

147 FERC ¶ 61,152
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

New York Independent System Operator, Inc.

Docket No. ER13-1380-003

ORDER ON REHEARING

(Issued May 27, 2014)

1. In this order, the Commission denies, in part, and grants, in part, rehearing of its August 13, 2013 order,¹ which accepted the New York Independent System Operator, Inc.'s (NYISO) proposed tariff revisions to establish and recognize a new capacity zone encompassing NYISO Load Zones G, H, I, and J (the G-J Locality), effective July 1, 2013, with the exceptions of certain tariff provisions that will become effective January 15, 2014, and January 27, 2014.

I. Background

2. NYISO's Installed Capacity (ICAP) market uses NYISO-determined demand curves for each ICAP pricing zone. Prior to the issuance of the August 13, 2013 Order, the ICAP market consisted of three pricing zones: New York City (NYC, comprised of Load Zone J), Long Island (LI, comprised of Load Zone K), and Rest-of-State, which is comprised of all load zones in the New York Control Area (NYCA).

3. In an August 30, 2012 order in Docket No. ER12-360-000, the Commission accepted tariff revisions that implement Commission-approved criteria for evaluating, identifying and, if necessary, establishing new capacity zones in the NYCA.² The process begins with a new capacity zone study. If the study identifies a constrained

¹ *New York Indep. Sys. Operator, Inc.*, 144 FERC ¶ 61,126 (2013) (August 13, 2013 Order).

² *New York Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,160 (2012) (August 30, 2012 Order).

Highway³ interface into one or more load zones, NYISO must file with the Commission, on or before March 31 of a Demand Curve reset year, proposed tariff revisions necessary to establish and recognize the new capacity zone(s).

4. In a related proceeding in Docket No. ER12-360-001, NYISO proposed market power mitigation measures that would apply for all new capacity zones that are comparable, with certain exceptions, to those in the New York City (NYC) capacity zone. The Commission conditionally accepted those measures in a June 6, 2013 order.⁴

5. On April 30, 2013, in the instant docket, NYISO filed proposed tariff provisions to provide for a new capacity zone encompassing load zones G-J (the G-J Locality). In the August 13, 2013 Order, the Commission accepted NYISO's proposal to establish the new G-J Locality capacity zone, finding that NYISO had properly followed its tariff in identifying a constrained Highway interface and in identifying the boundary of the new capacity zone.⁵ The Commission also directed staff to hold a technical conference, in a separate proceeding, to discuss with interested parties whether or not to model Load Zone K as an export-constrained zone for a future Demand Curve reset proceeding.

II. Requests for Rehearing of the August 13, 2013 Order

A. Procedural Matters

6. On September 12, 2013, the New York Power Authority (NYPA), the Indicated New York Transmission Owners (Indicated NYTOs),⁶ Central Hudson Gas & Electric Corporation (Central Hudson), and the New York State Public Service Commission (NYPSC) filed requests for rehearing of the August 13, 2013 Order. On October 28, 2013, NYISO filed what it styled as a request for partial reconsideration of the August 13, 2013 Order. On November 8, 2013, Independent Power Producers of

³ Highway is generally defined as 115 kV and higher transmission facilities.

⁴ *New York Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,217 (2013) (June 6, 2013 Order).

⁵ August 13, 2013 Order, 144 FERC ¶ 61,126 at P 20.

⁶ For purposes of this proceeding, the Indicated NYTOs consists 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.

New York, Inc. filed an answer in opposition to NYISO's October 28, 2013 pleading. On November 12, 2013, NRG Companies and Entergy Nuclear Power Marketing, LLC also filed answers in opposition to NYISO's October 28, 2013 pleading. On November 12, 2013, Multiple Intervenors⁷ filed in support of NYISO's October 28, 2013 pleading. On November 27, 2013, Central Hudson filed an answer to Entergy's November 12, 2013 answer.⁸

7. We reject NYISO's October 28, 2013 pleading. NYISO styles its pleading as a request for partial reconsideration of the August 13, 2013 Order. However, we find that NYISO's October 28, 2013 pleading is in actuality a request for rehearing of the August 13, 2013 Order.⁹ The Commission lacks the authority to consider requests for rehearing if filed more than 30 days after issuance of a Commission order, which, in the instant case, was September 12, 2013.¹⁰ Under section 313(a) of the FPA, a request for

⁷ Multiple Intervenors state that they are an unincorporated association of over 55 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State.

⁸ On April 30, 2014, Central Hudson filed a motion in this proceeding and in Docket No. ER14-500-000, the demand curve reset proceeding, requesting expeditious rulings on rehearing or, alternatively, a stay of capacity auctions for the new capacity zone. With the issuance of Commission orders in both of these proceedings, that motion is now moot and accordingly, we dismiss it.

⁹ Cf. *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services into Markets Operated by the California Indep. Sys. Operator*, 133 FERC ¶ 61,014, at P 15 (2010) (the Commission is "not obligated to accept a pleading solely on the basis of its party bestowed title and, instead, determines the substance of the pleading"). See also *id.* P 35 (rejecting requests for clarification and reconsideration as untimely requests for rehearing); *New York Indep. Sys. Operator, Inc.*, 115 FERC ¶ 61,206, at P 3 (2006) (rejecting request for clarification as essentially an untimely request for rehearing); *Friends of Keeseville, Inc.*, 39 FERC ¶ 61,269, at 61,880 (1987), *reh'g denied*, 41 FERC ¶ 61,071 (1987), *aff'd sub nom. Friends of Keeseville, Inc. v. FERC*, 859 F.2d 230 (D.C. Cir. 1988) (rejection of motion for reconsideration on finding the pleading was, in essence, an untimely request for rehearing).

¹⁰ *Baltimore Gas & Elec. Co.*, 130 FERC ¶ 61,210, at P 9 (2010); *Mississippi Delta Energy Agency*, 122 FERC ¶ 61,277, at P 9 (2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, 120 FERC ¶ 61,202, at P 6 (2007); *New York Indep. Sys. Operator, Inc.*, 115 FERC ¶ 61,206, at P 3 (2006); *New England Power Pool*, 89 FERC ¶ 61,022, at 61,076 & nn.3-4 (1999); *CMS Midland, Inc.*, 56 FERC ¶ 61,177, at 61,623 (1991); *Public*

(continued...)

rehearing must be filed within 30 days after issuance of a final order in a proceeding.¹¹ The Commission and federal courts have firmly established that the 30-day time period is jurisdictional and cannot be waived.¹² Thus, we have routinely dismissed filings that are, in essence, untimely requests for rehearing.¹³ We will do the same here. Consequently, we also dismiss the answers to NYISO's October 28, 2013 pleading.

