

140 FERC ¶ 61,160
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket No. ER12-360-000

ORDER ON COMPLIANCE

(Issued August 30, 2012)

1. On November 7, 2011, the New York Independent System Operator, Inc. (NYISO) submitted proposed tariff revisions to its Market Administration and Control Area Services Tariff (Services Tariff) to comply with the Commission's September 8, 2011 order in Docket No. ER04-449-023¹ regarding the deliverability criterion for the establishment of new installed capacity (ICAP) zones in the New York Control Area (NYCA).² NYISO requests an effective date of January 9, 2012. In this order, the Commission accepts NYISO's filing effective January 9, 2012, as requested.

¹ *New York Indep. Sys. Operator, Inc.*, 136 FERC ¶ 61,165 (2011) (September 8, 2011 Order).

² NYISO defines NYCA deliverability in the NYISO Tariffs, OATT, § 25.7.8.1 (Attachment S) as follows:

The NYCA transmission system shall be able to deliver the aggregate of NYCA capacity resources to the aggregate of the NYCA load under summer peak load conditions. This is accomplished through ensuring the deliverability of new Large Facilities, new Small Generators larger than 2 MWs, and any existing facility increasing its capacity by more than the 2 MWs allowed by Section 30.3.2.6 of the Large Facility Interconnection Procedures contained in OATT Attachment X, in the Capacity Region(s) where the facility interconnects.

I. Background

2. Since 2007, NYISO and its market participants have been implementing elements of NYISO's proposed Consensus Deliverability Plan³ 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. Currently, there are three capacity zones in New York: New York City, Long Island, and Rest-of-State (all three zones are also referred to as the NYCA zone). In a June 30, 2009 order,⁶ the Commission accepted NYISO's proposal to work with stakeholders to address dynamic changes to the NYCA that might warrant the creation of additional capacity zones within the NYISO ICAP market. In the September 8, 2011 Order, the Commission accepted, in part, subject to modification, NYISO's proposed criteria that would govern the evaluation and potential creation of new capacity zones and rejected NYISO's proposed additional considerations. The Commission directed NYISO to develop and file tariff revisions that implement the approved criteria within 60 days of the date of the September 8, 2011 Order and within 6 months of that date, to file a report on its stakeholder process.

3. In particular, the Commission found that NYISO should use the deliverability test methodology contained in section 25.7.8 of Attachment S to the NYISO Open Access

³ See NYISO and the New York Transmission Owners "Consensus Deliverability Plan" filed October 5, 2007, in Docket Nos. 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.

⁶ *New York Indep. Sys. Operator, Inc.*, 127 FERC ¶ 61,318 (2009) (June 30, 2009 Order).

Transmission Tariff (OATT) in determining whether to create new capacity zones.⁷ Under that methodology, 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. In an order issued December 19, 2011,⁸ the Commission granted clarification of the September 8, 2011 Order that the Attachment S test methodology to be used in determining whether a new capacity zone is needed should be the test in section 25.7.8 which applies to Highway transmission facilities (Highway facilities).⁹ The Commission clarified that byway evaluations are not useful for the purpose of identifying constraints between the 11 load zones and that only the Highway facilities' portion of the section 25.7.8 deliverability test methodology is necessary in determining whether to create new zones from the existing load zones.¹⁰

4. On November 7, 2011, NYISO filed proposed revisions to its Services Tariff to comply with the September 8, 2011 Order.

II. Notice of Filing and Responsive Pleadings

5. Notice of NYISO's November 7, 2011 filing was published in the *Federal Register*, 86 Fed. Reg. 71,006 (2011), with interventions, comments and protests due on or before November 28, 2011. Consolidated Edison Solutions, Inc., Hess Corporation, the New York Transmission Owners (NYTO),¹¹ Constellation Energy Commodities

⁷ Attachment S to NYISO's OATT provides the cost allocation methodology for new interconnections to the grid. Section 25.7 of Attachment S provides the cost allocation methodology for CRIS and includes the definition of NYCA deliverability and the deliverability testing methodology.

⁸ *New York Indep. Sys. Operator, Inc.*, 137 FERC ¶ 61,229 (2011) (December 19, 2011 Order).

⁹ NYISO defines a "Highway" as all 115kV and higher transmission facilities. NYISO OATT, § 25.1.2, Attachment S, Rules to Allocate Responsibility for the Cost of New Interconnection Facilities.

¹⁰ December 18, 2011 Order, 137 FERC ¶ 61,229 at P 11.

¹¹ NYTOs consist of 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, Niagara Mohawk Power

(continued...)

Group, Inc. and Constellation NewEnergy, Inc. filed motions to intervene. The New York State Public Service Commission filed a notice of intervention.

6. Consolidated Edison Solutions, Inc. filed comments. Bayonne Energy Center, LLC (Bayonne) filed a motion to intervene and limited protests. Entergy Nuclear Power Marketing, LLC, and the GenOn Parties¹² (collectively New York Suppliers) filed a joint motion to intervene, comments, and limited protests. Potomac Economics, the NYISO Market Monitoring Unit (MMU), filed a motion to intervene and comments.

7. On December 13, 2011, National Grid USA (National Grid) filed out-of-time comments. On December 20, 2011, Independent Power Producers of New York (IPPNY) filed an out-of-time motion to intervene.

8. NYISO filed an answer to the comments and protests. The NYTOs filed an answer to the comments of the MMU.

III. Summary of NYISO's Filing

9. NYISO proposes to revise its Services Tariff to provide the timing and sequence of steps required to evaluate and create a new capacity zone. NYISO's proposal aligns the process for creating a new capacity zone with the triennial ICAP demand curve reset process.¹³ NYISO proposes to begin the new capacity zone process with a New Capacity Zone Study (NCZ Study) in accordance with the methodology set forth in proposed section 5.16.1 of the Services Tariff. If the NCZ Study identifies a Highway

Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

¹² The GenOn Parties are successors to the Mirant Parties, which filed a motion to intervene in this proceeding on February 25, 2005.

¹³ Section 5.14.1.2 of the Services Tariff requires NYISO to perform a triennial review to determine whether the parameters for the ICAP demand curves should be adjusted. The review process typically takes over one year and includes the retention of a consultant to develop and propose a set of demand curves based on the identified criteria, a stakeholder process to comment on and evaluate the proposed curves, and the presentation of NYISO's final recommendations to the NYISO Board of Directors. The proposed curves are to be filed with the Commission on or before November 30th of the year prior to the first capability year of the next triennial period.

deliverability constraint (Highway constraint),¹⁴ NYISO will identify the boundary of a proposed new capacity zone. NYISO states that an additional early step would be the determination of a locational minimum ICAP requirement, followed by an analysis of a demand curve for the new capacity zone and submission to the Commission of tariff revisions to establish the new capacity zone.

10. As discussed in more detail below, NYISO states that proposed new section 5.16 specifies that NYISO will provide a written report of the NCZ Study results to its stakeholders. NYISO further states that the study would use the deliverability test methodology set forth in Attachment S to the NYISO OATT and that proposed section 5.16.1.1 specifies the inputs and assumptions that would be included in the study case. NYISO adds that this section is necessary because the NCZ Study starts at a different time than a Class Year Deliverability Study¹⁵ under Attachment S and is being performed outside the context of the Class Year Interconnection Facilities Study,¹⁶ of which the Class Year Deliverability Study is one component.

¹⁴ A highway constraint exists when 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.

