

136 FERC ¶ 61,165
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

New York Independent System Operator, Inc.
New York Transmission Owners

Docket No. ER04-449-023

ORDER ON COMPLIANCE FILING

(Issued September 8, 2011)

1. On January 4, 2011, in compliance with paragraph 53 of the Commission's June 30, 2009 order,¹ the New York Independent System Operator, Inc. (NYISO) and the New York Transmission Owners (NYTO)² submitted two proposed criteria (Criteria) and three additional analytical considerations (Considerations) that would govern the evaluation and potential creation of new Installed Capacity (ICAP) zones in the New York Control Area (NYCA) (Compliance Filing). In this order, the Commission accepts, in part, and rejects, in part, the proposed Criteria, subject to modification, and rejects the proposed additional Considerations. The Commission also directs NYISO to develop and file tariff revisions within 60 days of this order that implement the approved Criteria.

¹ *New York Indep. Sys. Operator, Inc.*, 127 FERC ¶ 61,318 (2009) (June 30, 2009 Order).

² The New York Transmission Owners include: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Orange & Rockland Utilities, Inc., Rochester Gas and Electric Corporation, and Niagara Mohawk Power Corporation. Because the June 30, 2009 Order directed NYISO to make the instant compliance filing, for simplicity we will refer to NYISO when referring to statements made in the instant filing.

I. Background

2. NYISO's ICAP market is currently divided into three separate installed capacity pricing zones: New York City (NYC), which is comprised of load zone J, Long Island (LI), which is comprised of load zone K, and Rest-of-State (ROS), which is comprised of all the remaining load zones in the NYCA. The entire NYCA has a reliability requirement for minimum capacity meeting a one in ten year (.1) Loss of Load Expectation (LOLE). The NYC and LI capacity zones are referred to as "locational" zones because they each have a separate requirement that a certain minimum percentage of the zone's generation capacity must be physically located within that zone.

3. Since 2007, NYISO and its market participants have been implementing elements of NYISO's proposed Consensus Deliverability Plan,³ submitted in the instant docket on October 5, 2007, to comply with the interconnection requirements of Order No. 2003.⁴ Among other things, the Consensus Deliverability Plan proposed to create a new Capacity Resource Interconnection Service (CRIS) that would allow a generator to participate in NYISO's ICAP market to the extent of the generator's deliverability⁵ in the capacity zone in which the generator is located. Of importance here, paragraph 19 of the Consensus Deliverability Plan proposed that "NYISO staff and market participants will work collaboratively to develop over the next three years criteria for the potential formation of additional locational ICAP zones." In paragraph 53 of the June 30, 2009 Order, the Commission accepted the proposal for NYISO to work with stakeholders to address dynamic changes to the NYCA that may warrant the creation of additional capacity zones within the NYISO market. Therefore, the Commission directed NYISO to make a filing by October 5, 2010, that satisfies paragraph 19 of the Consensus Deliverability Plan. The Commission stated that such a filing should address the implications and effects of a new capacity zone or zones on the tariff provisions and

³ See NYISO and the New York Transmission Owners "Consensus Deliverability Plan" filed October 5, 2007, in Docket No. ER04-449-003, *et al.*

⁴ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

⁵ NYISO stated that a generator can demonstrate deliverability if it can show that the generator is capable of deliverability of its capacity throughout the capacity region in which the generator intends to participate. Consensus Deliverability Plan at 5.

market rules governing CRIS. On October 4, 2010, the Commission granted NYISO an extension of time to comply by January 4, 2011.

II. NYISO's Proposed Criteria and Considerations

4. On January 4, 2011, NYISO submitted the Compliance Filing for Commission approval and states that the proposed Criteria and Considerations to identify a load zone or zones that warrant classification as a new capacity zone are the product of an extensive stakeholder process, and also reflect input from NYISO's independent Market Monitoring Unit (MMU). NYISO notes that the proposed Criteria and Considerations do not fully address concerns raised by the MMU, and that the NYISO stakeholder process continues to evaluate potential interactions among the proposed Criteria and Considerations.

5. NYISO proposes to analyze whether a new capacity zone should be developed by first applying two threshold pass/fail Criteria.⁶ The first proposed threshold criterion ("Highway Capacity Deliverability Test"), to be conducted every three years in conjunction with the update of ICAP demand curves, evaluates whether the available Tie Capacity Margin⁷ on each highway⁸ interface is at least equal to the size (in MW) of the NYCA "new entrant" peaking unit used to formulate the then-effective demand curve.⁹ For purposes of this test, NYISO proposes to analyze whether there would be "room" on the Highway for the additional capacity as if the system were in "equilibrium" state, i.e., assuming that the MW of installed capacity on the Highway equals the NYCA minimum ICAP requirement ("as designed" or "at equilibrium" test),¹⁰ without reference to the

⁶ NYISO proposes that the Criteria and Considerations would only evaluate, and thus could only result in the creation of, a new capacity zone with the same boundaries as one or a combination of the existing eleven NYCA load zones designated as zones A – K. Thus, NYISO states that the proposals in its filing would not govern the possible elimination of existing or newly created zones. Compliance Filing at 5 and note 8.

⁷ NYISO defines "Tie Capacity Margin" as "inter-zonal transfer capability."

⁸ NYISO defines a "Highway" as all 115 kV and higher transmission facilities. NYISO Open Access Transmission Tariff (OATT), section 25.1.2, Attachment S, Rules to Allocate Responsibility for the Cost of New Interconnection Facilities.

⁹ NYISO Compliance Filing at n.12 ("The MW figure would be equal to the [Unforced Capacity] of the unit as determined using the NERC class average Equivalent Demand Forced Outage Rate (EFORD) for the unit.").

¹⁰ See NYISO February 9, 2011 Answer at 5-6.

actual system conditions that exist at the time the test is conducted (“as found” test). Thus, it states, this proposed criterion would assume load and capacity conditions exactly matching the minimum NYCA reliability criterion (a Loss of Load Expectation of one day in ten years). If the results of the test indicate that one or more load zones within an existing capacity zone would not be deliverable at equilibrium with the addition of the amount of MW of the peaking unit in the capacity zone, then this threshold criterion would be considered to have been met. NYISO asserts that the Highway Capacity Deliverability Test at equilibrium is a more meaningful test of whether the system will benefit from the creation of a new capacity zone. It asserts that its analysis indicates that if sufficient Tie Capacity Margin is not available at equilibrium, it is reasonable to assume that the lack of sufficient Tie Capacity Margin would be exacerbated at higher levels of capacity outside the zone, and potentially mitigated by higher levels of capacity inside the zone. Further, it asserts, testing at the then-current level of capacity during a time of excess could produce a “false positive,” i.e., an incorrect indication that a new zone is needed, if, for example, excess levels were subsequently reduced due to retirements or changes in load forecasts. However, NYISO states that certain details must be vetted and finalized through the stakeholder process before the proposed Highway Capacity Deliverability Test can be translated into implementable tariff language.