B. Substantive Matters

1. Delay or Phase-In of the Implementation of a New Capacity Zone

8. In its April 30, 2013 tariff filing, NYISO stated that the new capacity zone study determined that the Upstate New York/Southeast New York (UPNY/SENY) Highway interface into Load Zones G, H, and I was constrained because it was bottling¹⁴ 849.2 MW of generation from Load Zones A through F, and therefore, NYISO was required to create a new capacity zone.¹⁵ NYISO explained that the new capacity zone

Service Co. of New Hampshire, 56 FERC ¶ 61,105, at 61,403 (1991); *Arkansas Power & Light Co.*, 19 FERC ¶ 61,115 (1982).

¹¹ 16 U.S.C. § 8251(a)

¹² See *City of Campbell v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985) (stating that the 30-day time limit “is as much a part of the jurisdictional threshold as the mandate to file for a rehearing”); *Boston Gas Co. v. FERC*, 575 F.2d 975, 977-79 (1st Cir. 1978) (same); *New York Indep. Sys. Operator, Inc.*, 115 FERC ¶ 61,206, at P 3 (2006) (footnote omitted); *New England Power Pool*, 89 FERC ¶ 61,022, at 61,076 (1999).

¹³ *Midwest Indep. Sys. Operator, Inc.*, 120 FERC ¶ 61,202, at P 6 (2007); *New York Indep. Sys. Operator, Inc.*, 115 FERC ¶ 61,206, at P 3 (2006).

¹⁴ “If the net generation available upstream is greater than the calculated [First Contingency Incremental Transfer Capability] (FCITC), that amount of generation above the FCITC is considered to be constrained or “bottled” capacity and may not be fully deliverable under all conditions.” NYISO April 30, 2013 Filing, Attachment X, New Capacity Zone Study Report at 5.

¹⁵ NYISO April 30, 2013 Filing, Attachment X, New Capacity Zone Study Report at 13.

study applied the assumptions and methodology required under section 5.16.1.1 of the Services Tariff.¹⁶

9. NYISO did not propose tariff revisions that would provide for the phase-in of a new capacity zone. Indicated NYTOs proposed a phase-in of the new capacity zone price impact similar to the phase-in period applied to the implementation of the original demand curves. In the August 13, 2013 Order, the Commission declined to require such a phase-in and agreed with the MMU that a phase-in would delay the capacity market's ability to send more efficient investment price signals. In addition, the Commission found that these issues have been considered over a seven-year time period with extensive focus over the past two years and parties have been on notice of these impending market design changes.

10. In its request for rehearing, the NYPSC contends that the Commission either failed to consider the New York State transmission initiatives underway that will address the deliverability constraint identified by NYISO or arbitrarily and capriciously ignored them. The NYPSC states that it does not dispute that creating a new capacity zone could have long-term reliability benefits, or that the creation of a new capacity zone in Zones G-J may eventually incent new generation in that location, but instead disputes that these benefits would accrue from establishing the new capacity zone at this time.¹⁷ The NYPSC states that there are new state transmission initiatives underway that will address the deliverability constraint identified by NYISO. It argues that the progress of the state programs raises serious doubts regarding the effectiveness of creating a new capacity zone at this time, while requiring ratepayers to pay hundreds of millions in additional ICAP costs within the new capacity zone with no concomitant benefits to consumers.

11. The NYPSC states that the Commission's rationale in approving the new capacity zone stressed the importance of long term price signals. It contends that implementing the new capacity zone in 2014 will provide a meaningless price signal and will only serve to provide an extremely high short-term price that provides incumbent generators in the Lower Hudson Valley with an economic windfall. The NYPSC asserts that this skewed short term price bears no relation to the long-term price signal the new capacity zone is intended to produce, and would be completely meaningless for prospective developers. The NYPSC argues that the Commission's goal of creating the new capacity zone to provide a long-term price signal would be successfully achieved by allowing for a delay until 2017 for the capacity price increase, or a phase-in approach as advocated by the

¹⁶ NYISO April 30, 2013 Filing at 11.

¹⁷ NYPSC September 12, 2013 Rehearing Request at 7.

NYTOs, so that prices in the new capacity zone would reflect the new configuration of the transmission system.¹⁸

12. NYPA argues that the Commission should direct NYISO to phase-in the cost impacts of the new capacity zone. NYPA contends that the cost increases that the new capacity zone consumers may experience over the three-year period, May 1, 2014, when the G-J new capacity zone takes effect, to April 30, 2017, has been estimated by the New York Department of Public Service potentially to exceed one billion dollars.¹⁹ NYPA argues that a phase-in would reduce the rate shock imposed on consumers without undermining or delaying the development of the new supply in the G-J new capacity zone that the new capacity zone is intended to incentivize. NYPA argues that no developer can respond to these increased price signals by bringing a new generator on line in one or even two years; the development process is simply too long. NYPA asserts that if the Commission were to send the price signal that prices are increasing and will fully reflect the cost of new entry in the G-J new capacity zone within three years, developers would be assured that when their projects commence operation they will receive the higher costs associated with the G-J new capacity zone. NYPA contends that in the meantime, there is no good reason to saddle consumers with dramatically higher costs from day one, given the length of time it will take developers to respond to increased price signals.²⁰

Commission Determination

13. The issue of a phase-in of the capacity prices in the new G-J capacity zone arose in both this proceeding and in the demand curve reset proceeding in Docket No. ER14-500. In the August 13, 2013 Order in this proceeding, the Commission considered the possibility of a phase-in of the projected estimated price impacts of the new capacity zone and found that such a phase-in was not justified. The Commission found that a phase-in would delay the capacity market's ability to send more efficient investment price signals, that the need for a new capacity zone in the Lower Hudson Valley has only become more pronounced since the Commission required NYISO to develop criteria for the creation of a new capacity zone,²¹ and that there was public notice at least as far back as 2006 concerning the need for creation of the new capacity zone.²² The Commission relied on

¹⁸ NYPSC September 12, 2013 Rehearing Request at 8-9.

¹⁹ NYPA September 12, 2013 Rehearing Request at 17.

²⁰ *Id.*

²¹ August 13, 2013 Order, 144 FERC ¶ 61,126 at P 32.

²² *Id.* P 31.

NYISO's conclusion from its deliverability tests (beginning in 2008) that the UPNY/SENY transmission interface between the Upper Hudson Valley and the Lower Hudson Valley has been overloaded since 2008.²³ Additionally, NYISO's market monitor had identified long-term reliability concerns in the Lower Hudson Valley that could be addressed by the creation of the new capacity zone. These clearly indicated a long-time unsatisfied need for a new capacity zone to ensure that sufficient energy and capacity would be available where it was needed. To address this long-standing transmission constraint, NYISO was required, under its tariff, to create a new capacity zone.