¹⁵ Section 25 of NYISO's OATT, Attachment S defines Class Year Deliverability Study as "An assessment, conducted by the NYISO staff in cooperation with Market Participants, to determine the System Deliverability Upgrades required for each generation and merchant transmission project included in the Class Year to interconnect to the New York State Transmission System in compliance with the NYISO Deliverability Interconnection Standard."

¹⁶ Section 30 of NYISO's OATT, Attachment X defines Interconnection Facilities Study as:

a study conducted by NYISO or a third party consultant for the Developer to determine a list of facilities (including Connecting Transmission Owner's Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades as identified in the Interconnection System Reliability Impact Study), the cost of those facilities, and the time required to interconnect the Large Generating Facility or Merchant Transmission Facility with the New York State Transmission System. The scope of the study is defined in Section 30.8 of the Standard Large Facility Interconnection Procedures.

11. NYISO requests that the Commission accept these proposed tariff revisions effective January 9, 2012.

IV. Discussion

A. Procedural Issues

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notice of intervention and timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant IPPNY's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or to an answer unless otherwise 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. Substantive Issues

1. Process Timeline

a. NYISO's Filing

14. NYISO proposes to revise Section 5.14.1.2 of the Services Tariff to provide that any new capacity zone will be factored into the ICAP demand curve reset process every three years. NYISO states that any new capacity zone would have an Indicative NCZ Locational Minimum ICAP Requirement¹⁷ established for use in the ICAP demand curve reset process, and the ICAP demand curve for the new capacity zone would become

¹⁷ The proposed tariff revision, section 2 of the Definitions section of the Services Tariff, defines "Indicative NCZ Locational Minimum Installed Capacity Requirement" as "the amount of capacity that must be electrically located within a New Capacity Zone, or possess an approved Unforced Capacity Deliverability Right, in order to ensure that sufficient Energy and Capacity are available in that NCZ and that appropriate reliability criteria are met."

active at the same time that ICAP demand curves for existing localities and the NYCA go into effect.¹⁸

15. NYISO states that it intends to commence the triennial NCZ Study before September 1 in the year preceding the calendar year in which NYISO files ICAP demand curves¹⁹ to allow sufficient time to establish the case that will be studied and to perform the Class Year Deliverability Study. NYISO will review the study inputs and assumptions with stakeholders on or before October 1 of that same year.²⁰ The proposed tariff revisions also provide that NYISO will provide a written report of the NCZ Study results to stakeholders no later than January 15 of the ICAP demand curve reset filing year.²¹ For example, in order to implement a new capacity zone in the next ICAP demand curve reset proceeding to be filed November 30, 2013, for new demand curves to be effective May 1, 2014, NYISO would commence the NCZ Study by September 1, 2012, review study inputs and assumptions with stakeholders by October 1, 2012, and submit its report on the NCZ Study results to the stakeholders by January 15, 2013.

16. NYISO proposes new section 5.16.3 and 5.16.4 of the Services Tariff to provide that for “each Load Zone or group of load zones identified in the NCZ Study as having a constrained Highway Interface²² [NYISO] shall determine [the] Indicative NCZ Locational Minimum ICAP Requirement” and file it for Commission review no later than March 1 of each ICAP demand curve reset filing year.²³ In the example above, that

¹⁸ NYISO November 7, 2011 Filing at 3.

¹⁹ The proposed tariff provision, section 2.14 of the Definitions section of the Services Tariff, defines “NCZ Study Start Date” as: “September 1 or the next business date thereafter in the calendar year prior to the ICAP Demand Curve Reset Filing Year.”

²⁰ NYISO November 7, 2011 Filing at 3-4.

²¹ *Id.* at 4.

²² The proposed tariff revision, section 5.16.2 of the Services Tariff, states:

The ISO shall identify the boundary of a New Capacity Zone if there is a constrained Highway interface into one or more Load Zones.... In determining the New Capacity Zone boundary, the ISO shall consider the extent to which incremental Capacity in individual constrained Load Zones could impact the reliability and security of constrained Load Zones, taking into account interface capability between constrained Load Zones.

²³ NYISO November 7, 2011 Filing, Attachment I, § 5.16.3.

would require the determinations be made by March 1, 2013. The proposed tariff provision states that NYISO will provide stakeholders with an opportunity to review and comment on the proposed Indicative NCZ Locational Minimum ICAP Requirement.²⁴

17. NYISO also proposes new section 5.16.4 of the Services Tariff, which states that, if the NCZ Study identifies a constrained Highway interface, NYISO will make a tariff filing with the Commission no later than March 31 of the ICAP demand curve reset filing year (by March 31, 2013, in the above example) to establish the new capacity zone or zones, and it will include a report of the NCZ Study results and the basis for its determination. Proposed section 5.16.4 also requires NYISO to provide an opportunity for the MMU to review and comment on the NCZ Study and any proposed tariff revisions.

18. NYISO states that the proposed timing would provide an opportunity for the concurrent review of all ICAP demand curves for the next triennial period and other implementation action so that the new capacity zone could be effective at the beginning of the capability year after the demand curves are accepted.

b. Protests and Comments

19. Bayonne states that any proposed change in capacity zones could be subject to factual disputes and proceedings which could delay the implementation of an integrated new capacity zone and ICAP demand curve reset filing. Bayonne maintains if there is a new capacity zone filing which is subject to delay, the associated delay in the ICAP demand curve reset would result in continued inaccurate price signals so that either suppliers would be under-compensated or customers would be charged higher rates during the delay.

20. Bayonne contends that in order to avoid needless delay in implementation of new demand curves, the Commission should direct NYISO to submit two sets of demand curves: one with the then-current capacity zones and one reflecting the new capacity zone or zones still pending before the Commission. This way, according to Bayonne, if there is a delay in implementing the new capacity zone or zones for any reason, the new demand curves need not be delayed. Bayonne adds that this would also allow the new demand curves to go into effect before the start of the next capability year so that if the Commission ruled on the new capacity zone(s) on May 2, 2014, the new demand curves could go into effect on June 1, 2014, and not await the new capacity zones, which would go into effect on May 1, 2015.

²⁴ *Id.*

21. New York Suppliers are also concerned about the possibility of delays beyond May 1, 2014 to implement new capacity zones identified in the 2012-2013 NCZ Study. They request that the Commission direct NYISO to develop and test any software changes needed to accommodate new capacity zones by no later than year end 2013 and deploy these software changes (in the “off” position if determined to be necessary) within the first two weeks of 2014.²⁵ Further, New York Suppliers request that the Commission direct NYISO to submit status reports at six-month intervals on its software development efforts, beginning with the second quarter 2012, until any software changes associated with this effort are fully developed, tested and deployed to ensure that NYISO’s efforts proceed in accordance with this schedule.

22. New York Suppliers also request that the Commission reject NYISO’s proposed definition of “NCZ Study Start Date,” and direct NYISO to revise this definition to provide that the NCZ Study will commence before September 1 in the year preceding the ICAP demand curve reset filing year, given the length of time that may be required to conduct the NCZ Study, the commitment in NYISO’s filing letter to commence work before September 1, and the fact that all study tools should be “geared up” and ready to go when the final data is available (as provided for in the tariff). Further, the New York Suppliers maintain that NYISO should confirm, in advance, that there are no impediments to its timely application, by conducting a “dry run” evaluation.²⁶

23. New York Suppliers assert that NYISO proposes to make its written report of the NCZ Study results due to stakeholders by January 15 in each ICAP demand curve reset filing year, however, without explanation, NYISO proposes to delay submitting the associated tariff filing to implement any identified new capacity zones until March 31. New York Suppliers assert that there is no reason for this two and a half month delay which, assuming a 60-day period for the effectiveness of any such tariff provisions, would, in turn, delay the effectiveness of a new capacity zone until May 31. New York Suppliers maintain that, at that point in time, the ICAP demand curve reset process would be well underway, setting the stage for potential further delay due to any mismatch in the established scope of the reset studies and the conclusions of the new capacity zone process.²⁷ New York Suppliers contend that the Commission should not permit NYISO to delay implementation of a new capacity zone that is identified in the NCZ Study and

²⁵ New York Suppliers November 28, 2011 Comments at 8.

