

June 26, 2014

By Electronic Delivery

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: *New York Independent System Operator, Inc.*, Compliance Filing, Docket No. ER13-1380-00_

Dear Ms. Bose:

The New York Independent System Operator, Inc. (“NYISO”) respectfully submits this compliance filing in response to the Commission’s May 27, 2014 *Order on Rehearing* (the “Rehearing Order”).¹ The Rehearing Order granted rehearing of a single aspect of the August 2013 Order,² which had accepted revisions³ to the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”) to establish and recognize the G-J Locality.⁴

Specifically, the Rehearing Order affirmed the August 2013 Order’s acceptance of the NYISO’s Pivotal Supplier threshold for the G-J Locality. However, it directed the NYISO to submit a compliance filing within thirty days “to revise the rebuttable presumption of [the] pivotal supplier threshold for [the G-J Locality] by deleting the current exclusion of forward capacity sales in Section 23.4.5.5(1)” of the Services Tariff.⁵ This compliance filing addresses that directive by proposing compliance revisions to Section 23.4.5.5(1).

I. LIST OF DOCUMENTS SUBMITTED

The NYISO respectfully submits the following documents:

1. This compliance filing letter;

¹ *New York Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,152 (2014).

² *New York Indep. Sys. Operator, Inc.*, 144 FERC ¶ 61,126 (2013) (the “August 2013 Order”).

³ *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* (filed April 30, 2013) (the “April 2013 Filing”).

⁴ Capitalized terms that are not otherwise defined in this compliance filing letter shall have the meanings specified in the Services Tariff.

⁵ Rehearing Order at P 37, footnote omitted.

2. A blacklined version of the proposed compliance modifications to the Services Tariff effective March 23, 2015 for application beginning with the 2015 Summer Capability Period (“Attachment I”); and
3. A clean version of the proposed compliance modifications to the Services Tariff effective March 23, 2015 for application beginning with the 2015 Summer Capability Period (“Attachment II”).

II. BACKGROUND

In June 2012, the NYISO proposed buyer-side and supplier-side capacity market power mitigation measures that would apply to all New Capacity Zones.⁶ Capacity market mitigation measures previously had only applied to New York City. In the June 2012 filing, the NYISO explained that it would “indicate the MW level of Unforced Capacity at which a supplier will be deemed to have Control, and is thus a Pivotal Supplier, at the time the NYISO submits a filing proposing a Mitigated Capacity Zone; *i.e.*, the March 31 Filing in a Demand Curve Reset Filing Year.”⁷ The Commission conditionally accepted those measures in the June 2013 order where it agreed to leave “the determination of the seller-side pivotal supplier threshold to each new capacity zone proceeding.”⁸

The April 2013 Filing proposed the G-J Locality and the Pivotal Supplier threshold for it.⁹ That filing was accepted by the August 2013 Order.¹⁰ It provides that a Pivotal Supplier is “a market party that, together with any of its affiliated entities “(a) Controls 650 MW or more of Unforced Capacity; and (b) Controls Unforced Capacity some portion of which is necessary to meet the G-J Locality Locational Minimum Installed Capacity Requirement in an ICAP Spot Market Auction.”¹¹ The previously existing and unchanged tariff provision provides that a Market Party can rebut the presumption that it has Control of Unforced Capacity by meeting certain conditions established in Section 23.4.5.5 of the Services Tariff.

The April 2013 Filing also noted that the independent Market Monitoring Unit for the NYISO (“MMU”) had expressed concern that language in Section 23.4.5.5, which establishes when a Market Party is deemed to “Control” Unforced Capacity, could result in the Pivotal

⁶ New York Independent System Operator, Inc., *Further Compliance Filing*, (filed June 29, 2012), Docket No. ER12-360-001 (the “June 2012 Filing”). The NYISO made the June 2012 Filing in further response to the Commission’s September 8, 2011 Order. *New York Indep. Sys. Operator, Inc.*, 136 FERC ¶ 61,165 (2011).

⁷ June 2012 Filing at 5.

⁸ *New York Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,217 at P 44 (2013) (“June 2013 Order”).

⁹ April 2013 Filing at 19-20.

¹⁰ August 13, 2013 Order at P 20.

¹¹ Services Tariff at Attachment H, Section 23.2.

Supplier framework being “circumvented.”¹² The MMU’s concern was that Unforced Capacity sold in advance of ICAP Spot Market Auction would be deducted from the Unforced Capacity under a Market Party’s Control for purposes of the Pivotal Supplier calculation.¹³ According to the MMU, such a deduction could result in a “large supplier with market power [reducing] the amount of capacity that it is deemed to control by selling some of its capacity in the Capability Period Auction or the Monthly Auction.”¹⁴ The MMU concluded that this issue could be addressed by deleting the “current exclusion of forward capacity sales in Section 23.4.5.5(1).”¹⁵

The NYISO stated in the April 2013 Filing that it agreed with the MMU’s recommendation. It also asked the Commission to consider that the proposed approach to determining “Control” for the G-J Locality also be applied to New York City. The NYISO stated that the MMU’s proposed enhancement should apply to both the G-J Locality and to New York City and thus that it would “favor conforming tariff revisions to provide for parallel treatment.”¹⁶