14. In approving NYISO's methodology for the creation of any new capacity zone in Docket No. ER04-449-023,²⁴ the Commission was careful to limit the circumstances in which a new capacity zone would be created to only when there is a *pre-existing* overload on the transmission system that would not allow for transmission of energy to where it is needed.²⁵ In such circumstances, the creation of a new capacity zone results in price signals that reflect that capacity is needed in order to address economic as well as existing or potential reliability concerns.²⁶ An existing reliability concern occurs when a binding transmission constraint prevents sufficient capacity from being deliverable where

²³ NYISO April 30, 2013 Filing, Attachment XI, Patton Aff. ¶ 11.

²⁴ *New York Indep. Sys. Operator, Inc.*, 136 FERC ¶ 61,165, at P 52 (2011) (September 8, 2011 Order).

²⁵ The Commission noted that 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-qualified) is insufficient to allow all of the capacity resources in a pre-existing zone to be deliverable throughout the pre-existing zone. *Id.*

²⁶ Similarly, in ISO-NE, the Commission held that

[o]ne of the goals of the forward capacity market is to reveal those locations where capacity is required, and to allow prices to rise to the levels necessary to induce resources to locate and to remain in those locations. To that end, zones are intended to make known the areas where binding constraints are preventing the unhindered movement of energy, and, to the extent that binding constraints prevent such unhindered movement, prices within those zones will reflect that reality. Thus, if prices within a particular zone separate and rise higher than would be the case absent that separation, the capacity market is operating as intended. *ISO New England, Inc.*, 142 FERC ¶ 61,107, at P 118 (2013).

it is needed to satisfy existing reliability requirements, i.e., the reliability need in the constrained area is greater than the sum of the existing capacity in the constrained area and the amount of capacity that can be imported. A potential reliability concern exists when, over time, the failure to create a new capacity zone²⁷ results in a capacity deficiency due to both the lack of resources within the constrained area and the inability to import resources into the constrained area.

15. The failure to create a new capacity zone when one is called for (or delaying its creation through a phase-in) results in capacity market auctions that do not reflect the reliability need in the constrained area. In the absence of a new capacity zone, a capacity auction would select capacity in the unconstrained area that was less expensive than that in the constrained area – even when capacity in the unconstrained area could not be delivered to the constrained area, essentially ignoring transmission constraints. Capacity in the unconstrained area would displace existing (more expensive) resources in the constrained zone that are deliverable, causing the displaced capacity not to receive capacity payments. In this situation, the price signals sent to the constrained and unconstrained areas would not accurately signal the relative reliability needs for and values of capacity in the two areas of the broad zone and may lead to capacity shortages.

16. Failure to create a new capacity zone that reflects accurate price signals discourages construction of new capacity and encourages premature capacity retirements in the import-constrained area because of the area's inefficiently low prices. Although it is more expensive to build capacity in the Lower Hudson Valley than in areas to the north (due to more stringent environmental regulations and other factors), in the absence of a new capacity zone and its resulting prices, capacity in the Lower Hudson Valley will receive the same price as capacity located to the north. The 2012 State of the Market Report described the effects of not having a separate capacity zone stating that the total amount of unforced capacity sold in Zones G, H, and I had fallen by 1 GW (or 21 percent) since the summer of 2006.²⁸ This fact demonstrates the precise concerns of the Commission and an underlying reason that NYISO's tariff requires the creation of a new capacity zone when capacity resources are not deliverable throughout a zone - reliability.

²⁷ NYISO's tariff requires that a new zone be created when the total transmission transfer capability is insufficient to allow all of the capacity resources in a pre-existing zone to be deliverable throughout the pre-existing zone. Services Tariff §§ 5.16.4(a), 5.16.2.

²⁸ NYISO April 30, 2013 Filing, Attachment XI, Patton Aff. ¶ 11.

17. Unfortunately, there is no simple solution to address the problems caused by the constraint between upstate New York and the Lower Hudson Valley. The reality is that, in the short run, consumers may pay more but doing so is necessary to provide the appropriate price signals to incent developers to build or restore capacity and address a long-standing problem. Fortunately, consumers have not yet seen a situation in which their energy needs have not been met due to a capacity reserve shortage. The Commission hopes to emphasize that decision-making based only on avoiding price increases in the short-term could threaten reliability and price stability in the long-term.²⁹ Indeed, the market will react most efficiently when provided with immediate and accurate price signals. In this regard, we note that Helios Power Capital, Inc. is seeking permission to restore to operational status the Danskammer generating plant due to the creation of the new capacity zone.³⁰ Moreover, NRG has stated that the recent approval of a new capacity zone with implementation to take effect beginning on May 1, 2014, greatly improves the prospects of NRG restoring its Bowline 2 unit.³¹ As more capacity

²⁹ NYISO's 2014 Summer Capacity Assessment states that there will be a 1,431 MW capacity reserve shortage during the upcoming summer in Southeast New York under extreme weather conditions, in part due to the constrained UPNY/SENY transmission constraint. Fortunately, NYISO's presentation indicates that such reserve shortage can be ameliorated this year by invoking its Emergency Operating Procedures. NYISO, *2014 Summer Capacity Assessment* (Apr. 2014) available at http://www.nyiso.com/public/webdocs/markets_operations/committees/mc/meeting_materials/2014-04-30/2014%20Summer%20Capacity%20Assessment%20-revised.pdf.

³⁰ See Helios Power Capital, LLC, Joint Application, Case 14-E-1077 at 2, 8 (NYPSC, April 1, 2014); see also Order Adopting Emergency Action, Case 13-E-0012 at 17 (NYPSC March 28, 2014).

³¹ See NRG Energy, Inc. (NRG), Comments, Case No. 13-E-0012 at 2 (NYPSC, March 17, 2014). NRG stated:

Bowline has been significantly derated over the last several years and a large capital investment would be required to effect the restoration of Bowline Unit 2 to its full operating capability. Market prices to date, due in part to the lack of a Lower Hudson Valley capacity zone, have been insufficient to justify the capital investment. However, the recent approval of a new capacity zone, with implementation to take effect beginning on May 1, 2014, greatly improves the prospects of NRG making this investment. In anticipation of the new market signal, NRG has made preparations to advance the restoration of Bowline 2.

locates in the new capacity zone in response to the appropriate price signal in the Lower Hudson Valley, capacity prices should decrease because the price determination is directly dependent on the supply of available capacity.

18. The Commission is not making this decision in a vacuum. We are fully cognizant that the NYPSC has two proceedings underway³² that may result in the construction of major new transmission facilities during the 2016-2018 timeframe and that, once built, they could alleviate the long-standing transmission constraint between UPNY and SENY, and reduce the deliverability issues that are leading to the creation of the new capacity zone. But, to date, no major new transmission facility has completed the certification review process required under Article VII of the New York State Public Service Law³³ and there is no assurance that any facilities would be completed during the 2016-2018 time frame. Moreover, the NYISO tariff required NYISO to make a section 205 filing to propose a new capacity zone with capacity prices to be determined by the application of demand curves that are calculated as required by the tariff. We therefore continue to believe that a delay or even a phase-in of the new capacity zone would not be appropriate given that it would only further delay a long-standing need to incent additional capacity in the Lower Hudson Valley, a need that has been known but not alleviated by maintaining the parity between the rest-of-state capacity prices and the prices in what is now the new capacity zone.³⁴ A further delay or phase-in would artificially reduce the appropriately determined prices resulting from the new capacity zone for two years based not on supply and demand, but rather on a desire to continue to shield consumers from costs that are reflective of actual system conditions.