6. The second proposed threshold criterion assesses the reliability of the transmission network (“Reliability Criterion”). Under the Reliability Criterion, NYISO will analyze, for each potential new capacity zone, whether the loss of the largest generator coupled with an N-1-1 loss¹¹ of transmission into or generation in the proposed zone would create a resource deficiency condition (i.e., imports and generation equal less than peak load). NYISO states that the N-1-1 test represents a prudent planning practice and is consistent with NERC reliability criteria. NYISO states that, in applying this criterion, it proposes to test the system under base case conditions, i.e., “as found” and various credible reliability risk scenarios, as well as potential mitigating factors. NYISO proposes to perform the reliability analysis once every three years in accordance with a timeline set forth in section V of the filing.¹²

7. NYISO proposes that, once a potential new capacity zone is identified using the foregoing criterion, it would perform a more detailed analysis of the reliability and

¹¹ An N-1-1 loss is a sequence of events consisting of the initial loss of a single generator or transmission element, followed by system adjustments, followed by another loss of a single generator or transmission element. NYISO Comprehensive Reliability Planning Process Manual 26, section 1.2.2 (November 20, 2007).

¹² NYISO Compliance Filing at 7.

economics of the proposed new zone. NYISO states that it would select an independent consultant to evaluate three “additional considerations” to determine whether or not to create a new capacity zone.¹³ First, the differences in the net Cost of New Entry (CONE) in each of the identified zones or the nested zone¹⁴ in which entry would occur would be analyzed using the same technology of the generation units, if possible. As part of the inquiry, a preliminary demand curve (“Indicative Demand Curve”) would be developed which would indicate the capacity prices that would be expected in the new zone and analyze those prices in comparison to prices in the existing capacity zones in NYC, LI, and ROS zones. NYISO states that a net CONE for a particular potential zone that is substantially lower than for an adjacent or other nested zone would militate against creating a new zone. Second, after developing the Indicative Demand Curve for a potential new capacity zone, NYISO states that it will calculate the capacity price impacts on consumers with sensitivity analyses. NYISO adds that some stakeholders are interested in using the results of the price impact analyses to conduct their own sensitivity analyses. Third, NYISO states that the capacity zone analysis will consider market power in the form of buyer and seller market concentration, including whether one or more ICAP suppliers would be a Pivotal Supplier¹⁵ in the proposed new capacity zone, and if necessary, identify market power mitigation issues. NYISO states that any market power mitigation issues will be identified on a case-by-case basis and made available to the NYISO staff, the NYISO Board of Directors, the MMU, stakeholders, and the Commission.

8. NYISO states that it intends to propose in its stakeholder governance process tariff provisions addressing the process of creating a new capacity zone. NYISO further states that if it were to conclude, after consultations with the hired consultant, the MMU, the New York State Reliability Council, and its stakeholders, that a new capacity zone was needed, then it would develop related tariff provisions for stakeholder review. NYISO also states that continued stakeholder discussion is necessary to inform the design of

¹³ *Id.* at 8–10.

¹⁴ *Id.* at 13. A nested zone is a zone that includes one or more other capacity zones.

¹⁵ For purposes of NYISO’s market power mitigation measures, a “pivotal supplier” means “a Market Party that, together with any of its Affiliated Entities (a) Controls 500 MW or more of Unforced Capacity, and (b) Controls Unforced Capacity some portion of which is necessary to meet the New York City Locational Minimum Installed Capacity Requirement in an ICAP Spot Market Auction.” NYISO, Market Services Tariff, § 23.2.1 (Attachment H, Definitions).

software needed to implement a new capacity zone. NYISO states that it expects that developing that new software will take at least two years because the existing software design has “hard-coded” the three existing capacity zones (ROS, NYC, and LI) and NYISO states that the software would need to be modified to, among other things, provide for mitigation measures beyond Zone J in the future to the extent necessary.

9. NYISO states that the MMU has raised substantial concerns regarding the proposed criteria and the MMU recommends that the OATT Attachment S Deliverability test applied to proposed new resources in the Class Year process be the sole basis for determining whether a new zone is necessary. NYISO further states that the MMU has advised that, just as a transmission constraint binding in the energy market causes locational energy prices to diverge across the constraint, a determination that new capacity is not deliverable in the capacity market should cause capacity prices to diverge across the binding interface. According to the MMU, this cannot happen unless new capacity zones are defined when the Attachment S Deliverability test indicates that new capacity is no longer deliverable between areas in the NYISO market. Therefore, according to NYISO, the MMU objects to the proposed Criteria because they are not consistent with the current OATT Attachment S Deliverability test, and to the process proposed in this filing that requires additional analysis and review by NYISO stakeholders.

III. Notice of Filing and Responsive Pleadings

10. Notice of NYISO’s Compliance Filing was published in the *Federal Register*, 76 Fed. Reg. 2,897 (2011), with interventions, comments and protests due on or before January 25, 2011. Motions to intervene were filed by TransCanada Power Marketing Ltd. and TC Ravenswood, LLC, Constellation Energy Commodities Group, Inc. and City of New York.

11. Motions to intervene and protests were filed by Brookfield Energy Marketing, Inc., Constellation Energy Nuclear Group, LLC, Constellation Energy Commodities Group, LLC, the NRG Companies, and the PSEG Companies (collectively the Indicated Parties); the Dynegy Parties,¹⁶ Entergy Nuclear Power Marketing, LLC, and the GenOn Parties¹⁷ (collectively New York Suppliers); Independent Power Producers of New York

¹⁶ The Dynegy Parties consist of Dynegy Northeast Generation, Inc., and Sithe/Independence Power Partners, L.P.

¹⁷ The GenOn Parties are successors to the Mirant Parties, which filed a motion to intervene in this proceeding on February 25, 2005.

(IPPNY); Niagara Mohawk Power Corporation (National Grid) and Potomac Economics, the NYISO Market Monitoring Unit (MMU).

12. Multiple Intervenors¹⁸ and Consolidated Edison Company and Orange & Rockland Utilities Inc., Long Island Power Authority and LIPA, Central Hudson Gas & Electric Corporation, and the New York Power Authority (Joint Commenters) filed comments.

13. On February 10, 2011, NYISO filed an answer to certain comments and protests and Joint Commenters filed an answer to the New York Suppliers and the MMU. On February 25, 2011, New York Suppliers filed an answer to the Joint Commenters and on March 9, 2011, Joint Commenters filed an answer to New York Suppliers.

A. Protests and Comments

14. National Grid asserts that the decision to proceed with the formation of new capacity zones should not be at NYISO's discretion. National Grid contends that NYISO's filing contains criteria that are subjective, not well-defined, and therefore, may be subject to discriminatory interpretations. Further, according to National Grid, this scheme creates a form of regulatory risk within the market for both consumers and project developers because no one understands the exact conditions that must exist that would justify creation of a new capacity zone or potential conditions that would call for the elimination of a capacity zone. National Grid asserts that the Commission should only accept the use of unambiguous, objective criteria. National Grid adds that there is no justification for NYISO having reserved to itself the ultimate, subjective decision-making authority to determine whether or not a new capacity zone should be created and presumably eliminated.

