

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

**New York Independent System Operator, Inc.            )**

**Docket No. ER13-1380-000**

**REQUEST FOR PARTIAL RECONSIDERATION  
OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

In accordance with Rule 212 of the Commission’s Rules of Practice and Procedure,<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”), respectfully submits this request for partial reconsideration of one element of the Commission’s *Order Accepting Proposed Tariff Revisions and Establishing a Technical Conference* (“August 13 Order”).<sup>2</sup> Specifically, the Commission should reconsider the August 13 Order’s rejection of a proposed “phase-in” of the price impacts of the G-J Locality;<sup>3</sup> *i.e.*, the New Capacity Zone proposed by the NYISO in its April 30, 2013 filing and accepted by the August 13 Order.<sup>4</sup>

The NYISO continues to believe that implementing the G-J Locality by May 1, 2014 would “send more efficient price signals, enhance reliability, mitigate potential transmission security issues, and serve the long-term interest of all consumers in New York State.”<sup>5</sup> But the NYISO also believes that there is a significant likelihood of short-term consumer impacts that merit action by the Commission. After considering more current information about the potential

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<sup>1</sup> 18 C.F.R. 385.212 (2013).

<sup>2</sup> *New York Independent System Operator, Inc.*, 144 FERC ¶ 61,126 (2013) (“August 13 Order”).

<sup>3</sup> Capitalized terms that are not defined herein shall have the meaning set forth in the NYISO’s Market Administration and Control Area Services Tariff.

<sup>4</sup> See also *Letter Order Accepting New York Independent System Operator, Inc.’s Compliance Filing Dated 6/19/13 in Response to the Commission’s June 6, 2013 Order under ER12-360*, Docket No. ER12-360-003 (August 14, 2013).

<sup>5</sup> *New York Independent System Operator, Inc., Proposed Tariff Revisions to Establish and Recognize a New Capacity Zone and Request for Action on Pending Compliance Filing*, Docket No. ER13-1380-000 (April 30, 2013) (“April 30 Filing”) at 1.

retail rate impacts of implementing the G-J Locality, the NYISO has concluded that a phase-in of the price impacts is necessary to ameliorate effects on consumers and mitigate what has been described as potential “rate shock.”<sup>6</sup>

After considering the information now available, the NYISO believes phasing in the capacity price increases associated with creating the G-J Locality is an equitable means to protect consumers from the risk of immediate and significant increases in their electric bills. A phase-in would provide retail customers with an opportunity to mitigate bill increases, *e.g.*, through energy efficiency and conservation measures. Further, a principal goal of creating New Capacity Zones, *i.e.*, incentivizing investment in new capacity, would not be defeated by gradually implementing the price signals over the three year duration of the initial ICAP Demand Curve for the G-J Locality. Even with a phase-in, investments in new generation, which typically have a construction cycle of two to three years, will receive the needed price signal. The NYISO also believes that existing capacity needed for reliability can be expected to be retained even with a phase-in over the three year period. Thus, a phase-in can mitigate short-term consumer impacts without suppressing desired investment signals, necessary to satisfy reliability requirements. Finally, adopting a phase-in of the first New Capacity Zone is consistent with prior Commission actions concerning NYISO ICAP Demand Curves.

The NYISO recognizes the August 13 Order’s concern that a phase-in could “delay the capacity market’s ability to send more efficient price signals,”<sup>7</sup> that the creation of the G-J Locality has been anticipated for years, and that the record includes pleadings opposing a

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<sup>6</sup> See *Petition for Rehearing of the New York Power Authority*, Docket No. ER13-1380-003 at 17 (“A phase-in would reduce the rate shock imposed on consumers without undermining or delaying the development of the new supply in the G-J NCZ that the NCZ is intended to incentivize.”); *Request for Rehearing of the Central Hudson Gas and Electric Corp.*, Docket No. ER13-1380-003 at 2 (“rapidly approaching rate shock.....”) (September 12, 2013) (“*Central Hudson Request for Rehearing*”).