³² The NYPSC states that it has solicited proposals for new generation and transmission projects that could be placed in service by the summer of 2016 in the event that Indian Point nuclear units are not relicensed, and it is seeking to secure approximately 1000 MW of AC transmission upgrades to address constraints on the UPNY/SENY and Central-East interfaces and to place such upgrades in service by 2018.

³³ Article VII of the New York State Public Service Law sets forth the existing certification review process for siting major utility transmission facilities in New York State.

³⁴ NYISO's phase-in proposal in Docket No. ER14-500 would set the first year capacity price in the new capacity zone to be similar to the annual reference value of the 2014/2015 NYCA ICAP demand curve. *See New York Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,043, at P 142 (2014) (January 28, 2014 Order), *order on reh'g*, 147 FERC ¶ 61,148 (2014).

19. We note that, because the need for a new capacity zone has been apparent for at least seven years, consumers have already been shielded from price increases during that time, but no significant additional generation or transmission solution to the capacity shortage in the Lower Hudson Valley has materialized. The result is a continuation of the transmission constraint, and a continued lack of incentive for more capacity in the Lower Hudson Valley. Failure to send the appropriate price signal will only further delay a response to this long-standing need. The Commission believes that it is important that prices be reflective of competitive conditions. This notwithstanding, we separately note that, to the extent that the state's transmission construction initiatives relieve the transmission constraint, prices in the new G-J capacity zone should decrease, because, as noted above for generation, the more supply that is available to the new capacity zone, the lower the capacity prices that will result.

20. Finally, we note that no party questions that a deliverability constraint exists and that such constraint must be addressed to ensure both reliability needs in the Lower Hudson Valley and economic efficiency. Parties in this proceeding estimated that capacity prices in the G-J capacity zone would cause an immediate and substantial capacity price increase to consumers, and therefore advocated for a phase-in of the demand curve increases (which affect capacity prices) in the new G-J capacity zone. Such demand curve prices have now been determined in the demand curve reset proceeding in Docket No. ER14-500.³⁵ In the January 28, 2014 Order, which ruled on NYISO's proposed demand curves for the 2014-2017 period, the Commission also rejected NYISO's proposal to phase-in the price effects of the ICAP demand curves for the G-J Locality.³⁶ The Commission found there, as it does here, that a phase-in will not ensure that market-clearing prices will guide efficient investment decisions to add or retire capacity resources and thus to meet reliability needs in this region.³⁷ Additionally, the Commission found that a phase-in could adversely affect incentives to supply shorter term capacity responses, such as demand response and repowering options,³⁸ to meet

³⁵ January 28, 2014 Order, 146 FERC ¶ 61,043.

³⁶ *Id.* P 163.

³⁷ *Id.*

³⁸ *See supra* note 32 and accompanying text.

capacity needs.³⁹ The Commission also found that sufficient notice of a new capacity zone was provided so that a phase-in is not necessary.⁴⁰

2. Indicative LCR For the New Capacity Zone

21. In the August 13, 2013 Order, the Commission rejected Central Hudson's request to direct NYISO to change its process for developing the Locational Capacity Requirements in the new capacity zone to take into account the deliverability constraint using an alternative calculation method. The Commission noted, *inter alia*, that NYISO is not proposing to change its methodology in this proceeding, the Locational Capacity Requirement is not used to determine whether to establish a new capacity zone or to establish its boundaries and is used solely for establishing the demand curve for the new capacity zone, NYISO only included it in the instant filing to comply with section 5.16.3 of the Market Administration and Control Area Services Tariff (Services Tariff),⁴¹ and that this proceeding is narrowly focused on determining whether NYISO followed its tariff in determining that a new capacity zone should be created. Accordingly, the Commission found that arguments regarding the computation of the Indicative Locational Capacity Requirement are beyond the scope of this proceeding.

22. On rehearing, Central Hudson contends that the Commission misconstrued the purpose of the Indicative Locational Capacity Requirement and thus failed to abide by its statutory obligation to ensure that NYISO's filing to establish a new capacity zone in the Lower Hudson Valley is just and reasonable. Central Hudson asserts that the Commission's overly narrow reading of section 5.16.3 of the Services Tariff in isolation overlooked the fact that the Indicative Locational Capacity Requirement is used in section 5.14.1.2 to develop the indicative ICAP demand curve.⁴² It asserts that, because

³⁹ We note that demand response can react very quickly to changes in capacity market prices and repowering can occur in a much shorter time frame than construction of new generation.

⁴⁰ January 28, 2014 Order, 146 FERC ¶ 61,043 at P 164.

⁴¹ Section 5.16.3 of the Services Tariff directs NYISO to establish an Indicative Locational Capacity Requirement for each load zone or group of load zones "identified in the NCZ Study as having a constrained Highway Interface, on or before March 1 of each ICAP Demand Curve Reset Filing Year."

⁴² Section 5.14.2.1. states: "The minimum Installed Capacity requirement . . . for any New Capacity Zone, [shall be] equal to the Indicative NCZ Locational Minimum Installed Capacity Requirement determined by the NYISO in accordance with Section 5.16.3."

the Indicative Locational Capacity Requirement is used to determine the expected value of capacity in the new capacity zone, it is directly relevant to the new capacity zone formation issue.

23. Central Hudson argues that it is not sufficient for the Commission to assert that the Indicative Locational Capacity Requirement is not being used to set capacity prices that customers will pay for capacity *now* when the calculation was a key factor in NYISO's new capacity zone boundary analysis. Central Hudson adds that, moreover, the Commission did not dispute either Central Hudson's showing that the Indicative Locational Capacity Requirement will contribute significantly to a five-fold increase in the capacity costs paid by Central Hudson's customers,⁴³ or NYISO's admission that the new capacity zone alone will cause capacity prices to double.⁴⁴ Central Hudson contends that the Commission ignored the issue and made no finding that the administratively-set capacity rates for the new capacity zone will fall in a zone of reasonableness.

24. In addition, according to Central Hudson, this is the first time that NYISO revealed its proposed method and applied the Indicative Locational Capacity Requirement to a new capacity zone and, therefore, the Commission has an obligation to ensure that NYISO's application of its tariff will produce just and reasonable rates.