15. Specifically, National Grid asserts that the reliability risk scenarios used in the Reliability Criterion should be more clearly defined and used for informational purposes only. In addition, with regard to the proposed "additional considerations," National Grid contends that any consultant hired by NYISO should be relegated to performing analyses and not providing opinions that NYISO may in turn use to create a new capacity zone. National Grid asserts that the term "substantially lower" as applied to the proposed "additional consideration" of a net CONE test for a potential zone, i.e., a net CONE for a particular potential zone that is "substantially lower" than for an adjacent or other nested zone, would militate against creating a new zone and should be defined quantitatively in

¹⁸ Multiple Intervenors is an unincorporated association of approximately 55 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State.

order to make the net CONE test transparent, not unduly discriminatory, and rigorous. Also, National Grid asserts that the net CONE test should be elevated to a third criterion added to the Deliverability and Reliability Criteria required for the creation of a new capacity zone. According to National Grid, it is a pass/fail test that would be more appropriately afforded the level of significance and needed specificity of the other two proposed Criteria.

16. National Grid also disagrees with NYISO's comments that its compliance obligation is to file criteria to govern the creation of a new capacity zone only. National Grid asserts that criteria for the elimination of a capacity zone should also be developed and requests that the Commission order NYISO to work with stakeholders to develop such criteria.

17. IPPNY objects to the use of the term "equilibrium" when used to describe the evaluation level where the MW of installed capacity is equal to the NYCA minimum ICAP requirement because it is not a defined term in the tariff, its use is confusing, and it is not needed to implement the capacity zone criteria. IPPNY asserts that "equilibrium" is used differently in the context of the demand curve reset where it represents an amount *above* the minimum ICAP requirement to ensure the proxy unit will earn sufficient revenues to cover its costs. IPPNY asserts that having two working, but not formal, definitions of the same term will lead to confusion and unjust and unreasonable results. IPPNY asks that, if the Commission approves the test, it direct NYISO to strike "equilibrium," which IPPNY asserts would not change the test, and instead simply use "NYCA Minimum Installed Capacity Requirement," a term which is already used by NYISO.

18. New York Suppliers protest NYISO's filing as not compliant with the Commission's prior compliance directives because it is incomplete, it will require further extensive stakeholder negotiations to develop necessary detail, and it will require at least three more years until a new capacity zone is created. New York Suppliers state that the filing does not set forth new zone creation criteria with adequate detail, and in particular does not establish whether the Criteria are cumulative or exclusive. According to New York Suppliers, the Deliverability Criterion departs fundamentally from past practice in that the deliverability analysis will be conducted at equilibrium conditions rather than at "as found" conditions. New York Suppliers add that it is unclear what assumptions would be utilized and how these assumptions would be applied in order to appropriately capture the equilibrium state.

19. New York Suppliers argue that the Reliability Criterion has no relevance in assessing whether a new capacity zone should be formed and should not be a prerequisite for such formation. New York Suppliers further state that the proposal does not define reliability risk scenarios and mitigating factors necessary to apply the Reliability Criterion. New York Suppliers assert that the other proposed mechanisms, such as the proposed status report cannot otherwise cure the filing's deficiencies.

20. According to New York Suppliers, there are already less complicated and shorter processes NYISO could adopt and they point to the annual Class Year Cost Allocation interconnection study process, which already measures deliverability across the NYCA system. The New York Suppliers note that creation of new capacity zones is a long-standing problem noted in the 2007 State of the Market Report, where the MMU raised concerns about long-term reliability in zones G, H and I, which are in southeastern New York, and that capacity in zones A - F may not be deliverable to southeastern New York to remedy these concerns. Therefore, New York Suppliers request that the Commission reject NYISO's January 4, 2011 filing and direct NYISO to submit a compliance filing within 30 days that uses the Class Year Cost Allocation study results as the basis for creating a new capacity zone, with NYISO completing all analyses in time for creating a new capacity zone no later than May 1, 2012.

21. The MMU asserts that the Commission should reject NYISO's proposed Criteria and instead direct NYISO to use the criterion from the existing Attachment S Deliverability Test in section 25.7.8 of Attachment S to the NYISO OATT. Under the MMU's proposal, a binding Highway transmission constraint (i.e., the Attachment S Deliverability Test indicates that new resources or imports are not deliverable throughout a zone in light of the actual amount of existing generation capacity that is already using the transmission capacity) would identify the need for the creation of a new capacity zone.¹⁹ The MMU states that the Attachment S Deliverability Test differs from the Highway Capacity Deliverability Test proposed by NYISO in this filing in two important respects. First, the MMU states, NYISO proposes to test the transmission system "as designed" whereas the existing Attachment S Deliverability Test tests the system "as found." The MMU asserts that this is an important distinction because using "as designed" ignores existing surplus generation capacity. According to the MMU, it is the actual surplus generation capacity that may be causing the Highway transmission constraint to bind and preventing new resources from being deliverable, so ignoring it may prevent the creation of a needed new capacity zone. A second distinction between Attachment S and the newly proposed criteria, according to the MMU, is that the proposed criteria will evaluate the entry of a single peaking resource, rather than the actual resources proposed in the relevant Class Year as required by Attachment S. The MMU asserts that, because the Attachment S Deliverability Test may load the Highway transmission interface more heavily than NYISO's proposal, the Attachment S Deliverability Test could indicate a problem that is not indicated by NYISO's proposed criterion.

¹⁹ The MMU states that it has recommended using the Attachment S Deliverability Test as the primary criterion for determining when a new zone is necessary since 2008. MMU January 25, 2011 Comments at 2.

22. The MMU argues that failing to create a new zone when transmission constraints bind results in three problems. First, costs and prices are raised to consumers in the unconstrained region. Second, capacity prices may fail to elicit needed new capacity resources in the constrained region. And third, capacity prices may fail to signal the value of new transmission investment.

23. The MMU encourages the Commission to ignore stakeholder warnings about “false positives” that may be created by the use of the Attachment S Deliverability Test. The MMU does not view it as a false positive if a Highway transmission facility binds. The MMU, instead, believes this is evidence that a new capacity zone is essential. The MMU identifies several problems that it finds when capacity is deemed not to be deliverable and a new zone is not created including: the capacity market will not send the pricing signals to build new capacity in the congested area, new suppliers on the uncongested side of the constraint may be shut out of the market, thus raising costs for consumers on the uncongested side and suppliers that can provide capacity and reliability benefits to the uncongested side will not receive efficient investment incentives.

24. The MMU is also concerned that NYISO’s proposal includes unnecessary additional considerations that will serve to delay or prevent the creation of a needed, new capacity zone. Further, and most troubling to the MMU, is the proposal to allow stakeholders to vote on the creation of a new capacity zone because, it asserts, those stakeholders have economic interests that are directly affected by the creation of a new zone.

