Dissenting Opinion of Thomas F. Ryan

On

APPEAL OF THE MANAGEMENT COMMITTEE'S MAY 28, 2010 DECISION ADOPTING MITIGATION MEASURES THAT WILL APPLY TO REST-OF-STATE GENERATORS THAT ARE COMMITTED FOR RELIABILITY

For the following reasons, I respectfully dissent, in part, from the NYISO Board of Directors' July 29, 2010 majority decision on the IPPNY and TransCanada appeals. However, it is also important to understand the portions of the majority decision that I agree with.

First, like the majority, I found unpersuasive the appellants' unsupported arguments that certain generators are unable to recover their fixed costs when they are required to operate for reliability. Nor was I convinced that uneconomic entrants are suppressing prices in a way that precludes suppliers from recovering their costs. If there is data supporting these conclusions, it was not made available to the Board of Directors.

Second, I do not believe that there was a flaw or bias in the Management Committee vote on the proposed section 205 filing or any other aspect of the stakeholder process that led up to that vote. The Board carefully reviews all proposed tariff amendments, is made aware of the votes, and attempts to understand the impacts on each sector. I agree with the majority that the Board has no basis to conclude that the stakeholder governance is "broken." Any concerns about that process should be raised, in the first instance, through the appropriate stakeholder committee.

Third, nothing in this dissent should be construed as condoning the abuse of market power or any other activity prohibited by law. Nonetheless, I must decline to support another permanent tariff rule that, in my view, places the NYISO in the posture of being a price setter that may remove or reduce the incentive to develop the most efficient solution.

Moreover, I am in agreement with the Board majority in directing the NYISO management to work with stakeholders in the governance process to (i) examine the Generation Owners' claims that existing cost recovery mechanisms are inadequate, and (ii) review the process by which permanent solutions to specific reliability needs are evaluated and planned for, particularly in terms of timing and cost to consumers.

I dissent because I believe the NYISO is being asked to administratively determine market outcomes, rather than allowing market forces to work. I recognize that electricity markets are not perfect and, at this stage of maturity, may require some level of regulatory involvement. However, to successfully retain needed existing resources, attract new investment, maintain reliability, achieve long term efficiencies, and provide economic benefits to consumers, we must allow *the market* to set prices.

Therefore, the NYISO should avoid being a price setting or price regulating entity. That is a role that regulatory commissions played *before* the electric industry was restructured. Rather than administratively setting rates of return, limiting bids and offers, or developing costs of service, the NYISO and all of its stakeholders should focus on finding ways for the markets to function freely to allow the laws of supply and demand to dictate prices. Over-reliance upon demand curves, offer caps, bid caps, mitigation measures and other administratively determined outcomes ultimately inhibits price signals. These measures must only be temporary.

Our collective goal should be to allow the markets to create price signals, stimulate investment and, over the long term, bring the most benefits to consumers. I support the continuation of stakeholder discussions regarding this issue, but do not believe we should focus on cost-of-service mechanisms as substitutes for market forces.

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