25. Central Hudson also argues that not only did the Commission fail to consider record evidence that the new capacity zone will lead to excessive rates in the Lower Hudson Valley, but it failed to respond to arguments that NYISO's method will cause the wrong customers to pay the resultant higher rates.⁴⁵ Central Hudson states that it showed that the proposed "nested" new capacity zone concept will allow for load zones J and K to shift capacity costs to load zones G-H-I due to the way NYISO has designed and plans to implement this nested new capacity zone. Central Hudson argues that the Commission did not deny that a rate mismatch will arise, but reasoned that there is no need to address it here because NYISO has not proposed to change the process for developing the Locational Capacity Requirement in the new capacity zone and this case is limited to the question of whether to create the new capacity zone. Central Hudson contends that this approach fails to satisfy the Commission's statutory obligation to ensure that the way

⁴³ Central Hudson September 12, 2013 Request for Rehearing at 13 (citing Central Hudson May 21, 2013 Protest, Borchert Aff. ¶ 15).

⁴⁴ *Id.* (citing NYISO November 27, 2013 Filing, Niazi Aff. Table 3).

⁴⁵ Central Hudson argues that NYISO's flawed method failed to evaluate correctly the source of energy flows that contribute to the binding constraint. Central Hudson September 12, 2013 Rehearing Request at 15.

NYISO has gone about establishing zone boundaries will lead to a just and reasonable rate.

26. Central Hudson further argues that the Commission failed to give consideration to its argument that NYISO's method for calculating the Indicative Locational Capacity Requirement did not rely on transmission constraints as the guiding criteria, but rather relied on reliability criteria.⁴⁶ In addition, Central Hudson argues that using deliverability considerations in the Indicative Locational Capacity Requirement calculation is necessary to give effect to the Commission's order rejecting NYISO's proposal to use reliability as a test for new capacity zone formation and to avoid sending the wrong price signal to investors.⁴⁷

Commission Determination

27. Central Hudson raises no new arguments on rehearing that were not already considered in our August 13, 2013 Order. In the August 13, 2013 Order, the Commission found that NYISO is not proposing to change its methodology for calculating Locational Capacity Requirements in this proceeding and that the Indicative Locational Capacity Requirement for the new capacity zone is not used to determine whether a new capacity zone should be created or to establish the new capacity zone boundary; it is used solely for establishing an ICAP Demand Curve for the new capacity zone, in accordance with section 5.14.1.2 of the Services Tariff. Similarly, the price impact in the new capacity zone is not a factor in determining whether to create a new capacity zone.⁴⁸ For this reason, the Commission does not need to determine whether NYISO's method for deriving the Indicative Locational Capacity Requirement is appropriate. In the August 13, 2013 Order, the Commission concluded that "[t]his proceeding is narrowly focused on determining whether NYISO followed its tariff in determining that a new capacity zone should be created" and that Central Hudson's arguments regarding the Indicative Locational Capacity Requirement were beyond the scope of this proceeding. Central Hudson has not provided any arguments in its rehearing request that would cause us to change our prior determination. Accordingly, we deny rehearing on this issue.

⁴⁶ Central Hudson September 12, 2013 Rehearing Request at 17-18.

⁴⁷ Central Hudson September 12, 2013 Rehearing Request at 17-18 (citing September 8, 2011 Order, 136 FERC ¶ 61,165 at P 60).

⁴⁸ September 8, 2011 Order, 136 FERC ¶ 61,165 at P 63 (stating "[w]e 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.").

3. Application of Mitigation Measures to the New Capacity Zone

28. In the August 13, 2013 Order, the Commission rejected arguments opposing NYISO's proposed adoption of New York City (NYC) mitigation provisions to be applied to the new G-J zone on the basis that such issues are beyond the scope of this proceeding since those provisions were accepted subject to condition in the June 6, 2013 Order in Docket No. ER12-360-001. The NYPSC argues on rehearing that the Commission "summarily dismissed" arguments that the existing NYC mitigation measures to be applied to the new capacity zone are unjust and unreasonable on the basis that they were beyond the scope of this proceeding. The NYPSC contends that, although the Commission previously accepted market power mitigation measures for a new capacity zone, it did so on a generic basis and now that the parameters of the new G-J capacity zone have been defined, the Commission should address whether such measures would be just and reasonable as applied to the specific new capacity zone.⁴⁹ The NYPSC reiterates the arguments it made in its May 21, 2013 protest in this proceeding that the buyer-side mitigation rules in the new capacity zone will produce uncertainty with respect to potential earnings and will likely have a long-term adverse impact on reliability and prices in the new capacity zone. The NYPSC adds that, under the proposed rules, even a pure merchant entrant would face the risk that it would be precluded from selling into the capacity market, thus effectively receiving a market price of zero.⁵⁰

29. We deny rehearing on this issue. As noted in the August 13, 2013 Order, the scope of this proceeding is limited to whether the proposed new G-J Locality capacity zone is just and reasonable. Therefore, with the one limited exception of the pivotal supplier threshold issue that the Commission did address (and will address below) as that necessarily must be applied on a zone-by-zone basis, this proceeding does not address the mitigation measures to be used in the new capacity zone. The mitigation measures for all new capacity zones, including the new G-J Locality, were addressed and conditionally accepted in the June 6, 2013 Order in Docket No. ER12-360-001.⁵¹ The mitigation rules were approved on the basis that they would apply to all new capacity zones and only the pivotal supplier threshold would be decided in each new capacity zone proceeding.⁵²

⁴⁹ NYPSC September 12, 2013 Rehearing Request at 15.

⁵⁰ *Id.* (citing NYPSC May 21, 2013 Protest at 8-9).

⁵¹ June 6, 2013 Order, 143 FERC ¶ 61,217.

⁵² *Id.* P 44. The Commission stated:

As with the NYC capacity zone, we believe it is appropriate to apply supply-side mitigation only to Pivotal Suppliers, i.e. to those who can

(continued...)

Accordingly, it is a collateral attack on the June 6, 2013 Order to now claim that the mitigation rules should be revisited and potentially revised each time a new capacity zone is approved, thereby rendering the generic rules a nullity. Therefore, it was not error for the Commission to not address arguments relating to the application of NYC mitigation measures to the G-J Locality, with the exception noted above, on the basis that they are beyond the scope of the instant proceeding.

4. The Pivotal Supplier Threshold for the G-J Locality

30. In its April 30, 2013 filing in the instant proceeding NYISO proposed to set the threshold used to define a pivotal supplier that would be subject to mitigation as one that controls the greater of 650 MW of unforced capacity in the G-J Locality, or the amount that is required in order to be pivotal.⁵³ In the August 13, 2013 Order, the Commission accepted NYISO's proposal without discussion. In its rehearing request, the Indicated NYTOs maintain that the August 13, 2013 Order failed to address its arguments that demonstrated that NYISO's proposed Pivotal Supplier threshold 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 new capacity zone.⁵⁴ The Indicated NYTO's assert that neither NYISO nor any other party refuted their analysis demonstrating the potential for withholding capacity that NYISO's proposed threshold would provide, citing statements from its witness, Mr. Cadwalader's, affidavit that accompanied the Indicated NYTO's May 21, 2013 protest.