In a request for rehearing of the August 2013 Order, the Indicated New York Transmission Owners¹⁷ (the “Indicated NYTOs”) requested, among other things, that the Commission reconsider its approval of the NYISO’s proposed Pivotal Supplier provisions on the ground that it “would, in many cases, exempt from offer caps entities that have a financial incentive to withhold capacity and thereby drive up capacity prices in” the G-J Locality.¹⁸ Specifically, the Indicated NYTOs argued that the exclusion of capacity sold by a supplier in forward auctions from the total Unforced Capacity amount that the NYISO considers when determining if that supplier is under the Pivotal Supplier threshold, and thus exempt from Pivotal Supplier offer caps, provides an opportunity for the supplier to manipulate the market to its benefit.

The Rehearing Order agreed and ordered the NYISO to revise the rebuttable presumption of its Pivotal Supplier threshold for the G-J Locality by deleting the current exclusion of forward capacity sales in Section 23.4.5.5(1).¹⁹ The Rehearing Order also stated, at footnote 75, that it

¹² April 30 Filing at 20-21, citing Attachment XI to April 30 Filing, Affidavit of Dr. David B. Patton, Ph.D (“Patton Affidavit”) at PP 27, 29-30, and 32.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 21, citing Patton Affidavit at P 32.

¹⁶ *Id.* at 21.

¹⁷ The Indicated NYTOs consist of 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, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

¹⁸ *Request for Rehearing of the Indicated New York Transmission Owners* (filed Sept. 12, 2013) Rehearing Request at 18.

¹⁹ Rehearing Order at P 37.

had granted rehearing “only with respect to” the G-J Locality and that if the NYISO wished to propose similar revisions for the New York City zone “it may do so in a separate proceeding.”

III. PROPOSED COMPLIANCE TARIFF REVISIONS

The NYISO proposes the following revisions to implement the Rehearing Order’s directive:

23.4.5.5 Control of Unforced Capacity shall be rebuttably presumed from (i) ownership of an Installed Capacity Supplier, or (ii) status as the Responsible Market Party for an Installed Capacity Supplier, but may also be determined on the basis of other evidence. **For purposes of determining if a Responsible Market Party is a Pivotal Supplier in a Mitigated Capacity Zone except the G-J Locality, the presumption of Control of Unforced Capacity from ownership can be rebutted by either: (1) the sale of Unforced Capacity from the Installed Capacity Supplier in a Capability Period Auction or a Monthly Auction, or (2) demonstrating to the reasonable satisfaction of the ISO. For purposes of determining if a Responsible Market Party is a Pivotal Supplier in the G-J Locality, the presumption of Control of Unforced Capacity can be rebutted by demonstrating to the reasonable satisfaction of the ISO, but cannot be rebutted by the sale of Unforced Capacity in a Capability Period or Monthly Auction. For any Mitigated Capacity Zone,** provided, however, that if the presumption has not been rebutted, and if two or more Market Parties each have rights or obligations with respect to Unforced Capacity from an Installed Capacity Supplier that could reasonably be anticipated to affect the quantity or price of Unforced Capacity transactions in an ICAP Spot Market Auction, the ISO may attribute Control of the affected MW of Unforced Capacity from the Installed Capacity Supplier to each such Market Party. Prior to reaching its decision regarding whether the presumption of control of Unforced Capacity has been rebutted, the ISO shall provide its preliminary determination to the Market Monitoring Unit for review and comment. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.9 of Attachment O.

The NYISO believes that this proposed revision fully complies with the Rehearing Order, including footnote 75, by eliminating the “forward capacity sales exclusion” for Market Parties that had “Control” of Unforced Capacity in the G-J Locality while preserving the rebuttable presumption language for New York City and any other future Mitigated Capacity Zone. It accomplishes this revision by clearly dividing the provision that applies to the G-J Locality from that which applies to any other Mitigated Capacity Zone.

Nevertheless, the NYISO and the MMU continue to believe that the forward capacity sales exclusion should be eliminated for all current and future Mitigated Capacity Zones (including New York City) so that all will have an equally effective Control test. Having separate rebuttable presumption rules in New York City (*i.e.*, Load Zone J) and the G-J Locality creates incongruities for Market Parties that participate in the same market. For example:

- An ICAP Supplier with 1000 MW in New York City that sells 501 MW or more in the Capability Period or Monthly Auctions or through a bilateral transaction would fall below the Pivotal Supplier threshold in New York City (which has a 500 MW minimum threshold.) But for the existence of the G-J Locality, this ICAP Supplier would not have an obligation to offer all Unforced Capacity under its Control at or below the offer cap. However, because New York City is within the G-J Locality and because of the differences in each Locality's ICAP Demand Curve, this ICAP Supplier would nevertheless be a Pivotal Supplier in the G-J Locality and receive a must-offer requirement.
- In contrast, an ICAP Supplier with 600 MW in Load Zone J that sells 101 MW in the Capability Period or Monthly Auction or through a bilateral transaction would not be a Pivotal Supplier in New York City or in the G-J Locality.