<sup>7</sup> August 13 Order at P 31.

phase-in. Nevertheless, since the NYISO's April 30 Filing, more current information has become available concerning the potential consumer impacts of implementing the G-J Locality for the Capability Period beginning May 1, 2014. As discussed below, the consumer responsiveness requirements applicable to all Independent System Operators and Regional Transmission Organizations under Order No. 719<sup>8</sup> caused the NYISO to bring this new information to the Commission's attention through this request for reconsideration.

## **I. BACKGROUND**

In the April 30 Filing, the NYISO included analyses of potential price impacts of the G-J Locality based on information available and reasonable assumptions at that time. Specifically, the April 30 Filing included an affidavit by the NYISO's Consumer Interest Liaison, Mr. Tariq N. Niazi ("Niazi Affidavit") that focused on two forward-looking wholesale consumer impact price analyses. Mr. Niazi's affidavit indicated that his analyses were based upon a number of assumptions including the reference prices and zero crossing points that would be incorporated in the New Capacity Zone ICAP Demand Curves. Moreover, the NYISO made clear that the analyses discussed in the Niazi Affidavit were just two of many that the NYISO conducted and were not intended to be price forecasts.<sup>9</sup>

Mr. Niazi's simulations showed that there would be increased capacity prices in Load Zones G, H, and I over the prices likely to occur absent the creation of the G-J Locality. He quantified those increases at \$173 million per year, which would translate into approximately \$500 million over the first three years of the G-J Locality. As discussed below, a more current assessment of the price impacts utilizing information contained in the report of the NYISO's

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<sup>8</sup> *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008), *order on reh'g*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 (2009), *order denying reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

<sup>9</sup> April 30 Filing at n. 35.

independent ICAP Demand Curve reset consultant (“Independent Consultant”)<sup>10</sup> and the NYISO staff’s ICAP Demand Curve proposal to the Board of Directors dated September 6, 2013, suggests the potential for even greater price impacts. Moreover, several parties, notably the New York State Public Service Commission (“NYPSC”), have now quantified the G-J Locality’s potential *retail* rate impacts to New York ratepayers.

It is important to note that the NYISO has not objected to a phase-in in this proceeding; rather it has deferred until this point, to other parties and the Commission. The Indicated New York Transmission Owners’ (“Indicated NYTOs”)<sup>11</sup> protest of the April 30 Filing requested that the Commission direct the NYISO to “phase-in the capacity price increases that will result from the creation of the NCZ over a reasonable period.”<sup>12</sup> The NYISO responded that it continued to support the creation of the G-J Locality but stated that it took no position on the question of “whether a phase in of capacity price increases is warranted on noneconomic grounds.”<sup>13</sup>

Specifically, the NYISO stated that:

The NYISO ... notes that it cannot yet evaluate whether any phase-in option would be administratively feasible or would threaten the timing of the implementation of the NCZ (or the ICAP Demand Curves). The NYISO expects that other parties will create a complete record on the equitable considerations

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<sup>10</sup> The Independent Consultant, selected in accordance with Services Tariff Section 5.14.1.2, is NERA Economic Consulting, with its subcontractor, Sargent & Lundy.

<sup>11</sup> The Indicated NYTOs are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation. *See Request for Rehearing of the Indicated New York Transmission Owners*, Docket No. ER13-1380-003 (September 12, 2013.)

<sup>12</sup> *Motion to Intervene and Protest of the Indicated New York Transmission Owners*, Docket No. ER13-1380-000 at 2 (June 13, 2013); *NYPSC Request for Rehearing* at p. 9 (supporting Indicated NYTOs’ request for phase-in).

<sup>13</sup> *Answer to Comments and Request for Leave to Answer and Answer to Protests of the New York Independent System Operator, Inc.*, Docket No. ER13-1380-000 (June 5, 2013) at 34 (quoted language capitalized in original).

posed by phase-in proposals. Accordingly, the NYISO does not believe that there is anything further for it to add to the record on this issue at this time.<sup>14</sup>

It was not until after the August 13 Order and the filing of requests for rehearing that further specific information was proffered on the retail rate impacts of the G-J Locality. For example, the NYPSC's rehearing request asserted that without a phase-in some consumer retail rates could increase by as much as 25% upon implementation.<sup>15</sup> In addition, Central Hudson's request for rehearing emphasizes that implementing the G-J Locality would result in wholesale capacity price increases of as much as 475% to its customers.<sup>16</sup>