31. The Indicated NYTOs state that the August 13, 2013 Order accepted the NYISO pivotal supplier threshold without mentioning or responding to their arguments and, other

potentially exercise market power. We recognize that the determination of a "pivotal" number of megawatts may differ by zone and thus we leave it to NYISO to propose that figure at the same time it proposes the new capacity zone.

⁵³ The Services Tariff at Attachment H, section 23.2, defines a pivotal supplier in the G-J Locality as 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; and ... for each Mitigated Capacity Zone except the New York City Locality and the G-J Locality, if any, a Market Party that Controls at least the quantity of MW of Unforced Capacity specified for the Mitigated Capacity Zone and accepted by the Commission."

⁵⁴ Indicated NYTOs September 12, 2013 Rehearing Request at 18.

than to call the proposal a “conforming change,” stated that mitigation measures are beyond the scope of this proceeding. The Indicated NYTOs go on to note that, in the June 6, 2013 Order,⁵⁵ the Commission left it to NYISO to determine a pivotal number of megawatts at the same time it proposes the new capacity zone.⁵⁶ The Indicated NYTOs state that the tariff language accepted by the Commission in that order does not define how much capacity a supplier must control in a new capacity zone in order to be subject to supplier mitigation, and instead, left that task for subsequent filings.⁵⁷ Consequently, they assert, this docket is where concerns regarding those proposed procedures are properly raised.

32. Additionally, the Indicated NYTOs argue that NYISO continues to permit suppliers to exclude capacity sold in forward auctions when determining which suppliers are exempt from offer caps, and that Dr. Patton’s⁵⁸ support for NYISO’s proposed Pivotal Supplier Exemption was conditioned on elimination of this exclusion.⁵⁹ The Indicated NYTOs argue that, despite Dr. Patton’s support and NYISO’s indication that it supported the change, the August 13, 2013 Order did not require NYISO to make such a change and did not explain why the Commission disregarded Dr. Patton’s arguments. For these reasons, the Indicated NYTOs assert that the Commission should grant rehearing, reverse its August 13, 2013 Order on this issue, and direct NYISO to revise the Compliance Filing’s definition of the Pivotal Supplier Threshold to avoid exempting suppliers from offer caps when they have a financial incentive to withhold capacity.

Commission Determination

33. At the outset, we agree with the Indicated NYTOs that the June 6, 2013 Order left the determination of the seller-side mitigation pivotal supplier threshold to each new capacity zone proceeding⁶⁰ and therefore, the pivotal supplier threshold is within the scope of this proceeding. As discussed above, when the Commission found that

⁵⁵ June 6, 2013 Order, 143 FERC ¶ 61,217 at P 44.

⁵⁶ *Id.*

⁵⁷ Indicated NYTOs September 12, 2013 Rehearing Request at 20.

⁵⁸ Dr. Patton is the President of Potomac Economics, Ltd. which is NYISO’s independent market monitoring unit.

⁵⁹ *Id.* (citing NYISO June 5, 2013 Answer, at Patton Aff. ¶ 32).

⁶⁰ *See supra* note 54.

mitigation measures were “beyond the scope of this proceeding” in our August 13, 2013 Order, it was referring to general mitigation measures that will apply equally to any future new capacity zone⁶¹ and which were accepted in earlier orders,⁶² whereas, the threshold for a pivotal supplier to be exempt will be unique to each new zone and is properly the subject of this proceeding.⁶³ NYISO proposed a pivotal supplier threshold exemption for the new G-J Locality in the instant docket as a market party that controls 650 MW or more of unforced capacity and 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.⁶⁴ We refer to this as NYISO’s minimum 650 MW pivotal supplier threshold.

34. In our August 13, 2013 Order, we accepted NYISO’s proposed pivotal supplier threshold without discussion. The Indicated NYTOs maintain that, in doing so, the Commission failed to address its arguments that demonstrate that NYISO’s proposed Pivotal Supplier threshold 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 new capacity zone. We agree that we did not specifically address the NYTO’s arguments in the August 13, 2013 Order, and therefore, will do so here.

35. NYISO’s proposed minimum 650 MW pivotal supplier threshold was derived using a methodology that aimed to achieve a balance between the benefits of effectively mitigating suppliers with market power against the benefits of minimizing NYISO interventions in the markets. We note that both NYISO’s and the Indicated NYTO’s pivotal supplier threshold analyses are based on the same underlying premise that an exemption from seller mitigation should be granted only to sellers that are not likely to have the incentive and ability to exercise market power. The primary difference is that

⁶¹ August 13, 2013 Order, 144 FERC ¶ 61,126 at P 84.

⁶² *New York Indep. Sys. Operator, Inc.*, 136 FERC ¶ 61,165 (2011) (conditionally accepting criteria to govern the evaluation and potential creation of new capacity zones); *New York Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,217 (2013) (implementing NYISO’s market power mitigation measures for new capacity zones).

⁶³ NYISO June 29, 2012 Filing, Docket No. ER12-360-001, at 3 (stating: “As explained in the Wyatt Affidavit, using the framework of the existing ICAP mitigation measures provides consistent rules across all Mitigated Capacity Zones and allows sufficient flexibility to modify specific Pivotal Supplier thresholds to accommodate differences among [new capacity zones].”).

⁶⁴ Services Tariff § 23.2.1.

NYISO proposes a fixed minimum 650 MW threshold exemption level that increases as supply increases, whereas Mr. Cadwalader recommends a floating exemption level that changes based on suppliers' control of an amount of capacity in the zone that does not exceed the amount by which the amount of UCAP in the new capacity zone at the zero-crossing point exceeds the amount of UCAP that is available in the new capacity zone. Dr. Patton tested NYISO's proposal under various conditions (i.e., by varying the assumed levels of the local capacity requirement and the zero crossing point),⁶⁵ and concluded that even under various ICAP demand curve scenarios, it would reasonably ensure that suppliers with market power would be mitigated. Although the Indicated NYTOs assert that there would still be conditions under which NYISO's proposed pivotal supplier threshold could exempt market parties that have the incentive to withhold capacity from mitigation, we do not believe that this renders NYISO's pivotal supplier threshold unjust or unreasonable. It is not necessary that NYISO's pivotal supplier threshold ensure that under all conditions where a supplier could exercise market power, mitigation would be imposed, although ideally, that would be the goal. It is sufficient that NYISO's proposal reasonably captures the majority of instances in which a supplier could exercise market power, and based on the record in this proceeding, this appears to be the case. As we have held previously, when choosing among competing proposals, the Commission must simply choose a just and reasonable option, and we believe that NYISO's proposal is reasonable.⁶⁶ Our conclusion is bolstered by the fact that the Commission previously approved a pivotal supplier threshold NYISO proposed for New York City that NYISO derived using the same methodology as it used to derive the 650 MW pivotal supplier threshold for the G-J Locality.⁶⁷ Additionally, NYISO's independent market monitor has determined that NYISO's proposed 650 MW minimum threshold is a conservative measure that will ensure that suppliers with market power will

⁶⁵ At the time of NYISO's filing (April 2013), the local capacity requirement and the demand curve parameters for the G-J capacity zone were not known, so Dr. Patton calculated the thresholds for three capacity requirements and three assumed slopes. NYISO April 30, 2013 Filing, Patton Aff. ¶ 22.

