

October 4, 2013

VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: *New York Independent System Operator, Inc.’s, Report Regarding Buyer-Side Mitigation Rules for Small Suppliers, Renewable Resources, and Special Case Resources in New Capacity Zones, Docket No. ER12-360-00_*

Dear Ms. Bose:

This report is filed in compliance with the Commission’s June 6, 2013 *Order Conditionally Accepting Proposed Tariff Revisions* in Docket No. ER12-360-001 (“June Order”). The June Order conditionally accepted a series of tariff revisions¹ proposed by the New York Independent System Operator, Inc. (“NYISO”) to, among other things, implement buyer-side market power mitigation measures for new capacity zones (“NCZs”).² Paragraph 77 of the June Order noted that the NYISO had proposed “to treat all resources in new capacity zones according to the same buyer-side mitigation rules that it currently applies in [New York City (“NYC”)].....” That is, consistent with the established rules for New York City, the NYISO did not propose a unique buyer-side mitigation test or exemption for renewable resources, small suppliers, or Special Case Resources (“SCRs”), *i.e.*, demand response resources, other than a “grandfathering” provision for proposed new resources in relation to the timing of the identification of a New Capacity Zone.³

The Commission has found the “NYISO’s buyer-side mitigation provisions for NYC to be a just and reasonable way to mitigate the potential for uneconomic entry and deter the exercise of market power.”⁴ The June Order observed that those rules had been “developed over many years in the context of the NYC zone” and that there could be material differences between

¹ Subsequent to the June Order, the Commission issued delegated letter Orders dated August 14, 2013 and August 23, 2013 accepting the tariff revisions proposed by the NYISO in compliance with the June Order.

² Terms not defined herein have the meaning set forth in the Market Administration and Control Area Services Tariff (“Services Tariff”).

³ See Services Tariff Section 23.4.5.7.7.

⁴ June Order at P 77.

the characteristics of the NYC zone and NCZs.⁵ It therefore found “that NYISO must consider whether the buyer-side market power rules for NYC, when applied to a new zone, will appropriately balance the need for mitigation of buyer-side market power against the risk of over-mitigation.”⁶ The NYISO was directed to “evaluate and consider with its stakeholders whether modifications to the buyer-side mitigation rules in a new capacity zone are warranted to balance the need for mitigation of buyer-side market power against the risk of over-mitigation” and to submit a report on this subject within 120 days.⁷

In compliance with Paragraph 77 of the June Order, the NYISO has considered with its stakeholders whether modifications to the buyer-side mitigation rules for NCZs are needed or appropriate. The NYISO hereby reports to the Commission that it does not see a need for a change regarding the treatment of SCRs or “small suppliers” at this time. The NYISO, would, however, support in principle the creation of a new exemption for renewable resources.

The NYISO began with an examination focused on the arguments in Docket No. ER12-360 that renewable resources, small suppliers, and SCRs should be exempt from buyer-side mitigation as they appear to be what prompted the Commission to require the NYISO to submit this report.⁸ The NYISO made presentations at the July 24 and September 11, 2013 meetings of its stakeholder Installed Capacity Working Group and engaged in a dialogue with its stakeholders.⁹ The NYISO also invited written stakeholder comments on these issues. During this process no stakeholder suggested that there should be an exemption or other change to the buyer-side mitigation rules applicable to SCRs in NCZs. Stakeholders did make a variety of suggestions regarding possible changes pertaining to the treatment of small suppliers and renewable resources under the buyer-side mitigation rules in all, or only in particular, NCZs, or only in a portion of the newly-accepted G-J Locality. The NYISO has carefully considered all stakeholder input. It takes very seriously concerns that the current version of the buyer-side mitigation rules might have the potential to deter competitive entry or interfere with New York State public policies.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ See June Order at PP 70-74 (summarizing argument by the New York Transmission Owners that demand response, small suppliers, and renewable generation should be exempt from buyer-side mitigation.)

⁹ The NYISO presentations are available at:

<http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_icapwg/meeting_materials/2013-07-24/BSM%20NCZ%20Discussion_ICAPWG072413_Final.pdf>,

<http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_icapwg/meeting_materials/2013-09-11/BSM%20Rules%20for%20Small%20Suppliers%20Renewables%20and%20SCRs%20in%20NCZ_Sept%202011.pdf>.

The NYISO was also mindful of: (i) the fact that the PJM Interconnection LLC's ("PJM") centralized capacity market design includes an exemption for wind and solar resources (although the ISO-New England Inc.'s ("ISO-NE's") capacity market does not)¹⁰; (ii) the apparent consensus at the Commission's September 25, 2013 Conference on Centralized Capacity Markets in ISOs/RTOs¹¹ ("Technical Conference") was that, as a general matter, ISOs/RTOs should be open to adopting certain "best practices" from other regions; and (iii) the fact that the Commission's *Supplemental Notice of Technical Conference*¹² and the discussion at the Technical Conference explored the question of whether centralized capacity market designs, including market power mitigation rules, adequately accommodate states' ability to pursue legitimate policy objectives (such as promoting renewable energy development.)

The NYISO's position in this proceeding has been that "it is essential for the buyer-side mitigation rules, including exemption provisions, to be consistent between New York City and any future NCZ unless there is a valid reason to make a distinction."¹³ The NYISO has contended that having "parallel" exemption rules is "important, both as a matter of market design principle and for reasonable administration."¹⁴ It has emphasized that consistency benefits stakeholders, by providing for greater transparency and enabling them to better anticipate how the rules will be applied, and the NYISO itself, from an implementation perspective.