25. The MMU states that it generally agrees with the logic underlying the Reliability Criterion, but this criterion is not consistent with the Attachment S Deliverability Test, i.e., as currently applied, the deliverability constraint can bind without a corresponding reliability need. Thus, according to the MMU, without a revision to the Attachment S Deliverability Test to conform it to this new Reliability Criterion, the application of the proposed Reliability Criterion is likely to prevent the creation of a new zone when one is needed.

26. The MMU also requests that the Commission direct NYISO to identify ways to implement new capacity zones more quickly than the three year process proposed and direct NYISO to evaluate the feasibility and benefits of pre-defining a full set of capacity zones. According to the MMU there may be high costs to defining new capacity zones individually as the need arises and therefore it asks the Commission to consider directing the pre-definition of capacity zones. The MMU sees little risk to pre-defining zones because zones with no deliverability constraints will not bind and will not have different zonal prices. The MMU notes that PJM Interconnection, L.L.C. (PJM) pre-defines zones or Locational Deliverability Areas (LDA) and in PJM’s 2013-2014 base residual auction, seven pre-defined LDAs were modeled, but only three were bound.

27. Joint Commenters contend that both the proposed threshold Deliverability and Reliability Criteria must be satisfied as a condition precedent to the establishment of a new capacity zone, and the Commission should require NYISO to develop in its stakeholder process the specific methodologies for applying these threshold criteria as well as the processes and factors to be considered in this process. Joint Commenters state that the Deliverability Criterion does not take into account whether installed capacity exists at any place in the NYCA, it merely tests the deliverability of an incremental unit; nor does it test whether the new unit is needed to meet or maintain reliability in a load zone.

28. Joint Commenters contend that the purpose of the ICAP market is to ensure that all load serving entities have acquired sufficient capacity to satisfy reliability requirements. They argue that if the application of the Reliability Criterion for new capacity zones shows no need for new capacity in the constrained area studied, then a new zone is not needed regardless of whether capacity from a new unit can be delivered into that constrained area. Conversely, according to Joint Commenters, applicability of the Reliability Criterion alone would be insufficient if the Deliverability Criterion demonstrated that the capacity from a new generating unit in an amount at least equivalent to the identified need is deliverable into the constrained area. Accordingly, Joint Commenters support a requirement that both Criteria be satisfied as a fail-safe threshold precondition to consider the development of a new capacity zone, and they support the proposed stakeholder process for determining a new capacity zone and the schedule for application of the threshold Criteria in conjunction with the process for resetting the demand curve used in the ICAP market.

29. Multiple Intervenors contend that since its inception, NYISO has administered the capacity markets in New York utilizing the same three capacity regions, and there is no evidence that the administration of the markets with these three capacity regions has led to any shortage of needed supply. Multiple Intervenors argue that recent evidence suggests that the current configuration of the capacity markets in New York is maintaining more than adequate levels of supply, and will continue to do so for the foreseeable future. Multiple Intervenors state that the 2010 NYISO Reliability Needs Assessment (RNA), which found no need for additional resources from a reliability perspective for at least the next 10 years, projects an average capacity excess in the NYCA of more than 10 percent above the currently-effective 18 percent installed reserve margin over the next four years, therefore the threshold to justify the development of one or more new capacity zones in New York should be extremely high.²⁰

²⁰ Multiple Intervenors January 25, 2011 Comments at 4-5.

30. Multiple Intervenors support NYISO's proposed two-stage process that involves initial screening criteria, and, in particular, they support the proposed analysis relating to the Deliverability Criteria. Multiple Intervenors contend that conducting the deliverability assessment under equilibrium conditions is appropriate, reasonable, consistent with the ICAP demand curves, and ensures that the current, significant levels of excess capacity in New York do not skew the results of such an assessment by indicating a lack of deliverability that is solely attributable to capacity surplus that is not necessary to maintain reliability.

31. Multiple Intervenors disagree with suggestions by other parties, including the MMU, that utilizing a single, determinative screening criteria is appropriate. Multiple Intervenors state that adequate consideration of fundamental policy and market development considerations cannot be accomplished through the use of a single determinative criterion.

32. Multiple Intervenors request that the Commission direct NYISO and the NYTOs to modify the proposed screening criteria related to reliability. Multiple Intervenors state that they support the inclusion of an initial screening criteria related to reliability, however the proposed reliability test establishes a threshold that is so low as to render the inclusion of such a screening criteria entirely meaningless. While Multiple Intervenors acknowledge that N-1-1 test that is part of the proposed test is an accepted reliability analysis utilized in prudent planning, they contend the proposed analysis coupling the N-1-1 test with the additional loss of the largest generation facility within a potential new capacity zone is not. Multiple Intervenors request that the Commission direct NYISO and the NYTOs to modify the proposed reliability screening criteria to utilize only the N-1-1 portion of the analysis described in the Compliance Filing, thereby ensuring that such criteria is meaningful and rooted in actual analysis conducted as part of prudent planning.

33. Multiple Intervenors contend that the apparent assumption in the filing that market mitigation measures can adequately address all levels of potential market power is fundamentally flawed. Multiple Intervenors concede that in certain circumstances, appropriately designed mitigation measures may be capable of addressing some level of market power concerns, while in other circumstances the overwhelming concentration of market power that would exist in a potential new capacity alone could and should be grounds to abandon further consideration of such a capacity zone.²¹

²¹ *Id.* at 9-10. "For example, in the Lower Hudson Valley (i.e., NYISO Load Zones G-I), three suppliers currently control more than 95 percent of the available capacity supply in such region. Multiple Intervenors contends that under no circumstances can such an extreme concentration of market power be overcome through

34. Indicated Parties support the development of a framework for the creation of new capacity zones, but state that the proposed “Criteria” and “Considerations” are not sufficiently developed, are impermissibly vague, and are wholly unsupported. In addition Indicated Parties assert that the timing and impacts on other market processes of any implementation of a new framework for establishing capacity zones must be better understood, and such a fundamental change in market design must be fully developed and vetted by stakeholders prior to Commission consideration. According to Indicated Parties, the applicants concede that their proposal is not sufficiently developed.²²

35. Indicated Parties state the adoption of Criteria and Considerations for creation of new capacity zones represents a fundamental change in market design, which requires clear and objective standards, such that market participants can make informed investment decisions. Indicated Parties contend that the instant proposal lacks clarity. They state, for example, that applicants do not describe whether they will give any consideration to how other demand curve decisions, such as the selection of the proxy unit location in the rest-of-state and the selection of a 2-unit installation versus a 1-unit installation would be factored into the decision to create a new zone. Indicated Parties add that both of these variables could materially change the outcome of the new zone evaluation. Indicated Parties also contend that the way the Deliverability Criteria would work in practice is unclear and, to compound the issue, the applicants have not yet developed tariff language that would inform market participants of the manner in which the proposed criteria would be applied.