²⁶ *Id.* at 12.

²⁷ *Id.* at 13.

request that the Commission require NYISO to submit tariff revisions to implement a new capacity zone by February 1 in each ICAP demand curve reset filing year.

24. Contrary to New York Suppliers, CES states that NYISO's proposed timeline does not appear to provide sufficient time between the decision to implement a new capacity zone and its actual implementation. CES requests that the Commission direct NYISO to ensure that market participants have reasonable clarity about all the market elements of any new capacity zones prior to 24 months in advance of their implementation, in order to facilitate the development of wholesale and retail bilateral contracts. CES maintains that since NYISO does not have a forward capacity auction, Load Serving Entities (LSEs) have to rely on the bilateral markets to hedge any capacity obligations greater than six months in duration. CES states that NYISO's proposal to determine the "indicative" amount of capacity LSEs have to procure by March 1, 2013,²⁸ does not provide sufficient notice for the bilateral markets to respond with a bilateral product for a new capacity zone that would become effective by May 2014. At a minimum, CES argues that the "market" needs to know who the eligible suppliers are, as well as both what the indicative capacity obligations are and how they are distributed, before bilateral contract products can be traded.

25. CES states that the introduction of a new capacity zone requires an appropriate transition period from when the operational details of a new capacity zone are identified to when the new capacity zone is implemented and that it is not obvious that NYISO's proposal will provide such a transition period. CES also asserts that NYISO's implementation plan has to allow adequate time for the utilities and retail suppliers in their service territories to properly identify which customers are located in any new capacity zone because NYISO's settlement process requires that level of information in order to financially settle each LSE's capacity obligations based on its actual customer load.

26. CES states that NYISO's proposal provides sufficient time for development and testing of NYISO software to accommodate the new capacity zone, however, CES maintains that market participants will also need time to develop and deploy their own software. CES contends utilities will need to identify which customer meters are located in the new zone and which generating units are qualified to offer in that zone, while retail suppliers will need to have pricing and customer information systems to properly identify the new zones and associated costs, which is a process that will require new software

²⁸ CES November 28, 2011 Comments at 3 (citing NYISO Filing Letter at 6: "[T]he NYISO shall determine the 'Indicative NCZ Locational Minimum ICAP Requirement' no later than March 1 of each ICAP Demand Curve Reset Filing Year.").

development. Without sufficient time, CES argues, the pricing will not be efficient and will cause unnecessary volatility in fixed price contracts.²⁹

c. Answers

27. NYISO states that the Commission should uphold the proposed implementation timetable as it was designed to allow sufficient time for all necessary software modifications, completion of the necessary studies, and all other necessary steps so that any new capacity zone could be established concurrent with the next ICAP demand curve reset process. NYISO adds that the timing and sequence of the proposed steps are an integral and critically important component of the filing and that the Commission has traditionally accepted implementation timetables developed by ISOs/RTOs.³⁰

28. NYISO argues that filing two sets of ICAP demand curves, as requested by Bayonne, is unnecessary. NYISO explains that any filing proposing a new capacity zone would identify the date by which Commission approval would be needed to permit the ICAP demand curve process to move forward on schedule. Requiring the creation and filing of additional ICAP demand curves that do not account for any required new capacity zone would necessitate an additional filing, which would likely be met with significant protests and introduce unnecessary complexity and delay.³¹

29. NYISO contends that directing NYISO to complete software modifications by the end of 2013 and deploy them within the first two weeks in 2014, as New York Suppliers request, is predicated on invalid fears of delay, and is unnecessary.³² NYISO asserts that its well-established set of systems and procedures accounts for all stages of project development; and prescribes design, coding, testing, and deployment milestones. Similarly, NYISO contends that there is no need for the Commission to require NYISO to file semi-annual “status reports” on its progress. NYISO states that it intends to periodically report to its ICAP Working Group³³ on its efforts, in order to keep stakeholders, and Commission staff monitoring working group meetings, apprised of

²⁹ CES November 28, 2011 Comments at 3-4.

³⁰ NYISO December 13, 2011 Answer at 3 (citing, *inter alia*, *PJM Interconnection, L.L.C.*, 134 FERC ¶ 61,246, at P 28 (2011)).

³¹ *Id.* at 6.

³² *Id.* at 4.

³³ The Installed Capacity Working Group is part of NYISO’s stakeholder process.

developments without requiring NYISO to incur the costs and burdens associated with preparing a formal status report for submission to the Commission.

30. NYISO also contends that New York Suppliers' proposal to require the NCZ Study to begin prior to September 1 should be rejected. NYISO states that the September 1 deadline was selected recognizing other concurrent efforts within various NYISO planning processes, and it allows the deliverability analysis to be completed in a timeframe necessary to facilitate the subsequent steps that need to be taken in the new capacity zone process. Similarly, NYISO contends that the request that the Commission require NYISO to complete tariff provisions to implement any identified new capacity zone by February 1, instead of March 31, should be rejected. NYISO argues that the proposed March 31 deadline allows NYISO sufficient time to draft necessary tariff revisions and to complete the filing of the NCZ Study results, while also allowing time for the MMU to review and comment on NYISO's filing prior to its submittal to the Commission.³⁴

31. NYISO states that the Commission should also reject CES's contention that the timeline is too short to allow the markets to adapt to the new rules. NYISO contends that it is neither feasible nor necessary for NYISO to provide market participants with the indicative capacity obligations and how they are distributed twenty-four months prior to implementation of a potential new capacity zone, given that the process is performed on a periodic basis. NYISO argues that its filing clearly outlines the deadlines for the various steps in the proposal to determine the Indicative NCZ Locational Minimum ICAP Requirement, and provides participants ample notice regarding what changes may occur if a new capacity zone is identified. Further, according to NYISO, market participants regularly adapt to such changes.

Commission Determination

32. We will accept NYISO's timeline and sequence for its new capacity zone determination as reasonable. Bayonne and the New York Suppliers are concerned about potential delays due to factual disputes or software changes and they propose revisions that they believe will ensure that the implementation is timely, or, at least, that it will not delay the ICAP demand curve reset. CES, in contrast, requests more time between the decision to implement a new capacity zone and its actual implementation. We find the protestors' concerns at this time to be speculative. Moreover, we recognize that NYISO must coordinate its workload with other tariff obligations and we find that NYISO's filing with respect to the timing and sequencing of the process complies with the September 8, 2011 Order. We address the comments more specifically below.

³⁴ NYISO December 13, 2011 Answer at 5-6.

33. We do not agree with Bayonne that it is necessary for NYISO to submit two sets of the demand curves to avoid delay in implementation. Every three years, NYISO performs a review of the ICAP demand curves, and no later than November 30 of the year prior to the year that the revised demand curves are proposed to become effective, makes a Federal Power Act section 205³⁵ filing with the commission for acceptance of such revised demand curves.³⁶ The Commission must then issue an order within 60 days of such filing and the new demand curves do not take effect until May 1 of the following year subject to whatever conditions the Commission attaches to their acceptance. Further, we agree with NYISO that requiring the creation and filing of alternative ICAP demand curves would necessitate an additional filing, which would introduce unnecessary complexity and delay.