⁶⁶ *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (1995). See also *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (Commission not required to consider "whether a proposed rate schedule is more or less reasonable than alternative rate designs"); *ISO New England, Inc.*, 145 FERC ¶ 61,014, at P 37 (2013); *ISO New England, Inc.*, 139 FERC ¶ 61,178, at P 27 (2012).

⁶⁷ See *New York Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,211, at PP 20, 64-70 (2008). See also NYISO Compliance Filing, Docket No. EL07-39-000, at 27 (filed Oct. 7, 2007) (citing attached Patton Aff. ¶ 57).

be subject to mitigation.⁶⁸ For these reasons, the Commission affirms its original acceptance of NYISO's proposed pivotal supplier threshold, and denies the Indicated NYTO's request for rehearing.⁶⁹

36. Separately, the Indicated NYTOs raise the issue of the exclusion of capacity sold in forward auctions when determining which suppliers are exempt from offer caps.⁷⁰ As noted by Indicated NYTOs, NYISO's witness Dr. Patton explained that a large supplier with market power could reduce the amount of capacity that it controls in the spot auction to get below the pivotal supplier threshold by selling some of its capacity in the capability period auction or the monthly auction, i.e. on a forward basis in advance of the spot auction, and then, in the next spot auction, withhold some or all of its remaining capacity from the auction to raise prices.⁷¹ Dr. Patton stated that such a strategy could be profitable for the large supplier because prices in the capability period auctions and the monthly auctions generally reflect the expected prices in the spot auction. He stated that, when the large supplier withholds capacity from the spot auction and, as a result, increases the spot auction price, the prices in subsequent capability period and monthly auctions will also become higher, thereby benefitting the large supplier. In Dr. Patton's view, for purposes of determining whether the supplier should be exempted from mitigation, the proper measure of a supplier's control of capacity would include the supplier's available supply that can be offered in any of the three auctions (capability period, monthly, and spot) for a given capacity month. Dr. Patton explained that under Services Tariff section 23.4.5.5(1), the presumption that a supplier controls capacity that it owns can be rebutted by the sale of Unforced Capacity from the ICAP supplier in a capability period auction or a monthly auction.⁷² Dr. Patton said that the tariff could be

⁶⁸ NYISO April 30, 2013 Filing, Patton Aff. ¶ 25.

⁶⁹ Our acceptance of NYISO's pivotal supplier threshold is not intended to preclude further stakeholder discussions on other methods that may provide further enhancements or greater accuracy in guarding against the exercise of market power.

⁷⁰ Indicated NYTO's September 12, 2013 Rehearing Request at 21.

⁷¹ NYISO April 30, 2013 Filing, Patton Aff. ¶ 29.

⁷² The NYISO Services Tariff at section 23.4.5.5 states that control of 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; 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

(continued...)

changed to correct this deficiency by deleting the current exclusion of forward capacity sales in section 23.4.5.5(1).⁷³ NYISO stated in its compliance filing that it was amenable to making the change requested by Dr. Patton and asked the Commission to make the change applicable to both the new capacity zone and the existing NYC Zone J.⁷⁴

37. We agree that a supplier could withhold some or all of the capacity it sells in a spot auction and can thereby unjustifiably raise prices not only in the spot auction but also in subsequent capability and monthly auction. We also agree that NYISO's agreement to make this change was not directly addressed in the August 13, 2013 Order. Therefore, we grant rehearing on this narrow issue and direct NYISO to submit a compliance filing within 30 days of the date of this order to revise the rebuttable presumption of its pivotal supplier threshold for a new capacity zone by deleting the current exclusion of forward capacity sales in section 23.4.5.5(1).⁷⁵

5. Discontinuation of a Capacity Zone

38. In the August 13, 2013 Order, the Commission declined to require NYISO, at this time, to develop a mechanism for determining whether a new capacity zone is no longer needed and should be eliminated⁷⁶ and stated that NYISO should work with its stakeholders, and, if a mechanism for zone elimination is deemed necessary, NYISO should file appropriate tariff revisions with the Commission. The Commission agreed with protestors that price separation may well continue even after deliverability constraints have been eliminated, but added that such potential distinction between prices is appropriate. The NYPSC, NYPA and the Indicated NYTOs argue that the Commission erred in failing to direct NYISO to establish rules for discontinuing a new capacity zone when the deliverability constraint is relieved. The NYPSC states that, by failing to establish tariff provisions for determining when the new capacity zone may be eliminated, the Commission has inappropriately skewed prices in favor of suppliers and

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.”

⁷³ *Id.* at Patton Aff. ¶ 32.

⁷⁴ NYISO April 30, 2013 Filing at 21 & nn.86, 87.

⁷⁵ We grant rehearing only with respect to the new capacity zone. Because this proceeding only involves the new capacity zone, if NYISO desires to propose similar revisions for its New York City zone, it may do so in a separate proceeding.

⁷⁶ August 13, 2013 Order, 144 FERC ¶ 61,126 at P 82.

left ratepayers in the position of having to bear a permanent increase in ICAP prices.⁷⁷ Moreover, the NYPSC states that the Commission appears to suggest a different standard may be appropriate for new capacity zone elimination than for new capacity zone creation. The NYPSC asserts that, although the Commission rejected both the reliability criteria and cost-of-new-entry criteria for determining when a new capacity zone should be created, the rationale that the Commission used for why the new capacity zone is needed in the August 13, 2013 Order is based on these same factors.

39. NYPA asserts that the new capacity zone rules will result in inefficient price signals and unwarranted price separation in the G-J capacity zone when the deliverability constraint justifying the new capacity zone is relieved, and therefore, new capacity zone discontinuation rules should be established promptly.⁷⁸ NYPA states that the Commission, in a 2012 order, found that new capacity zone discontinuation rules were not needed as urgently as zone creation rules based on the expectation that an unneeded new capacity zone would cause neither price separation nor inaccurate price signals.⁷⁹ However, according to NYPA, NYISO's April 30, 2013 filing made clear and, moreover the Commission acknowledged, that these premises no longer are correct.⁸⁰ NYPA states that it agrees with the Commission's premise that any new capacity zone discontinuation rules that are ultimately adopted would apply not only to the G-J Locality but also to the other localities. However, NYPA asserts that this is not a basis for rejecting the relief it requests and, in fact, supports the need to impose a binding deadline by which NYISO must establish new capacity zone discontinuation rules to avoid the unjust price separation and inaccurate price signals that otherwise will occur.