36. Indicated Parties also state that while a deliverability metric that excludes surplus capacity appears reasonable, the applicants have not explained the assumptions or methodology that would be employed to adjust the “as found” system to a minimum capacity requirement study condition. Further, Indicated Parties note that use of the term “equilibrium state” is problematic given that NYISO’s definition here differs from that used in the demand curve reset process.

37. Indicated Parties contend that the Reliability Criterion suffers from similar infirmities, in that the applicants have offered no support for a reliability standard that goes beyond an N-1-1 contingency analysis to also incorporate the additional loss of the largest generator, which is inconsistent with what NYISO would use under its planning

the implementation of mitigation measures. Market power concentration of that or comparable magnitude should foreclose a region from further consideration as an independent capacity zone.”

²² Indicated Parties January 25, 2011 Protest at 6 (citing NYISO Compliance Filing at 4, 6, 7).

process to maintain reliable operations. Indicated Parties assert that the N-1-1 test is well-established²³ and there is no support for an application of a more restrictive reliability standard for purposes of creating a new capacity zone. Indicated Parties argue that other aspects of the Reliability Criteria are also unsupported, such as performing the reliability analysis under “as found” base case conditions as well as “various credible reliability risk scenarios,” without any further elaboration or substantiation. Further, according to Indicated Parties, it is unclear how the Deliverability and Reliability Criteria will work together analytically.

38. Indicated Parties maintain that the proposed Considerations are poorly defined, ambiguous, and overly subjective. They assert that the “consumer impacts” Consideration is not well-defined and the proposed “market power” Consideration remains open-ended. In addition, Indicated Parties state that while they generally agree with the timing of any implementation, the impact on existing processes must be better understood. Indicated Parties state that the implications of the capacity zone proposal on the Class Year Deliverability Study and associated upgrade costs need to be better understood, but generally agree with the proposed implementation timeline that would align the creation of new zones coincident with a triennial demand curve reset cycle.²⁴

39. Indicated Parties argue that NYISO’s discussion of the manner in which the proposed Criteria and Considerations would fit within the existing Class Year Interconnection Facilities Study process is unclear. They add that, in particular, NYISO’s discussion of the timeline and handling of any System Deliverability Upgrade Costs that may be paid by a Class Year project is ambiguous and incomplete.

40. Indicated Parties conclude that the proposal does not establish an adequate foundation upon which to move forward and thus, the Commission should reject NYISO’s request for approval of the proposed Criteria and Considerations and require that a future filing incorporate and obtain stakeholder approval to the maximum extent possible. Indicated Parties argue as the Commission previously confirmed in this proceeding that the stakeholder process should not be circumvented.²⁵ Indicated Parties

²³ *Id.* at 10 (citing *Version One Regional Reliability Standard for Resource and Demand Balancing*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,653, at P 41 (2010); *PJM Interconnection, LLC*, 131 FERC ¶ 61,172, at P 2 (2010) (approving PJM tariff sheet for reliability upgrades as consistent with N-1-1 standard)).

²⁴ *Id.* at 13-14 (citing NYISO Compliance Filing at 10).

²⁵ *Id.* at 17 (citing *New York Independent Sys. Operator, Inc.*, 126 FERC ¶ 61,046 at P 54 (2009)).

argue that absent such an approach, it will be exceedingly difficult for stakeholders to develop an acceptable proposal for future Commission consideration in light of the deficiencies in NYISO's Filing. Indicated Parties conclude that, in order to minimize future disputes, specific tariff language must be founded on specific and objective criteria that are developed and approved by affected stakeholders consistent with NYISO's shared governance structure.

B. Answers

41. In response to the concern of Indicated Parties that NYISO's filing has not been fully developed and vetted by stakeholders, NYISO states that various Criteria and Considerations were vetted over numerous stakeholder meetings and that further stakeholder review is necessary. In response to New York Suppliers' contention that changes should be in place to implement a new Lower Hudson Valley capacity zone by May 1, 2012, NYISO responds that regardless of the criteria adopted to govern establishment of capacity zones, it will be necessary to implement and test modifications to NYISO's Automated Market System and time is required to do so properly. NYISO adds that application of the Criteria in concert with the triennial ICAP demand curve reset is a rational sequence, and that retaining the same boundaries as one or more of the eleven existing NYCA Load Zones is a practical limitation that should be retained by the Commission because partitioning existing load zones would raise major market design issues and software problems.

42. In response to Indicated Parties' and Multiple Intervenors' proposal to eliminate the "loss of the largest generator" component from NYISO's proposed Reliability Criterion, NYISO maintains that this component is a necessary element of the Reliability Criterion. According to NYISO, the Reliability Criterion is not the same as existing planning metrics insofar as it is intended to act as a screen for determining whether a given load zone warrants further evaluation as a potential new capacity zone based on the reliability of the transmission network. NYISO states that unlike other planning measures, the Reliability Criterion has also been designed to complement the Deliverability Criterion; its purpose is to assess whether both the loss of the largest generator and an N-1-1 outage would create a resource deficiency condition where imports into and generation within a zone would be insufficient to meet peak load. According to NYISO, the Reliability Criterion must therefore reflect expected levels of capacity, which necessitates that it account for some derated level of generation, and the inclusion of the "loss of the largest generator component is a means to account for the necessary derating."

43. In response to National Grid's argument that the Commission should elevate the net CONE test from a Consideration to a third independent Criterion, NYISO argues that such a reclassification could result in false negatives, thus the test should be applied as part of the more rigorous analysis necessary to determine if a new capacity zone should be created.

44. NYISO states that it agrees with IPPNY's proposal to strike the term "equilibrium" and replace it with the NYCA Minimum ICAP Requirement or the numeric proportionate equivalent of such requirement to the load zone or group of load zones subject to examination.

45. Finally, NYISO states that, contrary to New York Suppliers' assertions, the Compliance Filing does what the June 20, 2009 Order required in that it addresses "the implications and effects of a new capacity zone or zones on the tariff provisions and market rules governing Capacity Resource Interconnection Service."²⁶ NYISO adds that the fact that the proposal evolved over time and that the final version was discussed less extensively than some would have preferred does not mean that NYISO failed to meet its obligation to work with its stakeholders. NYISO further states that it is unrealistic for it to have developed software modifications necessary to implement an evolving proposal before it was finalized, let alone accepted by the Commission. According to NYISO, the Compliance Filing's approach is entirely consistent with proceedings where parties have obtained approvals of proposed tariff concepts prior to submitting actual tariff language.

