

**New York Independent System Operator, Inc.** ) **Docket No. ER14-500-00\_**

<sup>5</sup> The January Order also rejected the NYISO's associated request regarding waivers.

(“ISO-NE”) capacity market issued just a few days before the issuance of the January Order.<sup>6</sup>

Accordingly, the NYISO respectfully seeks rehearing.<sup>7</sup>

## **I. COMMUNICATIONS**

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## **II. REQUEST FOR REHEARING**

The January Order’s ruling on the phase-in should be reversed on rehearing because it gave too little weight to substantial record evidence regarding short-term consumer impacts and did not explain its departure from the precedent very recently established by the ISO-NE Orders on the importance of protecting consumers from “rate shock.”

The November Filing recited the concerns expressed by the NYPSC and Central Hudson regarding the potential consumer price impacts of establishing the G-J Locality without a phase-in.

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<sup>6</sup> *New England Power Generators Association, Inc. v. ISO-New England, Inc.*, 146 FERC ¶ 61,039 (2014) (the “ISO-NE Order on Complaint”) and *ISO New England Inc.*, 146 FERC ¶ 61,038 (2014) (“ISO-NE Order on Tariff Filing”) (collectively, the “ISO-NE Orders”).

<sup>7</sup> In compliance with the Commission’s directive in the January Order, the NYISO made on February 24, 2014 a compliance filing with tariff sheets with the G-J Locality ICAP Demand Curve parameters without a phase-in. The NYISO will implement the non-phased in rates for the Capability Year beginning on May 1. January Order at Ordering Paragraph (B).

<sup>8</sup> The NYISO respectfully requests waiver of the Commission’s regulations (18 C.F.R. § 385.203(b)(3) (2013)) to the extent necessary to permit service on counsel for the NYISO in both Miami and Washington, DC.

The November Filing also emphasized that the implementation of the proposed ICAP Demand Curve for the G-J Locality for the start of the 2014/2015 Capability Year on May 1, 2014 would be a very significant market design change likely to significantly impact the region's consumers.<sup>9</sup> It presented the results of its examination of the potential future clearing prices and concluded that "using the phase-in to protect consumers from the risk of a sudden rate increase is both appropriate and necessary."<sup>10</sup> The NYISO also identified precedents emphasizing that the Commission's primary statutory obligation was to protect consumers<sup>11</sup> and highlighting the need to guard against "rate shock."<sup>12</sup>

In addition, the November Filing provided evidence supporting the NYISO's view that a phase-in would not materially harm investors because it would continue to provide for "sufficient market signals to attract new capacity and retain existing capacity needed to meet requirements."<sup>13</sup> A properly structured phase-in would not discourage the investment in and entry of new resources, because, as the NYISO explained, the lead time for construction of new generation is at least two to three years.<sup>14</sup> Moreover, the November Filing explained that a phase-in would not incent existing resources to leave the market because the clearing prices in the G-J Locality, as demonstrated by the scenario analysis, are expected to increase significantly starting in the 2014/2015 Capability Year.<sup>15</sup> The clearing prices would also be higher in both the first and second Capability Years than they would be without the

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<sup>9</sup> November Filing at 36.

<sup>10</sup> See Table 1, November Filing at 40.

<sup>11</sup> See November Filing at 42, citing *Atlantic Refining Co. v. Publ. Serv. Comm'n*, 360 U.S. 378, 388 (1959) (interpreting parallel provisions of the Natural Gas Act) ("The Act was so framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges"); *Southwestern Electric Power Co.*, 39 FERC ¶ 61,099 at 61,293 (1987) (The "primary purpose of the [FPA] is the protection of customers from excessive rates and charges"); and *Chehalis Power Generating, L.P.*, 145 FERC ¶ 61,052 (2013).

<sup>12</sup> See November Filing at 36-37.

<sup>13</sup> Attachment IX to the November Filing, Affidavit of Rana Mukerji ("Mukerji Affidavit") at P 15.

<sup>14</sup> Mukerji Affidavit at P 15

<sup>15</sup> Mukerji Affidavit at P 15.

creation of a new capacity zone. Thus, the pricing regime for existing capacity “is more attractive than the one currently in place.”<sup>16</sup> This, when coupled with the expectation of the full, escalated ICAP Demand Curve price in two years’ time, will be “adequate to retain sufficient existing capacity to meet reliability needs. . . .”<sup>17</sup>

The January Order offered two principal reasons for its denial of the phase-in: (i) a theory that there would be no “rate shock” because consumers had notice of potential rate increases given that the possible creation of the G-J Locality had been discussed in Commission proceedings for more than seven years; and (ii) a belief that the NYISO’s arguments overlooked possible impacts on short-term supply responses such as demand response and repowering options.<sup>18</sup>

The NYISO respectfully submits that these stated rationales are inconsistent with reasoned decision-making. The fact that issues relating to the creation of the G-J Locality “have been considered extensively throughout a seven-year time period”<sup>19</sup> cannot be taken as actual notice to impacted consumers that might justify ignoring equitable concerns regarding rate shock. It would be inequitable to invoke whatever formal notice retail customers receive from Commission proceedings that are far removed from their daily concerns as a justification for exposing them to extreme rate increases. Similarly, the Commission’s concern for possible impacts on short-term supply responses tips the balance too far in the direction of promoting relatively small benefits for a relatively small number of investors at the expense of imposing disproportionately high costs on a larger class of consumers. Accordingly, the Commission should reverse its phase-in ruling on rehearing.

