of capacity that must be electrically located within a New Capacity Zone, or possess an approved Unforced Capacity Deliverability Right, in order to ensure that sufficient Energy and Capacity are available in that NCA and that appropriate reliability criteria are met.”

7. In support of its request, NYISO contends that its requested waivers are of limited scope in that it is requesting a brief extension of the filing deadline for section 5.16.4 and, to the extent necessary, a limited waiver to allow revision of the March 1, 2013 Indicative NCZ Locational Minimum ICAP Requirement determination after the section 5.16.3 deadline. NYISO asserts that it has worked diligently and has met all of the deadlines in the New Capacity Zone timetable. NYISO further asserts that it does not anticipate that granting the requested extension would delay: (1) the implementation of the tariff revisions to establish the NCZ; (2) the establishment of an ICAP Demand Curve for the New Capacity Zone as part of the November 2013 Demand Curve reset filing; (3) the inclusion of any proposed New Capacity Zone in NYISO's revised deliverability methodology for the Class Year Interconnection Facilities Study for Class Year 2012; or (4) the implementation of the New Capacity Zone at the start of Capability Year 2014/2015.

8. NYISO also states that its requested waivers will address a concrete issue that needs to be remedied. NYISO explains that this is the first time that it has engaged in the process to evaluate and establish a New Capacity Zone and certain questions regarding the implementation of the New Capacity Zone could benefit from additional analysis before the section 5.16.4 filing is made. Further, according to NYISO, the additional technical review initiated in response to stakeholder comments might result in it being appropriate to review the Indicative NCZ Locational Minimum ICAP Requirement established on March 1, 2013. NYISO adds that the waivers should also allow it to work to reduce the number and scope of disputed issues that eventually reach the Commission.

9. NYISO contends that the waivers will not have undesirable consequences and will not harm third parties. NYISO reiterates that it does not anticipate that the waivers will prevent it from meeting each milestone of the established New Capacity Zone timetable. NYISO asserts that in seeking the waivers, it is acting in good faith to address outstanding issues without altering its ability to meet the New Capacity Zone implementation timetable.

10. Notice of NYISO's March 15, 2013 filing issued with comments, protests and interventions due on or before March 25, 2013.

11. Exelon Corporation filed a motion to intervene. Entergy Nuclear Power Marketing, LLC (ENPM) and the New York Transmission Owners (NYTOs)³ filed

³ The NYTOs consist of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

answers to NYISO's motion. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motion to intervene serves to make the entity that filed it party to this proceeding. Because NYISO captioned its waiver request as being made in Docket No. ER12-360-000, which is closed, we will also grant intervention in the instant docket to ENPM and the NYTOs.

12. The NYTOs state that they support NYISO's request for an extension of time and limited waivers of Services Tariff sections 5.16.4 and 5.16.3 and believe it meets the Commission's criteria for tariff waivers. They add that granting the motion will provide the Commission with the most complete record upon which to examine NYISO's compliance efforts.

13. ENPM states that it does not oppose NYISO's waiver requests provided that NYISO's additional analysis will be conducted transparently and will be completed, with results discussed among all stakeholders, before NYISO makes its April 30 compliance filing. ENPM argues that New Capacity Zone issues have been pending before the NYISO stakeholder process since 2007 and the Commission's prior orders in this proceeding establish that the evaluation of the need for and, if necessary, the creation of, New Capacity Zones is critical to the market's proper functioning. It adds that on September 8, 2011, the Commission addressed NYISO's proposed New Capacity Zone testing methodology and expressed the need for prompt action on the part of NYISO.⁴ It notes that while the August 30, 2012 Order accepted NYISO's proposed implementation timetable, it did so based on NYISO's repeated representations that it had allowed adequate time for all necessary steps so that any New Capacity Zone could be established concurrent with the next ICAP Demand Curve Reset process.

14. Accordingly, ENPM requests that the Commission place NYISO on notice that no delay will be sanctioned with respect to: (1) the implementation of tariff revisions to establish the New Capacity Zone that NYISO notes has been identified through its studies; (2) the establishment of an ICAP Demand Curve for the New Capacity Zone and the overall completion of NYISO's Demand Curve Reset Process by the November 30, 2013 deadline; (3) the inclusion of the identified New Capacity Zone in NYISO's revised deliverability methodology for the Class Year Interconnection Facilities Study for Class Year 2012; and/or (4) the implementation of the New Capacity Zone at the start of Capability Year 2014/2015 (i.e., May 1, 2014). Specifically, it requests that the Commission condition any relief on the requirement that NYISO strictly adhere to the remaining New Capacity Zone and Demand Curve Reset Process deadlines, and that it vet any additional "analysis" through the normal stakeholder process within the requested 30-day period.

