

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

New York Independent System Operator, Inc.) **Docket No. ER04-449-023**
New York Transmission Owners)

**REQUEST FOR LEAVE TO SUBMIT LIMITED ANSWER AND LIMITED ANSWER
OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) submits this request for leave to answer, and its answer to, certain comments and protests addressing the *Compliance Filing Proposing Criteria to Govern the Potential Creation of New Locational Capacity Zones* (“Compliance Filing”) in the above-captioned proceeding. This answer addresses only those points where the NYISO believes that a response is essential to clarify the record and assist the Commission. The pleadings contain various other arguments, statements, and characterizations with which the NYISO disagrees, but will not address here in deference to the Commission’s preference that answers to protests be limited in scope. The NYISO reiterates its request that the Commission accept the Compliance Filing. The NYISO is committed to examining potential new Capacity² zones, pursuing measures to establish new zones, and establishing new zones when warranted.

¹ 18 C.F.R. §§ 385.212 and 385.213 (2010).

² Capitalized terms that are not defined herein have the meaning set forth in the Compliance Filing, and if not defined therein, in NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”), and if not defined therein, shall have the meaning set forth in Section 25.1.2 of Attachment S to the NYISO’s Open Access Transmission Tariff (“OATT”).

I. REQUEST FOR LEAVE TO ANSWER

The Commission's regulations authorize the NYISO to answer pleadings styled as "comments" as a matter of right.³ The Commission also has discretion⁴ to accept answers to protests, and has done so when they help to clarify complex issues, provide additional information, or are otherwise helpful in the Commission's decision-making process.⁵ The Commission should follow its precedent and accept the NYISO's answer in this instance. This proceeding involves a host of complex and highly technical issues. The NYISO has limited the scope of this answer so that it focuses exclusively on clarifying potentially difficult points that may have been confused by the comments and protests. This answer will therefore be helpful in the Commission's decision-making process.

II. ANSWER

A. Clarification Regarding the Scope of the Approvals Sought by the Compliance Filing

The "Indicated Parties"⁶ express concern that the Compliance Filing is seeking approval of a "change in market design" without it being "fully developed and vetted by stakeholders prior to Commission consideration."⁷ Their concern is misplaced. The NYISO has been vetting

³ *Id.* at § 385.213(a)(3).

⁴ *Id.* at § 385.213(a)(2).

⁵ See e.g., *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 at P 7 (2004) (accepting the NYISO's answer to protests because it provided information that aided the Commission in better understanding the matters at issue in the proceeding); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was "helpful in the development of the record...").

⁶ The Indicated Parties are: (1) Brookfield Energy Marketing, Inc.; (2) Constellation Energy Nuclear Group, LLC; (3) Constellation Energy Commodities Group, LLC; (3) NRG Power Marketing LLC, Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Oswego Harbor Power LLC (collectively the "NRG Companies"; and (4) PSEG Power LLC and PSEG Energy Resources & Trade (collectively the "PSEG Companies").

⁷ Indicated Parties at 5-6.

various criteria and considerations over numerous stakeholder meetings. Further, and as stated in the Compliance Filing, the Joint Filing Parties were not attempting to circumvent stakeholder review, and further stakeholder discussion and review is necessary.⁸

B. Clarifications Regarding Implementation Matters

A group of generators with Lower Hudson Valley interests, that identify themselves collectively as the “New York Suppliers”⁹ argue that the NYISO would take too long to implement potential new Capacity zones and should be directed to “complete all analyses and have all necessary software changes in place to implement” their proposed new Lower Hudson Valley Capacity zone by May 1, 2012.¹⁰ They assume that the NYISO’s proposed timetable could be drastically shortened if the NYISO were compelled to adopt different criteria to govern the establishment of new Capacity zones than were proposed in the Compliance Filing. In reality, however, no matter what criteria are ultimately adopted, it invariably will be necessary to implement and test modifications to the NYISO’s Automated Market System, including market mitigation software, and other systems in order to support a new Capacity zone.

The New York Suppliers have offered nothing but speculation to support their claim that such changes could be implemented by their arbitrarily selected May 1, 2012 deadline. The Commission should follow its precedent¹¹ holding that it is more important to ensure that

⁸ See, e.g., Compliance Filing at 4, 5, 6, 7, 9.