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<sup>16</sup> Mukerji Affidavit

<sup>17</sup> Mukerji Affidavit at P 11. *See also* November Filing at 42 (emphasizing that the NYISO’s proposal would fall within the “zone of reasonableness” under Section 205 of the Federal Power Act).

<sup>18</sup> *See* January Order at P 164.

<sup>19</sup> January Order at P 163.

In addition, the NYISO does not believe that the January Order's rejection of the proposed phase-in can be reconciled with the Commission's recent emphasis on protecting customers from rate shock in the ISO-NE Orders. Those rulings expressly acknowledged that:

[T]he Commission's statutory mandate under the FPA entails protecting consumer interests, which includes protecting consumers and the market from excessive capacity prices, sudden, significant capacity price increases, and the impacts of rate shock. Thus, the Commission must consider these somewhat competing principles in its approach here. Indeed, it has long been established that "the fixing of 'just and reasonable' rates, involves a balancing of the investor and consumer interests."<sup>20</sup> [Footnotes omitted] To fulfill its statutory mandate the Commission must necessarily find a balance between the competing goals of encouraging and supporting investment with the obligation to protect consumers.<sup>21</sup>

The ISO-NE Orders, did this by declining to adopt a pricing proposal that would have substantially increased the cost that consumers have typically paid to existing capacity resources.<sup>22</sup> The Commission instead supported more modest increases.<sup>23</sup> The January Order declined, without explanation, to show a similar regard for consumer interests.

It is well-established that an agency must follow its precedent, or else "provide a rational explanation for [its] departure."<sup>24</sup> But the January Order does not attempt to explain how its phase-in

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<sup>20</sup> *ISO-NE Order on Complaint* at P 52.

<sup>21</sup> *Id.*, citing *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348, 353 (1956) (Commission must consider, among other things, whether disputed contract rates cast excessive burden on certain consumers); *New York Indep. System Operator, Inc.*, 122 FERC ¶ 61,064, at P 54, *order on reh'g*, 125 FERC ¶ 61,299 (2008) (rejecting use of updated demand curve factors that "do not recognize the need to balance the impact on consumers with the need to provide correct price signals for new generation entry"); *see also FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944); *North Carolina v. FERC*, 584 F.2d 1003, 1012 (D.C. Cir. 1978) (evaluation of just and reasonable rates requires findings as to impact plan would have on ultimate consumers); *Algonquin Gas Transmission Co. v. FERC*, 948 F.2d 1305, 1315 (D.C. Cir. 1991) (as part of just and reasonable analysis, Commission must explicitly consider potential cost shifting resulting from mandated rates); *cf. Pub. Serv. Elec. & Gas Co.*, 129 FERC ¶ 61,300, at P 44 (2009); *PPL Elec. Utils. Corp.*, 123 FERC ¶ 61,068, at P 56 (2008), *reh'g denied*, 124 FERC ¶ 61,229 at P 15; *Am. Elec. Power Serv. Corp.*, 116 FERC ¶ 61,059, at P 59 (2006), *order on reh'g*, 118 FERC ¶ 61,041, at P 27 (2007) (discussing need to protect consumers from "rate shock").

<sup>22</sup> *ISO-NE Order on Complaint* at P 54.

<sup>23</sup> *ISO-NE Order on Tariff Filing* at P 27.

<sup>24</sup> *See Florida Power & Light Co. v. Federal Energy Regulatory Comm'n*, 617 F.2d 809, 818 (D.C. Cir. 1980), citing *International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) v. NLRB*, 459 F.2d 1329, 1341 (D.C. Cir. 1972). *See also Atchison, Topeka & Santa Fe Ry. Co. v. Wichita Bd. of Trade*, 412 U.S. 800, 807-08 (1973); *Zhao v. Holder*, 728 F.3d 1144, 1148 (9th Cir. 2013) and *National Conservative Political Action Comm. v. FEC*, 626 F.2d 953, 959 (D.C. Cir. 1980).

ruling is consistent with the ISO-NE Orders, which were issued just days earlier, or with the other “rate shock” precedents cited above. This is a separate and independent reason why the Commission should reverse its phase-in ruling on rehearing.

### **III. STATEMENT OF ISSUE AND SPECIFICATION OF ERROR**

In accordance with Rule 713(c), 18 C.F.R. § 385.713(c), the NYISO submits the following statement of issue, specification of error, and representative supporting precedents:

- 1) The Commission’s denial of the NYISO request to phase-in the price impacts of the new G-J Locality ICAP Demand Curve should be reversed on rehearing because it does not reflect “reasoned decision-making.”<sup>25</sup> The Commission did not fully consider record evidence regarding potential rate shock impacts on consumers. This was inconsistent with, and an inadequately explained departure from, the Commission’s precedent, including its holdings in the *ISO-NE Orders* regarding its statutory mandate to balance the interests of consumers against those of investors and to protect consumers from “excessive capacity prices, sudden, significant capacity price increases, and the impacts of rate shock.”<sup>26</sup>

### **IV. CONCLUSION**

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission grant its limited request for rehearing as specified above.

Respectfully Submitted,

/s/ Ted J. Murphy

Ted J. Murphy  
Counsel to the  
New York Independent System Operator, Inc.

February 27, 2014

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<sup>25</sup> *Williston Basin Interstate Pipeline Co. v. Fed. Energy Regulatory Comm’n*, 358 F.3d 45, 48 (D.C. Cir. 2004) (citing *N. States Power Co. v. Fed. Energy Regulatory Comm’n*, 30 F.3d 177, 180 (D.C. Cir. 1994)).

<sup>26</sup> ISO-NE Order on Tariff at P 26 and ISO-NE Order on Complaint at P 52.

**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 27th day of February, 2014.

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