34. With respect to New York Suppliers' concern about delays due to software implementation, we accept NYISO's assurances that the new capacity zone implementation has already been accounted for within NYISO's comprehensive software development plan, which accounts for all stages of project developments, design, coding, testing, and deployment milestones. We find no need for the Commission to prescribe an implementation schedule since NYISO explains that it already has an internal implementation schedule in place that already accounts for the time necessary to make all needed modifications in a timely manner. NYISO is not required to file this internal implementation schedule with the Commission. We also find no need for status reports every six months if NYISO will provide these status reports to the ICAP Working Group, which stakeholders can monitor.

35. We also decline to direct NYISO to revise its definition of "NCZ Study Start Date," to provide that the NCZ Study will start "before" September 1, and not on that date or the next business day, in the year preceding the ICAP demand curve reset filing year. We accept NYISO's explanation that the September 1 deadline was selected recognizing other concurrent efforts within various NYISO planning processes, and allows the deliverability analysis to be completed in a necessary timeframe. The term "NCZ Study Start Date" is proposed as a defined term in NYISO's tariff and this date is used thereafter in the tariff as a cut-off date for determining numerous factors that are

³⁵ 16 U.S.C. 824d (2006).

³⁶ Section 5.14.1.2.11 of NYISO's Service Tariff provides that the schedule and procedures shall provide for "Filing with the Commission of ICAP Demand Curves as approved by the ISO Board of Directors incorporating the results of the periodic review, such filing to be made not later than November 30 of the year prior to the year that includes the beginning of the first Capability Year to which such ICAP Demand Curves would be applied."

included in the study.³⁷ The precise date, i.e., September 1, is specifically defined for these particular uses and its specificity is, therefore, essential to the operation of the proposed provisions of the Services Tariff. Further, whether NYISO actually commences the study before or on September 1 or the next business day, NYISO is, nonetheless, required to review the study inputs and assumptions with stakeholders on or before October 1,³⁸ and provide a written report of the NCZ Study results to stakeholders no later than January 15 of the following year.³⁹ We therefore accept NYISO's proposal to define the "NCZ Study Start Date" as September 1 or the next business day thereafter in the calendar year prior to an ICAP demand curve reset filing year.

36. New York Suppliers also request that the Commission require NYISO to file tariff revisions as necessary to implement a new capacity zone by February 1, and not March 31 as proposed, in each ICAP demand curve reset filing year. We agree with NYISO that the proposed March 31 deadline would provide a reasonable period of time to draft any required tariff revisions, and provide an opportunity for NYISO's MMU to review and comment on the filing prior to its submittal to the Commission. Therefore, we accept NYISO's proposal to make a filing with the Commission no later than March 31 of each ICAP demand curve reset filing year.

37. CES requests that the Commission direct NYISO to provide certain detailed information including indicative capacity obligation 24 months in advance of implementing the new capacity zones. While we agree that adequate time is needed to prepare for a new capacity zone, we find that CES has not supported why 24 months is necessary or why NYISO's proposal falls short. We find that NYISO's timeline provides market participants reasonable notice regarding what changes may occur if a new capacity zone is identified.

³⁷ For example, the NCZ Study Methodology in proposed section 5.16.1.1.1(i) assumes "transmission facilities . . . identified as existing in the ISO's Load and Capacity data report most recently published prior to the NCZ Study Start Date."

³⁸ NYISO November 7, 2011 Filing, Attachment I, Services Tariff, § 5.16.1.2.

³⁹ *Id.*, § 5.16.

2. Clarity of Proposed Deliverability Test Methodology

a. NYISO's Filing

38. In compliance with the September 8, 2011 Order's directive to use the methodology contained in the existing Attachment S deliverability test in section 25.7.8 of Attachment S, NYISO proposes section 5.16.1.1, which specifies the inputs and assumptions regarding generation, transmission, and load that would be included in the study case.⁴⁰ According to NYISO, it identifies which "existing" and proposed generation and Merchant Transmission Facilities must be modeled in the NCZ Study. Further, proposed section 5.16.1.1(vii) provides that transfers of CRIS rights not reflected in the applicable NYISO annual Load and Capacity Data report (Gold Book), but which transfers are completed and the transferee is operational prior to the NCZ Study start date, are to be modeled.⁴¹ NYISO states that sections 5.16.1.1.4 and 5.16.1.1.5 expressly cross-reference the provisions of OATT Attachment S that describe base conditioning steps and the test methodology that will be applied to the inputs and assumptions. NYISO further states that section 5.16.1.1.4 specifies that NYISO's NCZ Study methodology will only consider Highways, since only Highway facilities are relevant to the evaluation of potential new capacity zones. NYISO contends that section 5.16.1 therefore complies with the September 8, 2011 Order's requirements that the deliverability test criterion be "clearly defined" and "formulaic."⁴²

39. NYISO states that in compliance with the September 8, 2011 Order, proposed section 5.16.2 states that NYISO "shall identify the boundary of a New Capacity Zone" if the NCZ Study shows that "there is a constrained Highway interface into one or more Load Zones." NYISO asserts that the boundaries of a new capacity zone could include one or more existing constrained load zones on the constrained side of a Highway. Proposed section 5.16.3 also establishes that when determining such boundaries, NYISO "shall consider the extent to which incremental capacity in individual constrained load zones could impact the reliability and security of the adjacent constrained load zones, taking into account interface capability between constrained load zones." NYISO contends that to the extent that excess capacity in an individual load zone within the

⁴⁰ NYISO states that this is necessary because the NCZ Study starts at a different time than a Class Year Deliverability Study under Attachment S, and is being performed outside the context of the Class Year Interconnection Facilities Study, of which the Class Year Deliverability Study is one component.

⁴¹ NYISO November 7, 2011 Filing at 5.

⁴² *Id.* (citing September 8, 2011 Order, 136 FERC ¶ 61,165 at P 61).

region of consideration for a new capacity zone can improve the reliability and security of a potential new capacity zone, it is a positive indicator for including that load zone as part of the new capacity zone. Conversely, according to NYISO, load zones that are relatively electrically isolated from other candidate load zones within the potential new capacity zone would tend to be a negative indicator for including them in the new capacity zone.⁴³

b. Protests and Comments

40. New York Suppliers state that a number of NYISO's proposed provisions lack sufficient detail to be able to confirm that NYISO will apply this test correctly, or the proposed provisions omit key components that are essential for market participants to understand how NYISO would implement a new capacity zone and how the new capacity zone would be treated once created.

41. New York Suppliers contend that proposed section 5.16.1.1.5 sets forth generalized statements with respect to performing the NCZ Study, and it is essentially a black box concerning how NYISO would apply the base conditioning steps and the test methodology to the inputs and assumptions to conduct the analysis.⁴⁴ Likewise, the New York Suppliers state that proposed section 5.16.1.1 describes in opaque terms how deliverability will be determined⁴⁵ and how each capacity region will be tested.⁴⁶ To ensure that NYISO applies the Attachment S test correctly in the new capacity zone context, New York Suppliers argue the Commission must reject this generalized, cross-reference language in both instances and instead direct NYISO to revise section 5.16.1.1.5 to provide a detailed, step-by-step description of how it will apply the base conditioning steps and the test methodology to perform the analysis in the NCZ Study. New York Suppliers assert that, absent more detailed tariff provisions delineating each step that NYISO must follow in this process, neither Market Participants nor

⁴³ *Id.* at 6.