⁹ The New York Suppliers are: (1) Dynegy Northeast Generation, Inc. and Sithe/Independence Power Partners, L.P. (collectively the “Dynegy Parties”); (2) GenOn New York, LLC, GenOn Bowline, LLC, and GenOn Energy Inc. (collectively the “GenOn Parties”); and (3) Entergy Nuclear Power Marketing.

¹⁰ New York Suppliers at 21-22.

¹¹ See, e.g., *California Independent System Operator Corp.*, 119 FERC ¶ 61,076 at P 670 (2008) (expressing the Commission’s view that it essential that major software and market design changes be implemented properly, finding that it would “not allow market operations and service reliability to be sacrificed for the sake of expedience,” citing, *California Independent System Operator Corp.*, 116 FERC ¶ 61,274 at PP 1380 (2006)).

complex software modifications are implemented properly than quickly and allow the NYISO to take the time reasonably required to implement the changes necessary to support new Capacity zones. Contrary to what the New York Suppliers have suggested, it would not be feasible to manually implement the complex functionality associated with the creation of a new Capacity zone, and manually adjust for how the new zone impacts, augments and alters the outcomes of NYISO's complex market system software.¹² Moreover, such a suggestion fails to consider the length of time it would take to develop and test the manual functionality – even assuming *arguendo* it were possible – and to do so would require the time and resources of the same NYISO personnel that need to participate in designing the rules for software modifications.

The New York Suppliers go so far as to assert that the NYISO should have been designing software modifications even before rules were developed. The Compliance Filing proposes an approach to assessing the creation of new Capacity zones, and other parties have proposed alternatives. Without a definitive market rule or design, software cannot be designed. The timetable the NYISO delineated in the Compliance Filing, to apply the Criteria in concert with the triennial ICAP Demand Curve reset process, is a rational sequence that will provide a realistic and feasible time for vetting and review of tariff revisions and software design, and which will provide certainty for Market Participants.

The Compliance Filing also explained that any new Capacity zone should have the same boundaries as one or more of the eleven existing NYCA Load Zones. Attempting to partition existing Load Zones would raise major market design issues and software problems because of the inter-relationships among the various Capacity and Energy market obligations of Installed

¹² New York Suppliers, Affidavit of Roy J. Shanker, Ph.D at 30.

Capacity Suppliers.¹³ This practical limitation will continue to exist even if the Commission were to adopt alternative approaches to new Capacity zones that have been advanced by the independent Market Monitoring Unit (“MMU”)¹⁴ and others. The Commission should therefore not require the NYISO to apply new Capacity zone creation criteria or standards in a way that would result in the division of existing Load Zones.

C. Clarifications Regarding the Compliance Filing’s Proposed Criteria and Considerations

Multiple Intervenors¹⁵ and the Indicated Parties¹⁶ proposed to eliminate the “loss of the largest generator” component of the Compliance Filing’s proposed “Reliability Criterion” which would leave only the Compliance Filing’s proposed N-1-1 analysis. Even assuming *arguendo* that accounting for the “loss of the largest generator” component may not be a “customary” planning practice, it is nevertheless a necessary element of the Reliability Criterion. The Reliability Criterion is not the same as existing planning metrics insofar as it is intended to act as a screen for determining whether a given Load Zone warrants further evaluation as a potential new Capacity zone based on the reliability of the transmission network. Unlike other planning measures, the Reliability Criterion has also been designed to complement the Highway Capacity Deliverability Test. Its purpose is to assess whether both the loss of the largest generator and an N-1-1 outage would create a resource deficiency condition where imports into and generation within a zone would be insufficient to meet peak load. The Reliability Criterion must therefore reflect expected levels of Capacity which necessitates that it account for some derated level of

¹³ Compliance Filing at 5.

¹⁴ It might be gleaned from the MMU comments that a deliverability criterion (whether as proposed by the NYISO or an alternative version) could lead to the creation of new Capacity zones within a Load Zone, *e.g.*, existing New York City or Long Island Load Zones. Market Monitoring Unit at 3.

¹⁵ Multiple Intervenors at 9.

¹⁶ Indicated Parties at 9-10.

generation. The proposal to include the additional loss of the largest generator component is a means to account for the necessary derating.