⁴ Entergy Nuclear Power Marketing March 19, 2013 Answer at 2-3 (citing *New York Indep. Sys. Operator, Inc.*, 136 FERC ¶ 61,165 (2011)).

15. The Commission has previously granted limited waivers of tariff provisions, *inter alia*, when: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.⁵ We find that NYISO has demonstrated good cause to grant limited tariff waivers because its requested waivers satisfy the aforementioned conditions.

16. First, there has been no error and we find that NYISO has acted in good faith in attempting to meet the Service Tariff's deadlines. We note that NYISO has met the other New Capacity Zone tariff deadlines and has conducted extensive stakeholder discussions in order to meet the New Capacity Zone tariff filing deadline. We also recognize that this is the first time NYISO has engaged in the process to evaluate and establish a New Capacity Zone and, therefore, recognize that, in this unique circumstance, unanticipated issues might well arise warranting more time to meet the Service Tariff's deadlines.

17. Second, the requested waivers are of limited scope. Both waivers result in short extensions of time until April 30, 2013, to meet the Service Tariff's requirements related to the filing of a New Capacity Zone proposal. We find that the waivers reflect the specific and unique facts presented here and do not constitute precedent that would allow NYISO to avoid these or any other requirements set forth in the Services Tariff.

18. Third, the waiver will remedy a concrete problem. NYISO has explained that questions have been raised by the stakeholders regarding its New Capacity Zone proposal. The waivers will grant NYISO more time to analyze and address these questions with its stakeholders. A limited waiver of the Service Tariff's time deadlines will, therefore, ensure that stakeholders can participate in resolving these issues. Further, waiver of the time deadline of section 5.16.3 will allow NYISO additional time to revise, if necessary, NYISO's March 1, 2013 Indicative NCZ Locational Minimum ICAP Requirement determination based on further technical analysis, including addressing questions raised in stakeholder comments that could affect its March 1, 2013 determination.

⁵ See, e.g., *PJM Interconnection, LLC*, 137 FERC ¶ 61,184, at P 13 (2011); *PJM Interconnection, LLC*, 137 FERC ¶ 61,109, at P 11 (2011); *PJM Interconnection, LLC*, 135 FERC ¶ 61,069, at P 8 (2011); *ISO-NE*, 134 FERC ¶ 61,182, at P 8 (2011); *CAISO*, 132 FERC ¶ 61,004 at P 10 (2010); *Hudson Transmission Partners*, 131 FERC ¶ 61,157, at P 10 (2010); *Pittsfield Generating Co., L.P.*, 130 FERC ¶ 61,182, at P 9-10 (2010); *ISO New England Inc. - EnerNOC*, 122 FERC ¶ 61,297 (2008); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008).

19. Fourth, we find that granting the waivers will not lead to undesirable consequences. We find that no harm would result from the waivers because they should not prevent NYISO from meeting the other established milestones of the New Capacity Zone timetable in time to coincide with NYISO's filing of proposed Demand Curves for the New Capacity Zone.

20. Finally, we reject ENPM's request to condition waiver on NYISO meeting certain future deadlines of the Services Tariff, such as the requirement to file to establish an ICAP Demand Curve by November 30 of the same year in which it filed to establish the New Capacity Zone, or the requirement to implement the New Capacity Zone by May 1 of the following year, and to require stakeholder involvement. NYISO has not requested waiver of those deadlines and there is no basis to assume it will not meet them. Further, NYISO has indicated that it will be engaged in discussions with its stakeholders regarding its proposed New Capacity Zone filing and Indicative NCZ Locational Minimum ICAP Requirement determination. However, we strongly encourage NYISO to continue its best efforts to meet all remaining deadlines.

21. For the foregoing reasons, the Commission grants NYISO's request for limited waiver of section 5.16.4 and, to the extent necessary, section 5.16.3 of its Services Tariff.

By direction of the Commission.

Kimberly D. Bose,
Secretary.