The NYPSC also contends on rehearing that such price increases would not send efficient long-term price signals because Governor Andrew Cuomo's "Energy Highway Blueprint"<sup>17</sup> is expected to result in the construction of new transmission facilities that will alter the configuration of the New York State Transmission System over the next few years. The NYPSC asserts that the State programs have progressed and questions "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."<sup>18</sup> The NYISO notes that on October 17, 2013, the NYPSC approved several projects that were proposed in a NYPSC

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<sup>14</sup> *Id.* at 34-35.

<sup>15</sup> *Request for Rehearing and Clarification of the New York State Public Service Commission*, Docket No. ER13-1380-001 (September 12, 2013) ("*NYPSC Request for Rehearing*") at 5, 9-10. *Central Hudson Request for Rehearing* at 8-9.

<sup>16</sup> *Central Hudson Request for Rehearing* at 8-9, 15. *See also NYPSC Request for Rehearing* at 8, n. 16 ("As noted above, the NYPSC estimates the price impacts may be upwards of \$350 million per year, which translates to a rate increase of over 25% for some customers.")

<sup>17</sup> *See, e.g., NYPSC Request for Rehearing* at 7-8 (describing New York State's ongoing transmission policy initiatives)

<sup>18</sup> *See, e.g., NYPSC Request for Rehearing* at 8 citing *New York State Public Service Commission Notice of Intervention and Protest*, Docket No. ER13-1380-000 (May 21, 2013) at 3 (emphasis in original).

proceeding established to further the Energy Highway Blueprint.<sup>19</sup> The NYPSC describes the approved projects as “three transmission projects capable of reducing capacity needs by upwards of 600 MW and extension of existing programs and creation of new programs designed to reduce downstate electricity use by 180 MW through energy efficiency and demand response.”<sup>20</sup>

## **II. REQUEST FOR PARTIAL RECONSIDERATION**

The Commission has discretion to reconsider its orders at any time.<sup>21</sup> A request for reconsideration “must show new information or evidence of changed circumstances that would warrant reconsideration by the Commission.”<sup>22</sup> There is new information not currently before the Commission that warrants reconsideration of the August 13 Order’s phase-in ruling.<sup>23</sup>

### **A. Description of New Information**

In the six months since the April 30 Filing, new information has developed concerning the potential severity of the capacity price impacts of implementing the G-J Locality. Most significantly, the proposed parameters of the G-J Locality’s ICAP Demand Curves for the 2014/2015 through 2016/2017 Capability Years (and therefore the prices that may result from it) have been developed by the NYISO’s Independent Consultant. The NYISO staff reviewed those parameters and, in large part, recommended them to the NYISO Board of Directors. This information was not available when Mr. Niazi performed his initial consumer analyses.

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<sup>19</sup> NYPSC Docket No. 12-E-0503, press release issued October 17, 2013, available at <[http://www3.dps.ny.gov/pscweb/WebFileRoom.nsf/Web/A0167A43AAA2952585257C07005A9F37/\\$File/pr13076.pdf?OpenElement](http://www3.dps.ny.gov/pscweb/WebFileRoom.nsf/Web/A0167A43AAA2952585257C07005A9F37/$File/pr13076.pdf?OpenElement)>, (“PSC Details Plans to Ensure Grid Reliability and Safeguard Customers”).

<sup>20</sup> *Id.*

<sup>21</sup> See *Florida Power & Light Co.*, 122 FERC ¶ 61,159 at P 9 and n.19 citing *Cities of Campbell and Thayer v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985).

<sup>22</sup> *Enterprise Texas Pipeline, L.P.*, 117 FERC ¶ 61,025 at P 7 (2006).

<sup>23</sup> This filing does not seek reconsideration of any other element of the August 13 Order and the NYISO is not addressing any other issue raised by the requests for rehearing at this time.