The Commission-accepted tariff provisions contemplate that each Mitigated Capacity Zone would have its own Pivotal Supplier threshold. The potential implications of an inconsistency between the manner in which a Market Party can rebut the presumption of Control of Unforced Capacity is a market design inefficiency.²⁰ The NYISO respectfully requests that, notwithstanding the reservations expressed in footnote 75 of the Rehearing Order, the Commission direct it to make an additional compliance filing that would eliminate the "forward capacity sales exclusion" for all existing and future Mitigated Capacity Zones. The NYISO suggested that the Commission do so in the April 2013 Filing and believes that the Commission has the authority to impose such a requirement. The MMU has authorized the NYISO to state that it, too, continues to support the application of this rule for New York City and any future Mitigated Capacity Zone. Accordingly, the NYISO respectfully requests that the Commission direct it to make an additional compliance filing so that all forward capacity sales will no longer be excluded for purposes of the Control of Unforced Capacity test.

IV. REQUESTED TIMING OF COMMISSION ACTION AND EFFECTIVE DATE

The NYISO respectfully requests that the Commission issue an order accepting this compliance filing within sixty days of the date of this filing, *i.e.*, by August 25, 2014 so that the NYISO will be in a position to implement the tariff revision in time for the Summer 2015 Capability Period. If the Commission issues an order by August 25, 2014, the NYISO asks that its proposed compliance tariff revisions become effective on March 23, 2015 for application beginning with the Summer 2015 Capability Period. Thus the rule would be effective in time for the first auction for the Summer 2015 Capability Period; *i.e.*, the Summer Capability Period Auction will open in the last week of March 2015. If the Commission does not issue an order by August 25, 2014 then the NYISO asks that the compliance revisions become effective on the date next following the issuance that is the earlier of forty-five calendar days before the start of a

²⁰ In both scenarios, the price at which a Pivotal Supplier in the G-J Locality has to offer is the same if it Controls Unforced Capacity in any Load Zone within the G-J Locality, even if it is only owns or controls resources located within New York City. *See* Services Tariff Section 23.4.5.2(a).

Capability Period.²¹ The NYISO is requesting Commission action relatively far in advance of its requested effective date because the software changes required to implement the proposed compliance revisions are significant. Commission action by August 25, 2014 will give the NYISO the certainty it needs to proceed with the software changes, which must be developed, tested, and deployed in advance of the auction activity preceding the start of a Capability Period.

It will not be practicable for these changes to be completed in time for the 2014-15 Winter Capability Period, which begins on November 1, 2014 (but for which there will be auction and related activity two months before that date.) In addition, it is not feasible for the NYISO to implement this revision manually; *i.e.*, without utilizing the software. There were 266 portfolios, each containing multiple resources, for which pivotal supplier status needed to be determined for the July Spot Market Auction (137 in the G-J Locality and 129 in the NYC Locality.) The Pivotal Supplier mitigation provisions include a complex determination of which parties have Control of Unforced Capacity. That determination includes an evaluation of Affiliated Entities, which is significantly broader than ownership.²² The analysis of which Installed Capacity Supplier controls Mitigated UCAP can only be conducted after the close of certification but must be conducted before the Spot Market Auction opens so that the NYISO can notify Installed Capacity Suppliers of their must offer obligation and the price cap. With only one business day between the 5 PM close of certification and the 8 AM opening of the ICAP Spot Market Auction, it is not feasible for the NYISO to perform this function without the software revisions.²³

Prior to the implementation of the software revisions, the NYISO will continue to be vigilant in examining Market Participant behavior for any potential exercise of market power, as it will in New York City where the forward capacity sales exclusion presumption rule will not be in place absent a further filing.

V. SERVICE

This filing will be posted on the NYISO's website at www.nyiso.com. In addition, the NYISO will e-mail an electronic link to this filing to the official representative of each party to this proceeding, to each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, and to the New Jersey Board of Public Utilities.

VI. COMMUNICATIONS

Copies of correspondence concerning this filing should be served on:

²¹ The activities that take place before the start of a new Capability Year require more lead time than before the start of the Winter Capability Period.

²² See, *e.g.*, Services Tariff Section 23.2.1 at definitions of Affiliated Entity and Control with Respect to Unforced Capacity.

²³ See ICAP Event Calendar, available at: http://icap.nyiso.com/ucap/public/evt_calendar_display.do.

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VII. CONCLUSION

For the reasons specified above, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this further compliance filing.

Respectfully submitted,

/s/ Gloria Kavanah
Gloria Kavanah
Senior Attorney
New York Independent System Operator, Inc.

Dated: June 26, 2014

cc: Michael A. Bardee
Gregory Berson
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²⁴ Waiver of the Commission's regulations (18 C.F.R. § 385.203(b)(3) (2012)) is requested to the extent necessary to permit service on counsel for the NYISO in both Miami, FL and Washington, DC.

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 26th day of June, 2014.

/s/ Joy A. Zimmerlin

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