⁴⁴ As currently proposed, section 5.16.1.1.5 sets forth generalized statements with respect to performing the NCZ Study by "applying to the . . . inputs and assumptions the methodology contained in [OATT Attachment S] to Highways." New York Suppliers November 28, 2011 Answer at 14.

⁴⁵ Section 5.16.1.1 states "through a shift from generation to generation within each Capacity Region that contains Highways."

⁴⁶ Section 5.16.1.1 states "Each such Capacity Region will be tested on an individual basis."

ultimately the Commission will be able to confirm whether NYISO has conducted a NCZ Study correctly.⁴⁷

42. New York Suppliers also take issue with proposed section 5.16.2, which provides that NYISO shall identify the boundary of a new capacity zone if there is a constrained Highway interface into one or more load zones. They maintain that the proposed language⁴⁸ must be clarified to reflect that it is triggered only when a NCZ Study identifies a constrained Highway interface.⁴⁹

43. New York Suppliers further contend that the proposed tariff language does not provide sufficient detail concerning how NYISO would define the new capacity zone boundaries and, thus, affords NYISO far too much discretion. For example, the proposed tariff language does not define how NYISO would measure the impact on the reliability and security of the constrained load zones or take the interface capability into account. Further, they state that while the tariff language appears to be broad enough to permit the designation of a “super-zone,”⁵⁰ it is not clear that the referenced Attachment S test itself can yield anything other than the partitioning of an existing zone. New York Suppliers contend that reliability analyses may ultimately show that the new capacity zone boundaries should not be so narrowly drawn. New York Suppliers assert that because this proposed language is overly vague, NYISO should be directed to clarify this provision and provide specific parameters concerning how the boundary determination will be made.⁵¹

44. New York Suppliers also contend that although proposed section 5.16.3 provides that NYISO shall determine an Indicative NCZ Locational Minimum ICAP Requirement

⁴⁷ New York Suppliers November 28, 2011 Comments at 15.

⁴⁸ Section 5.16.2 states that NYISO shall “consider the extent to which incremental Capacity in individual constrained load zones could impact the reliability and security of constrained load zones, taking into account interface capability between constrained load zones.”

⁴⁹ New York Suppliers November 28, 2011 Comments at 15.

⁵⁰ New York Suppliers indicate that a “super-zone” could combine portions of existing capacity zones (e.g., Zones G-K) rather than only the partitioning of an existing zone (e.g., Zones G-I from Zones A-F).

⁵¹ New York Suppliers November 28, 2011 Comments at 16.

for each new capacity zone that is identified in the NCZ Study, it provides no details with respect to how the level of this requirement would be determined. New York Suppliers assert that NYISO's proposed section 5.16.3 must be revised to specify how NYISO will calculate this requirement.⁵²

45. With respect to omissions of key components, New York Suppliers argue that NYISO has not proposed any tariff language with respect to the conduct, or change in conduct, of ICAP auctions for a new capacity zone. They argue that the Commission recognized that 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. Because of this omission, New York Suppliers assert that NYISO's filing fails one of the primary purposes for creating new capacity zones in the first instance. New York Suppliers add that NYISO has not conformed Attachment S, section 25.7.8 to take into account its new purpose to determine when new capacity zones must be created. They assert that NYISO must be directed to amend either Attachment S or include additional provisions to more clearly incorporate section 25.7.8 into the new provisions of section 5.16.1 of the Services Tariff.

c. Answers

46. NYISO responds that contrary to New York Suppliers' assertions of insufficient detail, proposed section 5.16 of the NYISO Services Tariff specify the assumptions NYISO will use and that the Attachment S provisions contain the methodology for the deliverability test that will be used to perform the NCZ Study. Additionally, the tariff revisions provide a level of detail that is comparable to similar NYISO tariff provisions and consistent with what is required by Commission precedent. NYISO adds that section 5.16.1.2 provides sufficient transparency by requiring NYISO to review the inputs and assumptions for the NCZ Study with stakeholders and provide them with an opportunity to comment.

47. Similarly, NYISO contends that the Commission should reject New York Suppliers' request that NYISO provide more detail on how the boundary for potential new capacity zones will be established.⁵³ NYISO argues that the proposed tariff revisions provide sufficient detail to ensure that if a new capacity zone is required, NYISO will have the needed flexibility to evaluate and consider any relevant information, while providing more detail may result in restrictions on the data that

⁵² *Id.* at 17.

⁵³ NYISO December 13, 2011 Answer at 8.

NYISO may consider, which would impede a full and meaningful evaluation of the need for and potential creation of new capacity zones.

48. NYISO contends that there is no basis for New York Suppliers' assertions that NYISO should provide more information regarding the determination of the Indicative NCZ Locational Minimum ICAP Requirement for any identified new capacity zones, because the requirement will be determined through the existing process used for developing the New York City and Long Island Locational Minimum ICAP Requirements. NYISO argues that no party has questioned NYISO's existing process or the application of that process to any potential new capacity zone.

49. Additionally, NYISO states that New York Suppliers' contention that NYISO failed to propose tariff language on how ICAP auctions will be conducted in the event a new capacity zone is established is not accurate. NYISO argues that while the tariff will need to be revised to recognize any new capacity zones, NYISO does not anticipate that the auction process will require substantive modification. However, NYISO adds that auction design is an element of the on-going software functional design, and if modifications to the existing auction process are identified during the software functional design process, NYISO will bring those modifications to the attention of the Commission and its stakeholders. NYISO concludes that, at this time, there is no need for the Commission to direct revisions with respect to provisions governing the auction, as NYISO has not identified any needed modifications.⁵⁴

Commission Determination

50. We find NYISO's proposed methodology for the NCZ Study in proposed section 5.16 complies with the September 8, 2011 Order. It incorporates the methodology, as relevant, of section 25.7.8 of Attachment S,⁵⁵ and is sufficiently detailed and includes the appropriate components of that methodology, while allowing NYISO a reasonable level of flexibility in its consideration and evaluation of new capacity zones. NYISO specifies in section 5.16 of its Services Tariff the methodology it will follow and the inputs and assumptions it will use in implementing that methodology, including appropriate references to specific subsections of section 25.7.8 of Attachment S that will be applied. Moreover, proposed section 5.16.1.2 specifies that NYISO will review the inputs and assumptions for the NCZ Study with stakeholders and provide them with an opportunity to comment, while section 5.16.3 provides for stakeholder review and comment on the locational ICAP requirement for the new capacity zone. This inclusion of stakeholders

⁵⁴ *Id.* at 9.

⁵⁵ *See* proposed sections 5.16.1.1.4 and 5.16.1.1.5.

provides for sufficient transparency so that we do not share the concerns of the New York Suppliers that market participants will not be able to confirm if NYISO has properly conducted its NCZ Study.

51. We do not agree with the New York Suppliers that compliance with our September 8, 2011 Order requires that NYISO provide detail on how the outcome of an NCZ Study might result in the creation of a “super-zone” such as a capacity zone comprised of load zones G through K. The focus of an NCZ Study is to determine if binding Highway constraints into existing load zones have developed and require a separate local resource capacity requirement and the corresponding creation of a capacity zone. Separate capacity zones permit capacity price divergence with higher prices in the constrained capacity zone. But if the constraint has been resolved, price convergence between two capacity zones will occur with or without the union of the two separate capacity zones into a “super-zone.” Because separate capacity zones do not inherently create unneeded or inefficient price separation, or any other inaccurate price signals, a combination of the separate capacity zones into a “super-zone” after the constraint is resolved would have no effect. Accordingly, we believe that it is unnecessary for NYISO to determine whether existing zones should be combined into a “super-zone.”