Mr. Niazi's analyses were instead based on scenarios that used assumptions about the various ICAP Demand Curve reset parameters. More specifically, the NYISO's Independent Consultant completed its study of the parameters for the 2014/15 through 2016/17 ICAP Demand Curves in early August 2013.<sup>24</sup> The NYISO staff issued its own recommendations, which adopted most of the consultant's proposals on September 6, 2013.<sup>25</sup> By contrast, Mr. Niazi's analyses were undertaken in January through April when the data used in the reports was only in the initial stages of development. Thus the analyses presented in the April 30 Filing were not informed by the data used to formulate these later reports. More refined information about reference prices and zero crossing points was likewise not available when Mr. Niazi performed his initial consumer impact analyses. The more current information is consistent with the NYPSC's and other parties' assertions that there may be a severe price impact from the first-time application of a Locational Minimum Installed Capacity Requirement and implementation of a new ICAP Demand Curve for Load Serving Entities in the G-J Locality.

The NYPSC has asserted that some consumer rates would increase by 25% solely from implementing these changes in the NYISO's capacity market rules. By way of comparison, the NYISO's understanding, based on publically available information, is that recently approved

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<sup>24</sup> Section 5.14.1.2 of the Services Tariff requires the NYISO to initiate an independent review of the ICAP Demand Curves every three years in accordance with the ISO Procedures to determine the parameters of the ICAP Demand Curves for the next three Capability Years. In accordance with Section 5.14.1.2, the NYISO retained the ICAP Demand Curve consultant which prepared its "*Independent Study to Establish Parameters of the ICAP Demand Curve for the New York Independent System Operator*" available at

<[http://www.nyiso.com/public/webdocs/markets\\_operations/committees/bic\\_icapwg/meeting\\_materials/2013-08-13/Demand%20Curve%20FINAL%20Report%208-2-13.pdf](http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_icapwg/meeting_materials/2013-08-13/Demand%20Curve%20FINAL%20Report%208-2-13.pdf)>.

<sup>25</sup> See *New York Independent System Operator, Inc.*, "Proposed NYISO Installed Capacity Demand Curves for Capability Years 2014/2015, 2015/2016 and 2016/2017 - Final" (dated September 6, 2013) available at

<[http://www.nyiso.com/public/webdocs/markets\\_operations/committees/bic\\_icapwg/meeting\\_materials/2013-09-11/2013%20NYISO%20Demand%20Curve%20Recommendation\\_9-6-13\\_clean.pdf](http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_icapwg/meeting_materials/2013-09-11/2013%20NYISO%20Demand%20Curve%20Recommendation_9-6-13_clean.pdf)>.

retail electric rate increases in New York have ranged from 2.5% to 5.8%.<sup>26</sup> Thus the potential retail rate increases associated with the implementing this new capacity zone could be significantly larger than any other recent retail rate increase. The record in this proceeding contains little, if any, information discussing the potential price impacts in the context of *retail* rates.

In October 2013 the NYISO's Board of Directors received written comments and heard oral arguments from stakeholders concerning the proposed ICAP Demand Curves. The stakeholder information further highlighted the real possibility that there could be severe price increases in the G-J Locality resulting from ICAP Demand Curves based upon information in the Independent Consultant's report and the NYISO staff's proposal.<sup>27</sup>

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<sup>26</sup> See, e.g., *PSC Adopts 3-Year Electric Rate Plan for O&R*, NYPSC Press Release No. 12043, Case No. 11-E-0408 (June 14, 2012) (average annual rate increase of 5.8%); *PSC Sets Rate Plans for NYSEG and RG&E*, NYPSC Press Release No. 1088, Case Nos. 09-E-0715, 09-G-0716, 09-E-0717; 09-G-0718 (Sept. 16, 2010) (increasing electric rates by between 2.6 percent and 4.3 percent per year); *New Gas, Electric Rates for Central Hudson Approved*, NYPSC Press Release No. 10056, Case Nos. 09-E-0588; 09-G-0589 (June 17, 2010) (electric rate increases between 3.2 percent and 4.5 percent per year); *New 3-Year Rate Plan Approved for Con Edison*, New York Public Service Commission, NYPSC Press Release No. 10028, Case Nos. 07-E-0523, 08-E-0539, 09-E-0428 (March 25, 2010) (3.60% levelized annual rate increase); *PSC Adopts 3-Year Electric Rate Plan for O&R*, NYPSC Press Release No. 08079, Case No. 07-E-0949 (July 16, 2008) (electric rate increase of 2.5 percent per year). Copies of all NYPSC press releases are posted at <http://www3.dps.ny.gov/pscweb/WebFileRoom.nsf/PressReleases?OpenForm&Count=5000>. Individual electric case numbers may be searched at <http://www3.dps.ny.gov/W/PSCWeb.nsf/All/B428BB2B680CD9B485257687006F3890?OpenDocument>.