40. Likewise, the Indicated NYTOs assert that, despite prior Commission statements that price separation will end when the binding constraint is alleviated,⁸¹ the August 13, 2013 Order rejects this position and now claims price separation could and should continue. The Indicated NYTOs also assert that the Commission's statement that "price separation reflects the cost of satisfying the Locational Capacity Requirement for the new

⁷⁷ NYPSC September 12, 2013 Rehearing Request at 11.

⁷⁸ NYPA September 12, 2013 Rehearing Request at 2-4, 6, 10.

⁷⁹ *Id.* at 8 (citing August 30, 2012 Order, 140 FERC ¶ 61,160 at P 51).

⁸⁰ *Id.* (citing August 13, 2013 Order, 144 FERC ¶ 61,126 at P 83).

⁸¹ Indicated NYTOs Request for Rehearing at 11-12 (citing August 30, 2012 Order, 140 FERC ¶ 61,160 at P 51; September 8, 2011 Order, 136 FERC ¶ 61,165 at P 70).

capacity zone and is based upon reliability needs as indicated by [loss of load expectation]”⁸² conflicts both with its former statements⁸³ and with its decision to order NYISO to change its new capacity zone test from an “as designed” method to an “as found” method.⁸⁴ Moreover, Indicated NYTOs argue that there is no reliability need for capacity in the new capacity zone if the constraint disappears and, therefore, there is no longer a need for a price signal to attract or retain capacity in that zone. The Indicated NYTOs state that the continuation of price separation is based on an untested assumption that the reliability contribution of capacity in the new capacity zone is higher than that of capacity in the Rest-of-State, but this assumption lacks analytical support if the constraint has been alleviated.

41. Like the NYPSC, NYPA and the Indicated NYTOs argue that, inconsistent with the September 8, 2011 Order where the Commission held that creation of a new capacity zone should be based solely on the existence of a deliverability constraint and rejected a reliability criterion, it now has adopted a reliability rationale for the continuation of price separation even when the deliverability constraint is alleviated. The Indicated NYTOs assert that the price of capacity in the new capacity zone may differ from the price of capacity in Rest-of-State, even when the incremental value of reliability provided by capacity in the new capacity zone is equal to the incremental value of reliability provided by capacity in Rest-of-State, because factors that affect price separation are not related to the incremental value of reliability. Therefore, they assert that NYISO’s methods do not ensure that price separation is based on reliability needs as claimed by the Commission.⁸⁵

42. The Indicated NYTOs also argue that the Commission failed to consider whether continuing price separation, even when a deliverability constraint is alleviated, will produce just and reasonable rates as NYISO’s customers will pay more for capacity in the new capacity zone than for capacity in Rest-of-State, even though there is no justified difference in terms of reliability benefits from generation located in Rest-of-State and

⁸² *Id.* at 11.

⁸³ *Id.* at 11-12 (citing September 8, 2011 Order, 136 FERC ¶ 61,165 at P 58).

⁸⁴ The Indicated NYTO’s assert that, in its conclusion, the Commission indicated that the *as found deliverability* test should govern the formation of the zone, rejecting the NYISO and Indicated NYTOs’ position that the new zone should be predicated on system reliability performance at *equilibrium*, but the Commission then reverted to reliability factors (i.e., LOLE) relative to equilibrium conditions. Indicated NYTOs Request for Rehearing at 15.

⁸⁵ Indicated NYTOs Rehearing Request at 17-18.

generation located in the G-J Locality. The Indicated NYTO's also assert that the unjustified price separation will have an adverse impact on generators in Rest-of-State because it will lead to the development of an above-optimal amount of generating capacity in the new capacity zone. The Indicated NYTOs and NYPA assert that the Commission ignored this evidence concerning the harm that will result from unjustified price separation.⁸⁶

43. NYPA asserts that the lack of new capacity zone discontinuation rules will also harm the Energy Highway Initiative.⁸⁷ According to NYPA, there is significantly less incentive to complete the Energy Highway Initiative and the Commission's suggestion in the August 13, 2013 Order that the G-J new capacity zone will provide incentives which support the Energy Highway Initiative is internally inconsistent. NYPA argues that the incentive for the Energy Highway Initiative would be price convergence between Rest-of-State and the G-J new capacity zone. However, according to NYPA the elimination of the deliverability constraint will not necessarily lead to price convergence without new capacity zone discontinuation rules thus undermining the Energy Highway Initiative.⁸⁸

Commission Determination

44. NYPA, the NYPSC, and the Indicated NYTOs argue that we should direct NYISO to establish tariff rules for discontinuing a new capacity zone when the deliverability constraint is relieved. They argue that maintaining a separate capacity zone when delivery constraints no longer exist would result in unwarranted price separation, inefficient price signals, and ultimately unjust and unreasonable rates.

45. In our September 8, 2011 Order, we explicitly declined to require NYISO to define criteria regarding the potential elimination of a new capacity zone as some commenters had suggested. However, we also said that NYISO is free to discuss with its stakeholders a mechanism to eliminate an unneeded capacity zone. Consistent with the September 8, 2011 Order,⁸⁹ we will not rule on the merits of the arguments presented in this proceeding, as they go beyond the matter of the rules for the establishment of new

⁸⁶ *Id.* at 15.

⁸⁷ The Energy Highway Initiative refers to New York State transmission initiatives that, according to the NYPSC will address the deliverability constraint identified by NYISO. NYPSC September 12, 2013 Request for Rehearing at 4, 7.

⁸⁸ NYPA September 12, 2013 Request for Rehearing at 11-12.

⁸⁹ September 8, 2011 Order, 136 FERC ¶ 61,165 at P 70.

capacity zones and, therefore, are beyond the scope of this proceeding. Additionally, any new rules for discontinuing a capacity zone must apply to all capacity zones and not just the recently-approved new G-J Locality and, therefore, should be the subject of a separate proceeding that develops a record for establishing tariff criteria and procedures for eliminating any capacity zone, including any future new capacity zone and not just the new G-J Locality at issue here. The August 13, 2013 Order reiterated that NYISO should work with its stakeholders on this issue.⁹⁰ We continue to believe and strongly urge NYISO to work with its stakeholders, and, if a mechanism for zone elimination is deemed necessary, to file appropriate tariff revisions with the Commission. We do not see the need to impose a deadline on such efforts, as the timing of actions necessary to relieve any existing constraints is not known with certainty.

The Commission orders:

(A) The Commission hereby denies, in part, and grants, in part, rehearing, as discussed in the body of this order.

(B) NYISO is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁹⁰ August 13, 2013 Order, 144 FERC ¶ 61,126 at P 82.