52. New York Suppliers contend that NYISO omits key components with respect to the conduct of ICAP auctions for a new capacity zone. In response, NYISO clarifies that it does not anticipate that the auction process will require substantive modification, but if modifications are necessary, NYISO will bring those modifications to the attention of its stakeholders and the Commission. Therefore, we reject New York Suppliers request that NYISO be directed to include additional tariff language on how ICAP auctions will be conducted for a new capacity zone. If NYISO determines that any tariff modifications regarding auctions are needed, we remind NYISO that it will need to make a timely filing for acceptance of such modifications.

53. New York Suppliers also contend that NYISO has not conformed Attachment S, section 25.7.8 to take into account its new purpose to determine when new capacity zones must be created. We disagree that such changes are necessary. Attachment S has a stand-alone purpose as a cost allocation methodology for CRIS. While any other uses for portions of Attachment S could be listed in Attachment S, New York Suppliers have not convinced us that it is necessary to do so. Additionally, we find that it is sufficient that proposed section 5.16 specifies the particular Attachment S provisions that are to be used in the section 5.16 process.

3. Treatment of New Resources

a. NYISO's Filing

54. Proposed section 5.16.1 provides that certain specific categories of facilities are to be included in the NCZ Study. In general, these are existing facilities, facilities that are

scheduled to be in service prior to the NCZ Study Capability Period,⁵⁶ and facilities from a Class Year final decision round⁵⁷ that occurs prior to the NCZ Study Start Date.⁵⁸ NYISO excludes any new (not finalized) Class Year requests for capacity rights by new resources.

b. Comments and Protests

55. The MMU states that the exclusion from the NCZ Study of those class year projects that have not yet accepted and paid their project cost allocation (Open Projects) is a critical omission. The MMU is concerned that such an exclusion will preclude the creation of new capacity zones when they are needed to produce efficient price signals, as well as allow deliverability constraints to continue that will inefficiently hinder the entry of economic new generation and imports.

56. Specifically, the MMU asserts that the NCZ Study described in NYISO's compliance filing varies from the deliverability test in Attachment S in that it will not include any new requests for CRIS rights by new resources or imports, which means that NYISO's methodology would only result in the creation of a new zone when there is a pre-existing overload (i.e., an overload without any new resources or new requests for CRIS rights).⁵⁹ Therefore, according to the MMU, the results of the NCZ Study will not likely identify any deliverability constraints that will bind when the new requests are studied and cause the new resources to be deemed undeliverable. The MMU asserts that this is precisely when the new capacity zone should be created. If a new capacity zone is not created, new investment can be inefficiently deterred by the requirement to invest in uneconomic transmission facilities, and the price signals on both sides of the constraint will be incorrect. The MMU does not believe the NYISO filing complies with the

⁵⁶ NCZ Study Capability Period would be defined in section 2.14 of the Services Tariff as: "The Summer Capability Period that begins five years from May 1 in a calendar year including an NCZ Study Start Date."

⁵⁷ The Class Year refers to the group of generation and merchant transmission projects included in any particular Annual Transmission Reliability Assessment and Class Year Deliverability Study. The final decision round for the Class Year refers to the round of NYISO-communicated cost estimates and developer responses for a Class Year, in which all remaining eligible developers issue an acceptance notice and post security.

⁵⁸ NYISO November 7, 2011 Filing, Attachment I, Proposed Market Services Tariff section 5.16.1.1.1.

⁵⁹ MMU November 28, 2011 Comments at 9.

September 8, 2011 Order and recommends that the Commission order NYISO to modify its NCZ Study to include Open Projects. The MMU argues that this small change will address a significant flaw and, as discussed further below, will also change the conditions under which system deliverability upgrade costs are incurred by NYISO market participants.

57. The MMU maintains that a primary benefit of establishing new capacity zones is that a binding deliverability constraint will no longer result in a mandate for the new supplier to build transmission to relieve congestion on Highway facilities. Instead, the MMU contends the new capacity zone will be created and the new supplier's resource will only have to be deliverable within its new zone (not across the Highway constraint). With this change, the MMU argues an investment decision will no longer be subject to the inefficient economic barrier that multimillion dollar transmission upgrades can represent.⁶⁰

58. The MMU agrees with the Commission that new resources should not be relieved of the system deliverability upgrade costs they must incur to ensure deliverability within their zone.⁶¹ However, according to the MMU, these costs should be limited to: investments that degrade the transfer capability of an existing Highway interface;⁶² or "byway" constraints that should not trigger the creation of a new zone. The MMU asserts that a resource that may be limited by a byway constraint from responding to a system contingency or other reliability condition is not providing comparable reliability services as other capacity suppliers within its zone. The MMU maintains that it does not believe the Commission intended for binding Highway constraints to be addressed through mandatory system deliverability upgrades rather than the creation of new capacity zones.

59. The MMU contends that transmission investments to relieve Highway constraints should occur only when they are economically efficient (excluding reliability upgrades). The MMU explains that such an investment is efficient only when the value of the additional transfer capability in the capacity and energy markets exceeds the cost of the investment. The MMU asserts that any market structure that would mandate investments that do not satisfy this principle will result in inefficient investment or barriers to entry

⁶⁰ *Id.* at 10.

⁶¹ *Id.* (citing September 8, 2011, Order 136 FERC ¶ 61,165 at n.30).

⁶² *Id.* The MMU states that this is the basis for the "no-harm" test in the current rules.

(when they are tied to generation investment), both of which ultimately raise costs to consumers and undermine the benefits a competitive electricity market should provide.

60. The MMU states that markets can be structured to satisfy this principle by accurately pricing the constraint in both the capacity and energy markets. According to the MMU, nodal pricing generally results in accurate pricing of the constraint in the energy market, and the creation of new capacity zones should accurately price the deliverability constraint in the capacity market, which will be reflected in the inter-zonal price difference. Once the constraint is fully priced, the MMU argues that the market will provide efficient incentives for participants to voluntarily make system upgrades.⁶³ Therefore, according to the MMU, investors should make these upgrades when the value of the new rights is projected to exceed the cost of the investments.

61. The MMU asserts that this structure has been shown to provide efficient investment incentives for most new transmission upgrades (because most are incremental upgrades to address a limiting element on the network). The MMU maintains that the primary exception are investments that exhibit substantial economies of scale – where the efficient size of the investment is large enough that it would substantially reduce or eliminate congestion over the path. In these cases, the MMU contends new transmission rights awarded may not provide adequate compensation to the investor because their value is based on the residual congestion after the investment. However, the MMU argues that these cases support the need for coordinated economic transmission planning, which is an effective means to address the economies of scale issue. The MMU maintains that the deliverability structure does nothing to address this issue because compelling a new supplier to pay for the upgrade simply erects an economic barrier to the generation investment. The MMU recommends that the Commission order NYISO to modify the proposed NCZ Study to eliminate the inefficient barrier, that is, any market structure that would mandate transmission investments to relieve Highway deliverability constraints that are not economically efficient, and address this significant market design flaw.