<sup>27</sup> See also *Comments of the Indicated New York Transmission Owners on Proposed ICAP Demand Curves for 2014-17* at 1 (arguing that the NYISO Staff Proposal would result in "a major unjustified price increase for New York State's electricity customers" and that "ICAP costs could unnecessarily increase in by approximately \$140 million annually in the LHV and more than \$350 million annually in New York City if the appropriate proxy unit for those demand curves is not selected.") available at [http://www.nyiso.com/public/webdocs/markets\\_operations/market\\_data/icap/Reference\\_Documents/2014-2017%20Demand%20Curve%20Reset/Demand\\_Curve\\_Reset/NYTO%20Demand%20Curve%20Reset%20Comments%20to%20Board\(final\).pdf](http://www.nyiso.com/public/webdocs/markets_operations/market_data/icap/Reference_Documents/2014-2017%20Demand%20Curve%20Reset/Demand_Curve_Reset/NYTO%20Demand%20Curve%20Reset%20Comments%20to%20Board(final).pdf).



The NYISO Board has not completed its deliberations regarding the parameters of the ICAP Demand Curves for the Capability Years 2014/15 through 2016/17.<sup>28</sup> ICAP Demand Curves that are ultimately approved by the NYISO Board of Directors will be filed with the Commission on or before November 29, 2013.<sup>29</sup>

### **B. The NYISO's Consideration of Consumer Impacts**

The NYISO's principal focus is to administer efficient and competitive markets without favoring any Market Participant or stakeholder group. While the New York wholesale electricity markets are designed to send long-term economically efficient price signals, the NYISO cannot be indifferent to the short-term consumer impacts resulting from its market rules. This is true even where those rules are intended to provide the correct long-term price signal that in the long term would be in consumers' best interests.<sup>30</sup>

Under Section 35.28(g)(6) of the Commission's regulations, *i.e.*, the "responsiveness" rules promulgated by Order No. 719, the NYISO has an obligation to consider consumer impacts. This obligation includes an "ongoing responsiveness" requirement under which the NYISO must "continue over time to consider customer and other stakeholder needs as the architecture or market environment of the RTO or ISO changes."<sup>31</sup> The NYISO believes that the potential capacity price increases for the G-J Locality constitute a change in "market environment" that justifies seeking reconsideration. Given the information that is now available

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<sup>28</sup> On October 17, 2013 the NYISO notified stakeholders that the Board has directed it to conduct further due diligence on the appropriate proxy unit to be used to establish the G-J Locality and other ICAP Demand Curves. The NYISO indicated that the results of the due diligence would be made public and that stakeholders would be afforded an opportunity to provide supplemental written comments to the Board.

<sup>29</sup> See Services Tariff 5.14.1.2.11.

<sup>30</sup> The *NYPSC Request for Rehearing* notes at 7 that the NYPSC "did not dispute that creating an NCZ could have long-term reliability benefits, or that the creation of a new NCZ in Zones G-J may eventually incent new generation in that location ....."

<sup>31</sup> Order No. 719 at P 509.

to it, the NYISO cannot ignore the potentially significant consumer impacts of implementing this new capacity zone without a phase-in.<sup>32</sup>

As noted above, the NYISO now believes that the Commission should order a phase-in over the initial Demand Curve period (*i.e.*, three years). Importantly, the NYISO believes that phasing-in the G-J Locality price increase can be accomplished in a balanced and equitable manner that will not interfere with price signals necessary to attract investment in new capacity or maintain existing efficient capacity. Further, existing economic capacity will still see a new price signal even with a phase-in, and this request for reconsideration only proposes to address dramatic short-term price increases that may occur.