46. Joint Commenters, in response to the New York Suppliers and the MMU, assert that the Compliance Filing is consistent with the compliance obligation in this proceeding because the proposed Criteria satisfy the objective of paragraph 19 of the Consensus Deliverability Plan, which they note did not direct the creation of a capacity zone specifically. In addition, Joint Commenters assert that the proposed Criteria contain sufficient detail to meet the intent of the compliance obligation. Furthermore, Joint Commenters disagree with New York Suppliers' assertion that once the threshold criteria have been met no further analysis is needed. Joint Commenters state that using only these criteria is unreasonable and too simplistic without the additional considerations listed in the filing. Joint Commenters also state that the MMU's assertion that only one criterion should be used is unjustified because one criterion is overly broad, too simplistic and may result in the creation of unneeded capacity zones.²⁷ Michael Cadwalader, testifying in support of Joint Commenters, argues that even if a transmission constraint prevents capacity in one part of a zone from being delivered to the rest of the zone, a new zone may not need to be created to send accurate price signals. That is because, in Mr. Cadwalader's view, the capacity price in the original, broad zone may rise to the level needed to support new entry. Mr. Cadwalader's analysis is based on the conclusion that if a binding transmission constraint develops within a zone, NYISO market rules would

²⁶ NYISO February 10, 2011 Answer at 7 (citing June 9, 2009 Order, 127 FERC ¶ 61,318 at P 53).

²⁷ In support of their rebuttal of the MMU's assertions, the Joint Commenters also submit the affidavit of Michael Cadwalader as an exhibit to their answer.

not permit more capacity in the unconstrained portion of the zone to participate in the capacity auction than can be delivered to the entire zone.²⁸

47. New York Suppliers respond that Joint Commenters misrepresent the MMU's comments and recommendations and that the assumptions and conclusions in Mr. Cadwalader's affidavit should be disregarded.²⁹ According to the New York Suppliers, the combination of higher costs and more stringent environmental requirements means the proposed NYCA demand curve net CONE will not support new entry in the three constrained lower Hudson Valley load zones. Dr. Shanker, testifying in support of the New York Suppliers, disputes the assumptions underlying the analysis of Joint Commenters' witness, Mr. Cadwalader, including the assumption that undeliverable capacity is not permitted to participate in the NYISO capacity auction. Dr. Shanker states that under the current NYISO market rules, all existing supply is deemed to be deliverable and is eligible to participate in the capacity markets. New York Suppliers also assert that recent NYISO Class Year studies support the assertion that a persistent constraint exists on the New York system that has not been addressed due to deficiencies in the capacity market structure.

48. Joint Commenters answer the New York Suppliers' answer by asking the Commission to reject the New York Suppliers' answer because, according to Joint Commenters, it mischaracterizes the Cadwalader affidavit they submitted earlier and distorts the record. However, if the Commission accepts the New York Suppliers' answer, then the Joint Commenters ask the Commission to also accept their supplemental answer and affidavit by Michael Cadwalader, which disputes the assertions made by New York Suppliers.

IV. Discussion

A. Procedural Matters

49. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

50. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011) prohibits an answer to a protest or to an answer unless otherwise

²⁸ See Joint Commenters February 10, 2011 Filing, Cadwalader Aff. at 4, 8.

²⁹ The New York Suppliers also submitted the supplemental affidavit of Dr. Roy Shanker as an exhibit to their answer to respond to the affidavit of Michael Cadwalader.

ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

B. Commission Determination

51. We accept in part the proposed Criteria, subject to modification, and reject the proposed additional Considerations. We also direct NYISO to develop and file tariff revisions within 60 days of this order that implement the approved Criteria. We also direct NYISO to file a report with the Commission on its stakeholder process within six months of the date of this order.

1. Threshold Criteria

a. Highway Capacity Deliverability Test

52. We agree with the MMU and Joint Suppliers that the NYISO proposal is not just and reasonable because it fails to adequately recognize binding transmission constraints in the capacity market, as explained below. We find that NYISO should use the methodology contained in the existing Attachment S Deliverability Test in section 25.7.8 of Attachment S to the NYISO OATT in determining whether to create new zones. That is, a new zone should be created when the total transmission transfer capability (including any upgrades that would be required to be built to make new resources capacity-qualified³⁰) is insufficient to allow all of the capacity resources in a pre-existing zone to be deliverable throughout the pre-existing zone.

53. As explained herein, the Highway Capacity Deliverability Test, which is proposed to be conducted every three years in conjunction with the update of ICAP demand curves, evaluates whether the available Tie Capacity Margin on each Highway interface is at least equal to the size (in MW) of the NYCA “new entrant” peaking unit used to formulate the then-effective demand curve. NYISO proposes to analyze whether there would be “room” on the Highway for the additional capacity as if the system were in “equilibrium” state, i.e., assuming that the MW of installed capacity on the Highway equal the NYCA minimum ICAP requirement (“as designed” or “at equilibrium” test), without reference to the actual system conditions that exist at the time the test is conducted (“as found” test).

³⁰ Our decision here is not intended to relieve new resources of their requirement to pay for the upgrades as specified in Attachment S. We agree that it is reasonable to require a new resource, as a condition of participating in the capacity market, to pay for the transmission upgrades needed to relieve the binding incremental transmission constraints that its entry would cause within its zone in the capacity market.

54. The Joint Commenters argue that the mere existence of a binding transmission constraint does not necessarily create the need for a new zone. Undeliverable capacity, they argue, would not be allowed to participate in the capacity markets; undeliverable capacity in the unconstrained part of a zone would not be allowed to displace capacity on the constrained side of the zone. Thus, under their theory, if there were a need for new capacity in any constrained portion of the zone, prices in the entire zone would rise to the level needed for new entry in that constrained portion of the zone, despite the presence of untaken (but undeliverable) capacity elsewhere in the zone. We conclude that the analysis of Joint Commenters and their witness, Mr. Cadwalader, is only partly correct. While new capacity that is undeliverable is not allowed to participate in the capacity markets, the same conclusion does not apply to existing capacity.

55. Attachment S of the NYISO Tariff requires that any new generation wishing to become a capacity resource must pay for sufficient transmission upgrades to make it deliverable throughout its zone.³¹ Therefore, Joint Commenters are correct that no new resource would be allowed to participate in the NYISO capacity auction unless it is deliverable throughout the zone. Thus, if no binding transmission constraints exist within a zone prior to the entry of new generation, but would exist if new generation entered the market, the new generation must pay for transmission upgrades to eliminate the binding constraint if it wishes to participate in the capacity market. If such upgrades by new resources eliminate what would otherwise be a binding constraint, then there is no need to create a new capacity zone. But, once a resource qualifies as a capacity resource, because either it is deliverable at the time it requests CRIS rights³² or it is a capacity resource before Class Year 2007,³³ it is deemed deliverable throughout a zone even if binding transmission constraints arise in the future in that zone that prevent that resource

³¹ NYISO OATT Attachment S, section 25.7.3, New York Capacity Regions.

³² NYISO OATT Attachment S, section 25.7.5, The Pre-existing System (“Where the Existing System Representation demonstrates deliverability issues, a Developer electing CRIS need only address the incremental deliverability of its inter-connecting generator or merchant transmission project, not the deliverability of the pre-existing system depicted in the Existing System Representation. Likewise, Transmission Owners will not be responsible for curing any pre-existing issues related to the deliverability of generators.”).