62. The MMU states that adopting a criterion that would create a new capacity zone whenever existing and new requests for CRIS rights together would cause a Highway constraint to bind is demonstrably more economically efficient than the criterion proposed by NYISO. Additionally, the MMU maintains that this structure is fully consistent with the September 8, 2011 Order requiring NYISO to establish a new capacity zone criterion, consistent with Section 25.7.8 of Attachment S. The MMU asserts that this section calls for the study of both existing CRIS rights and new requests

⁶³ *Id.* at 11.

for CRIS rights. Hence, the MMU recommends modifying the proposed NCZ Study to be fully consistent with Section 25.7.8 of Attachment S, which must include the Class Year requests for CRIS rights from new resources and imports.⁶⁴

c. Answers

63. National Grid responds to the MMU's comments stating that it shares the MMU's desire to minimize the costs that New York consumers pay for electricity, and to avoid the construction of facilities, including transmission facilities, where better alternatives exist, but it does not believe that the MMU's proposed modifications to NYISO's new capacity zone criteria will achieve this goal. National Grid argues that the MMU's proposal, which would eliminate the requirement for a planned generating resource to fund a Highway transmission upgrade, and would allow planned resources to be considered in the determination of whether a new capacity zone is needed or not, is flawed. National Grid states that, according to the MMU, the creation of market price differentials, not a Highway deliverability upgrade funding requirement, is the correct means to support the development of economically efficient transmission investment. National Grid argues, however, that the two essential preconditions recognized by the MMU as necessary to facilitate the development of such transmission under its approach do not exist in New York.⁶⁵

64. National Grid contends that the first precondition the MMU identifies is that Unforced Capacity Deliverability Rights (UDR)⁶⁶ be available for all transmission investments, and not just direct current or DC lines. National Grid argues that the

⁶⁴ MMU November 28, 2011 Comments at 12-13.

⁶⁵ National Grid December 13, 2011 Comments at 5-6.

⁶⁶ Unforced Capacity Deliverability Rights (UDR) are rights, as measured in MWs, associated with new incremental controllable transmission projects that provide a transmission interface to a NYCA Locality (i.e., an area of the NYCA in which a minimum amount of Installed Capacity must be maintained). When combined with Unforced Capacity which is located in an External Control Area or non-constrained NYCA region either by contract or ownership, and which is deliverable to the NYCA interface with the UDR transmission facility, UDRs allow such Unforced Capacity to be treated as if it were located in the NYCA Locality, thereby contributing to an LSE's Locational Installed Capacity Requirement. To the extent the NYCA interface is with an External Control Area, the Unforced Capacity associated with UDRs must be deliverable to the Interconnection Point. Services Tariff section 2.21.

NYISO tariff currently does not allow for this, and as far as National Grid is aware, no stakeholder process is underway to change the NYISO tariff to describe how an alternating current or AC UDR could be incorporated into the capacity markets. National Grid states that the functional difference between AC and DC UDR, and thus the potential difficulty in creating an AC UDR in this context, should not be underestimated. National Grid argues that adopting the MMU's proposal at this time would, by its own admission, remove investors' ability "to receive the economic rights to their investment," thus preventing economic investment in transmission from taking place.⁶⁷

65. National Grid explains that the second factor the MMU discusses, the "exception" to its analysis, is much more important than the MMU acknowledges. National Grid states that in the MMU's view, transmission upgrades that "substantially reduce or eliminate" congestion costs paid by consumers are the "exception" that must be dealt with in the transmission planning process. However, it states, relying exclusively on the arbitrage opportunity between newly created capacity zones as the primary incentive to transmission development simply ignores the benefits to customers that transmission should create, and which should be identified in NYISO's transmission planning process.

66. The NYTOs respond to the MMU's contention that the filing is not consistent with the deliverability test described in section 25.7.8 of Attachment S and therefore fails to comply with the September 8, 2011 Order. The NYTOs argue that the MMU fails to recognize that section 25.7.8 of Attachment S describes a methodology that is applied multiple times over the course of a Class Year Interconnection Study, and that the resources included in the study vary depending on the iteration. The NYTOs state that in the first round of a Class Year Deliverability Study, all resources seeking CRIS rights are included in the study, while those that decline to accept their allocation of transmission upgrade costs may decline to seek CRIS in subsequent rounds of the study and, if they refuse, are excluded from the NYISO's analysis. The NYTOs contend that the MMU's claim is therefore incorrect that Attachment S prescribes a single set of assumptions about which set of new resources to include.

67. The NYTOs further contend that the MMU specifically proposes to include all new resources as part of the test, even those that have not yet accepted cost allocation, despite the Commission's statement in its September 8, 2011 Order that "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

⁶⁷ National Grid December 13, 2011 Comments at 6.

capacity market.”⁶⁸ The NYTOs contend that the MMU’s comments are a collateral attack on the Commission’s September 18, 2011 Order, and should be disregarded.

68. The NYTOs assert that the MMU’s claim that the NCZ Study methodology “will not include any new requests for CRIS rights by new resources or imports” is factually incorrect.⁶⁹ They state that NYISO’s filing specifically calls for inclusion in its NCZ Study methodology of “planned generation projects or Merchant Transmission Facilities that have accepted either (a) Deliverable MW or (b) a system deliverability upgrade cost allocation.”⁷⁰

69. The NYTOs contend that including all such resources that are participating in an on-going Class Year Interconnection Study in the NCZ Study would also create the potential for suppliers to game the process for establishing new capacity zones. NYTOs assert that in the MMU’s proposed NCZ Study methodology, a market participant could propose a new project, at minimal cost, with the intention of triggering the creation of new capacity zones to benefit existing resources. In addition, according to the NYTOs, units can actually create incremental increases in flows across a Highway facility that is physically located “upstream” of the proposed interconnection point. The NYTOs argue that the MMU’s proposal would allow generation situated in a zone downstream of a binding Highway constraint to force the creation of a new capacity zone, thus the addition of supply within the newly formed capacity zone may actually increase prices to consumers within that zone.

Commission Determination

70. We find that NYISO’s proposed section 5.16.1 that excludes Open Projects in the NCZ Study complies with our September 8, 2011 Order wherein we stated:

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

⁶⁸ NYTOs December 13, 2011 Answer at 4 (citing September 8, 2011 Order, 136 FERC ¶ 61,165 at P 55).

⁶⁹ *Id.* (citing MMU November 28, 2011 Comments at 2-3).

⁷⁰ *Id.* (citing NYISO November 7, 2011 Filing, Attachment I, section 5.16.1.1(iii)).

upgrades by new resources eliminate what would otherwise be a binding constraint, then there is no need to create a new capacity zone.⁷¹

We also stated: “[w]e 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.”⁷² Thus, a binding constraint created solely as a result of the entry of new generation should not result in the creation of a new zone; rather, the new generation would be required to pay for upgrades, thus relieving the constraint. Accordingly, we conclude that NYISO has complied with our September 8, 2011 Order by excluding Open Projects from the NCZ Study in determining whether a new zone should be created because even if an open project goes forward and in doing so, creates congestion, it will be required to pay for transmission upgrades to eliminate that congestion.

71. However, we agree with the MMU that it may be efficient to create additional capacity zones in other situations. As the MMU observes, under the proposed section 5.16.1, new entry alone would not justify a need for a new capacity zone. Under NYISO’s proposal, it is only when existing capacity resources have become undeliverable (perhaps because of load changes) within the existing capacity zone that there could be creation of a new capacity zone. This is because, under NYISO’s proposal, it is only projects that have accepted either a Deliverable MW or a system deliverability upgrade cost allocation that are included in the NCZ Study; those that have not yet accepted their cost allocations, or have not agreed to the transmission system upgrades that are necessary to ensure deliverability throughout the existing zone, would not be included in the NCZ Study. The MMU argues that NYISO should include all planned generation projects or merchant transmission facilities in the NCZ Study, including those that have not agreed to their cost allocation (i.e., not paid for transmission upgrade costs). The MMU asserts that it may be inefficient to require construction of a transmission upgrade instead of creation of a new capacity zone, and that requiring potential new entrants to bear Highway transmission upgrade costs could serve as a barrier to entry. We agree with the MMU regarding the potential for inefficiency in requiring construction of transmission upgrades instead of creation of a new capacity zone. This would be the case if the benefits of new generation with price divergence reflecting inter-zonal congestion exceeded the benefits of new generation with transmission expansions that eliminated inter-zonal congestion, thus discouraging efficient new entry.