It is important to recall that Commission took a similar approach when it first approved the implementation of ICAP Demand Curves in New York. In 2003, the Commission concluded that a phase-in was appropriate to “ameliorate” ratepayer impacts by gradually implementing the cost of new entry into the newly-adopted demand curves.<sup>33</sup> A similar situation exists today. The G-J Locality is the first new capacity zone implemented since the NYISO’s inception. As with the ICAP Demand Curves first adopted in 2003, the New Capacity Zone is a major change in the market. Given its potentially significant retail rate impact, it is a market change that should be

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<sup>32</sup> The NYISO intends to follow the August 13 Order’s suggestion that it explore with its stakeholders possible mechanisms to determine whether there is a need to eliminate “unneeded” zones, and if so the mechanism to do so. *See* August 2013 Order at P 82 (“[w]e reiterate here that NYISO should work with its stakeholders, and if a mechanism for zone elimination is deemed necessary, NYISO should file appropriate tariff revisions with the Commission.”); *see also*, *New York Indep. Sys. Operator, Inc.*, 136 FERC ¶ 61,165 at P 70 (2011). However, no such effort would be responsive to short-term price concerns since, as the *NYPSC Request for Rehearing* states, transmission construction under the Energy Highway Blueprint may not occur until 2018. *See NYPSC Request for Rehearing* at 8.

<sup>33</sup> *New York Independent System Operator, Inc.*, 103 FERC ¶ 61,201 at P 6 (2003).

undertaken in a measured fashion that takes into consideration the short-term implications for retail customers.<sup>34</sup>

Moreover, a short-term phased approach likely would not interfere with long-term investment decisions to develop new generation in the G-J Locality because of the revenue forecast horizon utilized by developers. So long as a sufficient price signal is present in the third year of the G-J Locality ICAP Demand Curve and beyond, the NYISO expects that there will be an appropriate incentive for new investment. In other words, phasing-in capacity prices during the first three years of this new capacity zone should not materially affect investors' responses. Further, as mentioned above, existing capacity needed for reliability will still realize increased prices and revenues within this three-year period.

As an equitable matter, a phase-in would provide retail ratepayers with an opportunity to better anticipate, and take steps to respond to, potentially large price increases. Consumers generally, and retail customers in particular, are generally not poised to react quickly to wholesale price increases. Given sufficient time, however, they may be able to mitigate their exposure to a wholesale price increase through energy efficiency and other demand-side actions, and thus avoid potential rate shock.

An additional basis for reconsideration is the fact that the NYISO has now concluded that it would be administratively feasible to implement a phase-in. Specific phase-in proposals were not presented in pleadings when the NYISO first addressed the issue in June. The NYISO subsequently determined that it can administer a phase-in through structuring the ICAP Demand

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<sup>34</sup> This filing brings to the Commission's attention information provided by parties on retail consumer price impacts that might result from the NYISO's market rules in the absence of a phase-in. It is possible that both the NYISO Board of Director's ultimate determination about the new ICAP Demand Curves and future market activities could result in different price impacts.

Curve for the G-J Locality.<sup>35</sup> This approach would not require significant software revisions. Based on this approach, which had not been previously considered in this proceeding, the NYISO now believes that a phase-in of capacity price increases in the G-J Locality is administratively feasible.<sup>36</sup>

As noted above, the Commission accepted a very similar phase-in of the original ICAP Demand Curves in 2003 on the ground that it would “ameliorate rate impacts.”<sup>37</sup> The Commission has also traditionally accepted rate treatments designed to avoid customer rate shock, particularly in its decisions permitting the inclusion of up to 100 percent of Construction Work in Progress (“CWIP”) costs in utility rate base in order to preserve rate stability and avoid abrupt rate increases.<sup>38</sup> Thus, providing for a phase-in of capacity price increases for the G-J

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<sup>35</sup> As noted above, the ICAP Demand Curve for the G-J Locality, along with the ICAP Demand Curves, will be filed on or before November 29, 2013.