The NYISO has also stated that there was clear Commission precedent indicating that SCRs should be subject to buyer-side mitigation, which militated strongly against creating additional exemptions for them.¹⁵ There is no such precedent precluding the establishment of exemptions for small or renewable resources. The NYISO has previously indicated that it had not yet fully assessed, or formulated a position regarding, potential exemptions for renewable or small resources, and that it was therefore premature for the Commission to take action related to them.¹⁶

The NYISO's independent Market Monitoring Unit ("MMU") has advised the NYISO and has informed the Commission in an affidavit in this proceeding, that it is necessary to have effective buyer-side mitigation rules in all NCZs. The MMU has also argued that all NCZs should be "subject to the same supply-side and buyer-side mitigation measures" in order to "reduce the future uncertainty of both buyers and sellers in the capacity market associated with

¹⁰ See *ISO New England, Inc.*, 142 FERC ¶ 61,107 (2013) at P 96.

¹¹ *Centralized Capacity Markets in Regional Transmission Organizations and Independent System Operators*, Docket No. AD13-7-000.

¹² *Supplemental Notice of Technical Conference*, Docket No. AD13-7 (Aug. 23, 2013).

¹³ *Request for Leave to Answer and Answer of the New York Independent System Operator, Inc.*, Docket No. ER12-360-001 (Aug. 6, 2012) at 9.

¹⁴ *Id.* at 11.

¹⁵ *Id.* at 9.

¹⁶ *Id.* at 11.

the potential formation of NCZs.”¹⁷ The MMU explained that “[r]educing this source of price uncertainty will facilitate long-term investment and contracting decisions” and that “[t]his is important because facilitating these long-term decisions is the primary purpose of the NYISO’s capacity market.”¹⁸

Given both the Commission precedent and the stakeholder input referenced above, the NYISO continues to believe that there is no “valid” reason to adopt different buyer-side mitigation rules for SCRs in NCZs at this time.

By contrast, exemption for renewable or small resources would not be contrary to Commission precedent. An exemption for wind and solar resources in New York would in fact be consistent with earlier Commission holdings that “wind and solar resources are a poor choice if a developer’s primary purpose is to suppress capacity market prices.”¹⁹ The NYISO has concluded that this probably is as true for wind and solar resources in New York as it is in PJM, and that it also may be true for other kinds of renewable resources.

Moreover, there were several stakeholder arguments that indicate that there are “valid” reasons to consider establishing an exemption for certain renewable resources in the Commission-accepted NCZ encompassing the Load Zones G-J Locality. Some of the comments indicated that it would be appropriate to only apply an exemption to projects located in Load Zones G, H, and I. The NYISO believes that these are “valid” reasons for developing a renewable exemption for all New Capacity Zones, including the newly-established G-J Locality, or at least Load Zones G, H, and I all of which are in the Mitigated Capacity Zone of the G-J Locality,²⁰ and for considering whether such an exemption should also apply to Load Zone J (New York City.)

¹⁷ *Further Compliance Filing*, Affidavit of David B. Patton, Ph.D, Docket No. ER12-360-001 at 14.

¹⁸ *Id.*

¹⁹ *PJM Interconnection, LLC et al.*, 135 FERC ¶ 61,022 (2011) at P 153. The Commission also noted that “[d]ue to the intermittent energy output of wind and solar resources, the capacity value of these resources is only a fraction of the nameplate capacity. This means that wind and solar resources would need to offer as much as eight times the nameplate capacity of a CT or CC resource in order to achieve the same price suppression effect.” *Id.* The Commission order denying a complaint in relation to ISONE’s consideration of a renewable exemption distinguished ISO-NE’s market chiefly based on the fact that it has a vertical ICAP Demand Curve. *See New England States Committee on Electricity v. ISO New England, Inc.*, 142 FERC ¶ 61,108 (2013) at P 35.

²⁰ The Services Tariff already identifies a different manner in which new projects in Load Zones G, H, and I will be examined under the buyer-side mitigation rules than new projects in Load Zone J. It provides that “[a]n NCZ Examined Project or Examined Facility located in more than one Mitigated Capacity Zone shall be evaluated pursuant to the tests in Section 23.4.5.7.2 or 23.4.5.7.3 (as applicable), calculating Mitigation Net CONE for the smallest Mitigated Capacity Zone that contains the Load Zone in which such NCZ Examined Project or Examined Facility is electrically located.” *See Services Tariff* Section 23.4.5.7.2.7.

Consequently, the NYISO is open in principle to the development of an exemption for renewable resources from buyer-side mitigation in all NCZs, including the G-J Locality, at least with respect to Load Zones G, H, and I, and will consider whether the exemption should also apply to Load Zone J.²¹ If the Commission were to direct it to do so, the NYISO would work with stakeholders on the concepts, and would make a compliance filing to establish a “renewable exemption” suitable to conditions in NCZs.

Finally, the NYISO believes that most “small” resources that are likely to be developed in the G-J Locality or a future New Capacity Zone would be renewable resources. It therefore does not believe that there is any need to develop a separate exemption for “small” resources at this time.

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this Report and direct it to make a compliance filing as described above.

Respectfully submitted,

/s/ Gloria Kavanah

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Dated: October 4, 2013

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²¹ Load Zones G, H, I and J are all in the Mitigated Capacity Zone of the G-J Locality.

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 4th day of October, 2013.

/s/ Mohsana Akter

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