⁷¹ September 8, 2011 Order, 136 FERC ¶ 61,165 at P 55.

⁷² *Id.* at n.30.

72. On the other hand, we also share National Grid's concern that the MMU's recommendation may not achieve its objectives because two preconditions noted by the MMU and discussed below do not currently exist in New York. First, NYISO's tariff does not allow UDRs to be available for all transmission upgrades. Thus, a new generator entrant that was required to incur transmission upgrade costs to receive capacity status may not receive the full economic benefits of its transmission investment and may as a result be discouraged from making such investments. Second, National Grid emphasizes that some Highway transmission expansions required for capacity status could substantially reduce system-wide congestion costs and should more appropriately be identified and built through the integrated transmission planning process. We share the perspective that a single new generation entrant may not always have the interest or incentive to develop large-scale efficient transmission expansions in response to zonal capacity price differences. However, we have no basis on this record that would allow us to judge the significance of these current omissions to achieving the goals of the MMU's proposal.

73. Thus, although we agree with the MMU's argument that NYISO's proposal will not *always* produce an efficient outcome, we do not agree that it warrants a rejection of NYISO's proposal as non-compliant with our September 8, 2011 Order. We find that the MMU's recommendation raises concerns that are best evaluated by NYISO and its stakeholders in the first instance and that requiring its adoption now would be premature. As our September 8, 2011 Order directed NYISO to consider, but did not mandate, the creation of capacity zones when transmission constraints develop within a load zone, we similarly direct NYISO and its stakeholders to study further the merits of the MMU's recommendation to include Open Projects in the NCZ Study. Specifically, NYISO and its stakeholders should evaluate whether the goals of the MMU's recommendation require Tariff changes that would allocate UDRs to all transmission investments and whether such rights along with incremental Transmission Congestion Credits would be compensatory to those bearing transmission expansion costs.

4. Market Power Mitigation

a. NYISO's Filing

74. In its November 7, 2011 Filing, NYISO asserts that the September 8, 2011 Order confirmed that "additional market power mitigation measures may be needed for an established new capacity zone."⁷³ NYISO states that it has discussed the issue with the MMU and both agree that a consistent set of supplier-side and buyer-side market power

⁷³ NYISO November 7, 2011 Filing at 7 (citing September 8, 2011 Order, 136 FERC ¶ 61,165 at P 64).

mitigation measures applicable to all new capacity zones should be included in NYISO's tariffs. NYISO states that it envisions that these measures would be imposed only on suppliers including, with respect to buyer-side mitigation, new market entrants in new capacity zones that trigger clear and objective market power screens. NYISO adds that the specific parameters and thresholds under the generally applicable screen might vary from one new capacity zone to another. NYISO adds that, given the complexity of designing such measures, it was not possible to develop a market power mitigation proposal by the deadline for this filing. Accordingly, NYISO requests an extension of time to no later than June 30, 2012 to make this further compliance filing that would propose new market power mitigation tariff provisions that would apply to any future new capacity zone.⁷⁴

b. Comments

75. New York Suppliers assert that initially NYISO proposed a more accelerated timeline to develop and file mitigation provisions for new capacity zone market power mitigation rules. Based upon the experience in New York to initially develop the comprehensive market power mitigation structure for the capacity markets in New York City and the associated litigation that has transpired, New York Suppliers argue that the development of any such rules for a new capacity zone is likely to be time-intensive and may be controversial. Thus, New York Suppliers support NYISO's decision to provide sufficient time before the NCZ Study is completed to develop and make a compliance filing with new market power mitigation rules, if necessary.⁷⁵

76. New York Suppliers assert that the development of balanced supplier- and buyer-side market power mitigation rules is essential to achieve a just and reasonable result in New York's capacity markets, and that the time should be taken now to ensure that any mitigation rules proposed for new capacity zones are clearly and objectively determined, consistent with Commission precedent in the New York markets. New York Suppliers argue that the development of specific triggering thresholds to implement any new mitigation measures is reasonably straight forward, and should commence immediately, independent of any specifically identified new capacity zone. New York Suppliers maintain that specific criteria for such a new mitigation approach must not be allowed to further delay the process. New York Suppliers request that the Commission direct

⁷⁴ *Id.* at 7-8.

⁷⁵ New York Suppliers November 28, 2011 Comments at 10.

NYISO to make its comprehensive market power mitigation rule compliance filing, if found to be necessary, by no later than June 30, 2012.⁷⁶

77. The MMU asserts that although NYISO did not file specific market power mitigation measures, it agrees with NYISO that an approach that provides for a consistent set of supplier-side and buyer side measures applicable to all new capacity zones should be included in the tariff. The MMU contends that it will be consulting with NYISO and its stakeholders on the development of the market power triggers, and as long as the triggers are reasonable, the MMU argues that the Commission should find this market power framework just and reasonable.⁷⁷

Commission Determination

78. New York Suppliers and the MMU both fully support NYISO's implementation of market power mitigation rules. The Commission agrees with New York Suppliers' comment that the development of balanced supplier and buyer side market power mitigation rules is essential to achieve a just and reasonable result in New York's capacity markets, and that time should be taken now to ensure that any mitigation rules proposed for new capacity zones are clearly and objectively determined.

79. New York Suppliers maintain that the lack of specific criteria for such a new mitigation approach must not be allowed to further delay the process, and request that the Commission direct NYISO to make its comprehensive market power mitigation rule compliance filing, if found to be necessary, by no later than June 30, 2012. NYISO's filing indicated that NYISO intended to make a further compliance filing, no later than June 30, 2012, that would propose new market power mitigation tariff provisions that would apply to any future new capacity zone. NYISO made this filing on June 29, 2012, in Docket No. ER12-360-001 and it is now pending before the Commission.

5. Effective Date

80. NYISO requests that the Commission accept the proposed tariff modifications effective January 9, 2012. It states that it is presently developing internal processes to accommodate the new capacity zone deliverability test, and for making corresponding changes to provisions in numerous sections of its Services Tariff and ICAP Manual that would be needed to accommodate and recognize one or more new localities. NYISO adds that it is also developing software to accommodate new capacity zones. In addition,

⁷⁶ *Id.* at 11.

⁷⁷ MMU November 28, 2011 Comments at 13.

NYISO states that it will initiate the process for the ICAP demand curve reset in the spring 2012. NYISO maintains that it would be beneficial at the early stage of the process to have the tariff revisions effective.

81. While no commenters specifically addressed NYISO's proposed effective date, as discussed above,⁷⁸ CES has argued for a longer implementation period, while Bayonne and New York Suppliers have complained about delays and potential delays in the process.

82. For the reasons given by NYISO, we accept the January 9, 2012 effective date.

The Commission orders:

NYISO's proposed tariff revisions are hereby accepted, effective January 9, 2012, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose
Secretary.

⁷⁸ See *supra* PP 24-26, 37.