<sup>36</sup> There are likely also additional administratively feasible ways that a phase-in could be implemented.

<sup>37</sup> *New York Independent System Operator, Inc.*, 103 FERC ¶ 61,201 (2003)

<sup>38</sup> See, e.g., *Northern Indiana Public Service Co.*, 141 FERC ¶ 61,231 at P 33 (“Furthermore, as the Commission has previously determined in prior orders, the CWIP incentive will help insulate NIPSCO’s customers from “rate shock” that might otherwise accompany use of AFUDC.”); *PJM Interconnection LLC*, 135 FERC ¶ 61,229, at P 78 (2011) (“As explained in prior orders, when certain large-scale transmission projects come on line, there is a risk that consumers may experience “rate shock” if CWIP is not permitted in rate base. By allowing CWIP in rate base, the rate impact of each of the three projects can be spread over the construction period and will help reduce rate shock.”) (footnotes omitted); *PPL Electric Utilities Corp.*, 123 FERC ¶ 61,068, at PP 40-43 (2008); *American Elec. Power Serv. Corp.*, 116 FERC ¶ 61,059, at P 59 (2006), *order on reh’g*, 118 FERC ¶ 61,041, at P 27 (2007).] See also *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 29, 117 (establishing a policy that allows utilities to include, where appropriate, 100 percent of prudently-incurred transmission-related CWIP costs in rate base), *order on reh’g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh’g*, 119 FERC ¶ 61,062 (2007). *Construction Work In Progress for Public Utilities; Inclusion of Costs in Rate Base*, Order No. 298, 48 Fed. Reg. 24,323 (1983), at 30,499 (“Without any CWIP in rate base, a new plant has no direct effect on consumer prices until it begins to provide service. Then, when it does come on line, consumer’s rates must be increased to give the company a cash return on both the direct cost of the plant and the capitalized [(AFUDC)] as well as a return of capital through depreciation. If the plant is large relative to the existing rate base, the result can be a rate increase that is both large and sudden, producing a so-called ‘rate shock’. In contrast, with all CWIP in rate base, the impact of new plant is spread over the entire construction period, and the rates

Locality would be consistent with Commission precedent. It would also appear to align with the Commission's recent indications of its greater willingness to accommodate "legitimate state policy objectives" within the framework of competitive capacity markets.<sup>39</sup> Accommodating consumer interests in this proceeding would not prevent the G-J Locality from having its intended market design effect.

### III. COPIES OF CORRESPONDENCE

Copies of correspondence concerning this filing should be served on:

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when the plant begins to provide service are lower because they do not include a return on and of capitalized AFUDC.”).

<sup>39</sup> See *Notice Allowing Post-Technical Conference Comments*, Docket No. AD13-7-000 (October 25, 2013) (seeking written comments regarding “[a]ccommodating state policies . . . .”); *Supplemental Notice of Technical Conference*, Docket No. AD13-7-000 (August 23, 2013) (raising questions concerning whether “centralized capacity markets effectively accommodate various federal and state policies.....” and what might be done to ensure that the market designs do so more effectively); See also *New England States Committee on Electricity v. ISO New England, Inc.*, 142 FERC ¶ 61,108 (2013) *dissenting opinion of Chairman Wellinghoff and Commissioner Norris* (questioning whether the existing New England capacity market design does enough to accommodate “legitimate state policy goals.”).

#### IV. CONCLUSION

In conclusion, for the reasons set forth above, the NYISO respectfully requests that the Commission reconsider the August 13 Order's decision to reject a phase-in of the price impacts for the G-J Locality.<sup>40</sup>

Respectfully submitted,

/s/ Robert E. Fernandez

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Ted J. Murphy, Hunton & Williams LLP  
On behalf of  
New York Independent System Operator, Inc.

October 28, 2013

cc: Michael A. Bardee  
Gregory Berson  
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Morris Margolis  
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Michael McLaughlin  
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<sup>40</sup> As noted above, the actual ICAP Demand Curves will be filed on or before November 29, 2013.

## **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 in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 28<sup>th</sup> day of October, 2013.

/s/ Joy A. Zimmerlin

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