National Grid argues that the Commission should “elevate” the “Net Cost of New Entry Test” (“Net CONE Test”) from a “Consideration” to a third independent “Criterion.” National Grid’s theory is that the Net CONE test resembles the other two proposed Criteria insofar as it requires a “pass/fail” analysis.¹⁷ The Net CONE Test is properly included as a Consideration, as it provides a more detailed analysis necessary to fully evaluate the creation of a new Capacity zone. As the Compliance Filing explained, one of the primary objectives of additional work with stakeholders on the Criteria is to avoid creating rules that result in false negatives.¹⁸ Reclassifying the Net CONE Test as a Criterion could create such a situation. Thus the test is more properly applied as part of the more rigorous analysis necessary to determine if a new Capacity zone should be created.¹⁹

The Independent Power Producers of New York, Inc. (“IPPNY”) takes issue with the Compliance Filing’s description of the proposed “Highway Capacity Deliverability Test” to the extent that it equates the term “equilibrium” with the NYCA Minimum Installed Capacity Requirement. The NYISO agrees with IPPNY’s proposal and believes it improves the clarity of the proposal. As the Compliance Filing states, the Criterion would be applied “at the level where the MW of Installed Capacity was equal to the NYCA Minimum Installed Capacity Requirement, without reference to the actual conditions existing at the time that the test was conducted”²⁰ and that “the test would set the MW level to the NYCA Minimum Installed

¹⁷ National Grid at 8-9.

¹⁸ Compliance Filing at 7.

¹⁹ *Id.* at 5.

²⁰ *Id.* at 5-6.

Capacity Requirement.”²¹ The NYISO supports IPPNY’s proposal to strike the term “equilibrium” and replace it with the NYCA Minimum Installed Capacity Requirement or the numeric proportionate equivalent of such requirement to the Load Zone or group of Load Zones, subject to the examination.

D. The NYISO Has Satisfied its Compliance Obligations

Finally, the NYISO takes exception to the New York Suppliers’ assertions that the Compliance Filing was “patently deficient”²² and “fails to satisfy NYISO’s compliance obligation.”²³ The Compliance Filing did what the Commission’s June 2009 Order required, *i.e.*, it addressed “the implications and effects of a new Capacity zone or zones on the tariff provisions and market rules governing Capacity Resource Interconnection Service.”²⁴ Consistent with the terms of the original Consensus Deliverability Plan, the NYISO also consulted with stakeholders before making the Compliance Filing.

The fact that the proposal evolved more over time, and that the final version of it was discussed less extensively, than some would have preferred, does not mean that the NYISO failed to meet its obligation to work with its stakeholders. The NYISO acknowledges that the filed Compliance Filing reflects revisions to the Criteria and Considerations presented at the final NYISO stakeholder meeting on the topic before the December holidays (*i.e.*, December 13, 2010). Those revisions are consistent with the Filing Parties’ consensus, and the consensus achieved is consistent with the June 2009 Order’s Ordering clause that “[t]he Filing Parties are directed to submit criteria for the development of additional capacity zones by October 5,

²¹ *Id.* at 6, n. 13.

²² New York Suppliers at 12.

²³ *Id.* at Affidavit of Glenn D. Haake at P 39.

²⁴ *New York Independent System Operator, Inc.*, 127 FERC ¶ 61,318 at P 53 (2009).

2010.”²⁵ Complaints that the NYISO did not spend sufficient time working with stakeholders before the June 2009 Order²⁶ are inaccurate since there is no question that the NYISO sought stakeholder input. As described above, it is also unrealistic for the NYISO to have developed software modifications necessary to implement an evolving proposal before it was finalized, let alone accepted by the Commission.²⁷ Similarly, the Compliance Filing’s approach was entirely consistent with proceedings where parties have obtained approvals of proposed tariff “concepts” prior to submitting actual tariff language.

III. CONCLUSION

For the reasons set forth above, the Commission should grant the NYISO leave to submit this limited answer, accept the clarifications offered herein, and approve the Criteria and Considerations included in the Compliance Filing.

Respectfully Submitted,

/s/Ted J. Murphy
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February 9, 2011

²⁵ *Id.* at Ordering Clause (E).

²⁶ *See* New York Suppliers, Affidavit of Glenn D. Haake at PP 16-27.

²⁷ *See Id.* at Affidavit of Roy J. Shanker, Ph.D at 30.

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, this 9th day of February, 2011.

/s/Ted J. Murphy _____

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