³³ “The proposed deliverability requirements will not apply to projects prior to the Class Year 2007.” NYISO, Filing, Attachment I, Docket No. ER04-449-016, at 6 (filed October 5, 2007) (accepted by the Commission, *New York Independent Sys. Operator, Inc.*, 126 FERC ¶ 61,046 (2009)).

from being deliverable in fact.³⁴ Such transmission constraints could bind in the future because, for example, transmission capacity becomes degraded or because load shrinks in part of the zone, thereby creating or increasing a generation surplus that cannot be delivered to the rest of the zone.

56. If transmission constraints bind and a new zone is not created that will allow the auction to recognize the constraint, the capacity auction for that zone may accept more capacity in the unconstrained area of the zone than can be delivered to the constrained area. Some of this capacity may, in fact, displace capacity located in the constrained area. Thus, the amount of capacity that is accepted in the auction that is actually deliverable to the constrained area of the zone may be less than the amount needed for reliability. Such a result could jeopardize reliability, by either failing to provide capacity payments to the capacity needed to meet the reliability objective in the constrained area, or providing a zone-wide capacity price that is too low to maintain the amount of capacity needed to meet reliability objectives in the constrained area. Additionally, the zone-wide capacity price may be higher than the marginal value of capacity in the unconstrained area (as represented in the capacity demand curve).

57. By contrast, if a new zone is created that will allow the auction to recognize the constraint, prices in the constrained area will be allowed to rise above prices in the unconstrained area, thereby providing stronger incentives to attract and retain capacity needed to meet reliability objectives in the constrained area. Similarly, the lower prices in the unconstrained area would reflect the lower marginal value of capacity, thereby avoiding the encouragement of capacity that is not needed in that area.

58. Accordingly, we agree with the MMU that the test should be applied to the market “as found” rather than “as designed.” The purpose of creating zones is to help the capacity auctions appropriately select and price capacity resources from among those that participate in the auctions in light of all the actual constraints that exist. This purpose can be accomplished only by considering the ability of the transmission grid to accommodate the actual capacity resources found in the NYISO market and the binding transmission constraints that may actually arise in the auction. By contrast, testing for deliverability assuming “as designed” conditions, as NYISO proposes, would ignore actual capacity in the market that is in excess of the “as designed” capacity. As a result, the test could fail

³⁴ NYISO OATT Attachment S, section 25.9.3, Term of CRIS Rights (“Large Facilities and Small Generating Facilities qualifying for CRIS will retain their CRIS Status at the capacity level found deliverable in the Class Year Deliverability Study regardless of subsequent changes to the transmission system or the transfer of facility ownership, provided the facility remains capable of operating at the capacity level studied and is not deactivated.”).

to find deliverability constraints that would actually arise during auctions, resulting in poor price signals and selection of capacity resources that could create reliability problems as discussed above. We direct NYISO to file tariff changes implementing this process for creating new zones within 60 days of the date of this order.

b. Reliability Test

59. Under the Reliability Criterion, NYISO proposes to analyze, for each potential new capacity zone, whether the loss of the largest generator coupled with an N-1-1 loss³⁵ of transmission into or generation in the proposed zone would create a resource deficiency condition (i.e., imports and generation equal less than peak load). Unlike the Highway Capacity Deliverability Test, which would analyze the system “as designed,” under the Reliability Criterion, NYISO would analyze the system “as found.”

60. Here we also agree with the MMU that the proposed Reliability Criterion may improperly result in a new capacity zone not being created when one is necessary.³⁶ As noted by the MMU, the Reliability Criterion is not consistent with the Attachment S Deliverability Test that we find should be the basis for analyzing whether or not to create a new capacity zone.³⁷ We note that we are not prejudging how NYISO may establish any local reliability requirements for a potential new zone, for example, New York City’s 81 percent locational minimum requirement, or passing judgment on the use of various credible reliability risk scenarios generally as a part of system planning.³⁸ In short, we find that a deliverability constraint can bind under the Attachment S Deliverability Test without there being a corresponding reliability need. More specifically, a binding transmission constraint may occur in an auction even though the Reliability Criterion is not met (i.e., the amount of resources within the constrained area is sufficient to meet reliability objectives), at least temporarily. For example, even though an auction selected capacity in the unconstrained area that cannot be delivered to the constrained area and displaced existing capacity located in the constrained area, the displaced capacity could elect to remain operational, at least temporarily, in the hope of being selected in future auctions and receiving capacity payments in the near future. But the price signals sent to

³⁵ An N-1-1 loss is a sequence of events consisting of the initial loss of a single generator or transmission element, followed by system adjustments, followed by another loss of a single generator or transmission element. NYISO Comprehensive Reliability Planning Process Manual 26, section 1.2.2 (November 20, 2007).

³⁶ MMU January 25, 2011 Comments at 8.

³⁷ *Id.*

³⁸ NYISO Compliance Filing at 7.

the constrained and unconstrained areas would not accurately signal the relative needs for and values of capacity in the two areas of the broad zone. Accordingly, we reject the use of the proposed Reliability Test as a criterion.

2. Additional Considerations

61. We find that the use of clearly-defined approved formulaic Criteria and procedures that NYISO will implement through tariff provisions will provide a just and reasonable process for the creation of new capacity zones as actual conditions dictate. Therefore, we reject the proposed additional “Considerations” laid out in the filing as unnecessary and vague determinants for the establishment of a new capacity zone for the following reasons.

62. First, we do not find that comparing differences in the Net Cost of New Entry in adjacent zones is necessary given that we are directing NYISO to use the Attachment S Deliverability Test. As this test is based on the “as found” conditions in a given Class Year, comparing hypothetical units to determine an “Indicative Demand Curve” is not necessary to determine whether or not to create a new capacity zone. If a new zone is determined to be needed, NYISO will have to create a new demand curve and determine any locational capacity requirement for the new zone. However, these studies should occur after the Attachment S Deliverability Test has determined the need for a new capacity zone.

63. Second, NYISO has not explained how it would use the Consumer Impacts test beyond informational purposes. NYISO explains that some stakeholders are interested in quantifying the price impacts of a potential new capacity zone’s demand curve and interested stakeholders may want to use the results to develop their own specific impact scenarios.³⁹ We are not opposed to NYISO conducting any consumer impact studies, but do not find them necessary as part of the Attachment S Deliverability Test we are directing NYISO to use herein.

64. Third, we agree with NYISO that market power concentration studies may be necessary after a new zone is determined to be needed, and that additional market power mitigation measures may be needed for an established new capacity zone.⁴⁰ However, we will not prejudge these yet-to-be-developed measures, and reject NYISO’s proposal that they should be used to determine whether or not to create a new capacity zone.

³⁹ *Id.* at 9.

⁴⁰ *Id.*

65. Fourth, we are not persuaded that stakeholder voting should occur as a prerequisite for the creation of a new capacity zone, as NYISO proposes. As the MMU notes, the votes of individual market participants may be driven by considerations narrowly focused on their own economic interests in a way that will not align with the efficiency implications of a new capacity zone. Further, this is not a feature of the ICAP demand curve reset process and, therefore, should not be part of the new capacity zone determination process. We acknowledge additional discussions with stakeholders may be needed to develop the actual, detailed tariff language to implement the approved Criteria for the creation of new capacity zones. However, as with the demand curve reset process, a stakeholder vote on each proposed new capacity zone will not be necessary if clear and definitive criteria and procedures for the establishment of new capacity zones are set forth in the NYISO Services Tariff.

66. Further, while we accept NYISO's proposal to initially base new capacity zones on the existing 11 load zones or a combination thereof due to the practical limitations of market and software design, we again note the importance of accurately reflecting binding transmission constraints in the capacity market clearing process.⁴¹ We recognize the administrative and developmental costs that may arise in designing a system that allows subdividing the existing 11 load zones to create new capacity zones and we agree with NYISO that the costs may initially outweigh the benefits. However, over time, more precision in capacity pricing may be warranted. Accordingly, if NYISO determines that localized constraints are not being reflected in capacity clearing prices, NYISO should reconsider subdividing the existing 11 load zones into more, smaller zones.

3. Timing

67. We note that this proceeding began in 2004 as a part of the joint compliance filing of NYISO and the New York Transmission Owners with Order No. 2003 where the Commission directed NYISO to work with its stakeholders to develop a second level of interconnection service containing a deliverability component similar to Network Resource Interconnection Service (NRIS).⁴² In 2007, NYISO and the New York

⁴¹ NYISO February 9, 2011 Answer at 4 - 5.

⁴² "We agree with the Joint Filing Parties that NYISO's collaborative stakeholder process should be allowed to determine how to integrate a deliverability component into its interconnection service. Therefore, we accept the Joint Filing Parties' current proposal but will require that the parties modify their tariff to include a second level of service containing a deliverability standard, similar to NRIS, within 60 days of the issuance of this order." *New York Indep. Sys. Operator, Inc.*, 108 FERC ¶ 61,159, at P 28 (2004).

Transmission Owners filed the Consensus Deliverability Plan that, among other things, included a provision to work with stakeholders over the next three years to address the “potential formation of additional locational ICAP zones.”⁴³ In the June 30, 2009 Order, the Commission noted the ongoing stakeholder process to develop zonal criteria and also stated that the filing should address the implications and effects of a new capacity zone on the tariff provisions and market rules.⁴⁴ Tariff provisions to effectuate the proposed Criteria have yet to be developed.

68. Filing parties’ presentation suggests that a new capacity zone, if required, could likely not be implemented until the ICAP demand curve reset for the capability period that begins on May 1, 2014. NYISO asserts that the creation of any new zones should occur only at the time that the ICAP demand curve is reset. According to NYISO, that is because creating a new zone would require creating a separate demand curve for the new zone, which in turn requires establishing (among other things) a net Cost of New Entry for the new zone in order to establish the parameters of the new zone’s demand curve. We agree with NYISO and, therefore, at this time, we will accept NYISO’s recommendation regarding the timing for creating new zones. Thus, NYISO would apply the test for determining whether to create new zones every three years in conjunction with the ICAP demand curve reset process.

69. However, we direct NYISO, along with its stakeholders, to consider the desirability and feasibility of creating new zones on an annual basis rather than only once every three years. As discussed above, ignoring transmission constraints can result in poor price signals and in selecting capacity in the auction that is not actually deliverable to a constrained area. Among other things, NYISO should consider whether an adequate demand curve could be developed for a new zone created between demand curve reset processes without going through analysis of the cost of new entry in the new zone. For example, consideration should be given to whether a temporary demand curve for the new zone could be developed (until the next demand curve reset process) using the net cost of new entry that underlies the demand curve of the zone out of which the new zone has been created. We direct NYISO to file, within six months of the date of this order a

⁴³ NYISO, Filing, Attachment I, Docket No. ER04-449-016, at 8 (filed October 5, 2007) (accepted by the Commission, *New York Independent Sys. Operator Inc.*, 126 FERC ¶ 61,046 (2009)).

⁴⁴ June 30, 2009 Order, 127 FERC ¶ 61,318, at P 53.

report with the Commission on the results of this effort, and a schedule for developing tariff changes to implement any recommendations resulting from the process.⁴⁵

70. Finally, we will not expand our compliance directive to require NYISO to define criteria regarding the potential elimination of capacity zones as some commenters have suggested. In the June 30, 2009 Order,⁴⁶ the Commission directed NYISO specifically to define the criteria for the evaluation and creation of a new capacity zone to satisfy part of the 2007 Consensus Deliverability Plan.⁴⁷ Given the length of time that has passed since NYISO and the New York Transmission Owners filed the Consensus Deliverability Plan committing to “work with stakeholders to develop detailed tariff sheets consistent with the Deliverability Plan to be filed with the Commission upon their completion,” we are not inclined to expand the compliance directive beyond the creation of new capacity zones. NYISO is free to discuss with its stakeholders a mechanism to eliminate an unneeded capacity zone, but we do not believe NYISO should be required to expend its time and resources, at this time, to develop such criteria as that may interfere with the more important goal of establishing a process by which new capacity zones may be established. The impact of the failure to create a zone where one is needed is much more significant than the impact of a failure to eliminate an existing unneeded zone because an unneeded zone should not experience price separation from the neighboring zones. Moreover, if a new capacity zone is not created where one is needed, the reserve margin may not be met in the long run because new capacity resources will not be given the proper price signal to invest in the areas where new capacity is needed.⁴⁸

⁴⁵ Because we are rejecting the use of assumed equilibrium conditions, NYISO’s statement in its answer that it supports striking the term “equilibrium” and replacing it with the “NYCA Minimum Installed Capacity Requirement” is now moot. *See* NYISO, February 9, 2011 Answer at 7.

⁴⁶ June 30, 2009 Order, 127 FERC ¶ 61,318 at P 53 (“[W]e direct NYISO to make a filing by this date that satisfies paragraph 19 of the Consensus Deliverability Plan. Such a filing should address the implications and effects of a new capacity zone or zones on the tariff provisions and market rules governing Capacity Resource Interconnection Service.”).

⁴⁷ 2007 Consensus Deliverability Plan at P 19 (“The NYISO staff and market participants will work collaboratively to develop over the next three years criteria for the potential formation of additional locational ICAP zones.”).

⁴⁸ The MMU identified numerous risks to not creating a new capacity zone where one is needed in the “New York ISO 2008 State of the Market Report” at pages 14 and 15.

The Commission orders:

(A) NYISO's proposed Criteria are hereby accepted, in part, and rejected, in part, subject to the conditions discussed in the body of this order, and NYISO's proposed Considerations are hereby rejected.

(B) NYISO is hereby directed to file tariff revisions to its Services Tariff that implement the revised Criteria as discussed in the body of this order, within 60 days of the date of this order.

(C) NYISO is hereby directed to file a report with the Commission as discussed in the body of this order within six months of the date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.