

READ AND LANIADO, LLP

ATTORNEYS AT LAW
25 EAGLE STREET
ALBANY, NEW YORK 12207-1901

(518) 465-9313 MAIN
(518) 465-9315 FAX
www.readlaniado.com

KEVIN R. BROCKS
DAVID B. JOHNSON
SAM M. LANIADO
KONSTANTIN PODOLNY

TYLER W. WOLCOTT

HOWARD J. READ
PATRICK A. SILER
Of Counsel

Via Hand Delivery

March 21, 2018

Mr. Michael Bemis
Chairman of the NYISO Board of Directors
c/o Mr. Bradley C. Jones
President and CEO
Diane Egan
Corporate Secretary
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144

Re: Motion in Opposition to Appeal by Central Hudson and NYPA of February 28, 2018 MC
Action

Dear Chairman Bemis:

Pursuant to Section 4.01 of the Procedural Rules for Appeals to the New York Independent System Operator, Inc. ("NYISO") Board of Directors ("Board"), Independent Power Producers of New York, Inc. ("IPPNY") hereby submits this Motion in Opposition to the appeal filed by Central Hudson Gas & Electric Corporation and the New York Power Authority of the February 28, 2018 decision of the Management Committee to reject Motion 5, which recommended that the Board support a tariff filing at the Federal Energy Regulatory Commission that would establish a method for eliminating capacity zones or Localities and to revise the existing rules to create new capacity zones or Localities.

IPPNY takes no position on the need for oral argument on the appeal. If the Board determines that oral argument is appropriate, IPPNY respectfully requests the opportunity to participate in any such oral argument.

Mr. Michael Bemis
Chairman of the NYISO
Board of Directors

March 21, 2018

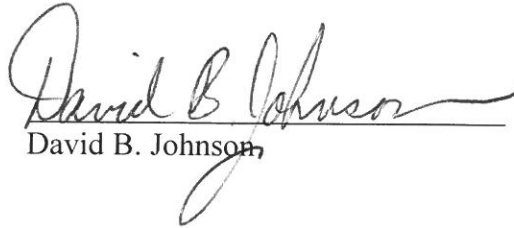
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A copy of this Motion in Opposition has been transmitted to NYISO staff via e-mail for circulation to all Management Committee members.

Respectfully submitted,

READ AND LANIADO, LLP
Attorneys for Independent Power
Producers of New York, Inc.

By:


David B. Johnson

Attachment

**MOTION OF INDEPENDENT POWER
PRODUCERS OF NEW YORK, INC. IN OPPOSITION TO APPEAL**

On February 28, 2018, the Management Committee (“MC”) rejected Motion No. 5, which recommended that the New York Independent System Operator, Inc. (“NYISO”) Board of Directors (“Board”) file with the Federal Energy Regulatory Commission (“Commission”) proposed revisions to the NYISO Market Administration and Control Area Services Tariff and the Open Access Transmission Tariff to modify the existing rules governing the creation of capacity zones and introduce new rules for the elimination of capacity zones in New York (referred to by the NYISO as the “On Ramps & Off Ramps” market design proposal (the “Proposal”)). On March 14, 2018, Central Hudson Gas & Electric Corporation and the New York Power Authority (collectively, “Appellants”) filed a Notice of Appeal of the MC’s decision requesting that the Board either file the Proposal with the Commission under Section 206 of the Federal Power Act (“FPA”) or return it to the stakeholder process.¹ Pursuant to Article 5 of the ISO Agreement and Section 4.01 of the Procedural Rules for Appeals to the ISO Board, Independent Power Producers of New York, Inc. (“IPPNY”)² hereby submits this motion in opposition to the Appellants’ Notice of Appeal. The Board should deny the Notice of Appeal.

As demonstrated below, Appellants have failed to demonstrate that the existing capacity zone creation rules are unjust and unreasonable, which the NYISO would have the burden of proving if the Proposal were to be filed with the Commission under FPA § 206. Even assuming, *arguendo*, the NYISO could meet this burden, tariff revisions addressing an FPA § 206 violation must be just and reasonable. The Proposal fails this requirement. The Proposal would distort

¹ *Notice of Appeal*, Cent. Hudson Gas & Elec. Corp. & N.Y. Power Auth. (Mar. 14, 2018), http://www.nyiso.com/public/webdocs/markets_operations/committees/appeals/Appeals_to_the_BOD/February_28,_2018/Central%20Hudson%20and%20NYPA%20Appeal%20On%20RampsOff%20Ramps.pdf.

² IPPNY is a not-for-profit trade association representing nearly 75 companies involved in the development and operation of electric generating facilities and the marketing and sale of electric power in New York. In submitting this motion, IPPNY is acting through its members on the MC.

market price signals and create market uncertainty, which would harm the market's ability to maintain needed existing, and encourage investment in new, generation required to ensure reliability. Because the Proposal is significantly flawed and would harm reliability if adopted, the Board should not endorse it by either submitting an FPA § 206 filing with the Commission or returning it to the stakeholder process.

I. BACKGROUND

The NYISO has been developing the Proposal since late last summer. The NYISO has advanced the Proposal despite the fact IPPNY and other Market Participants had established that capacity zone elimination rules are unnecessary and would harm the market. Further, the NYISO Consumer Liaison's study had demonstrated that consumers will bear major costs if a zone is eliminated prematurely, but there are *de minimis* effects if a zone remains in place longer than necessary.³

Importantly, the NYISO's proposed methodology and the underlying data were not presented to Market Participants until October 24, 2017. Once the data became available, Mr. Mark D. Younger of Hudson Energy Economics, LLC made a presentation demonstrating that, even if the NYISO decided modified rules are warranted, the Proposal was significantly flawed.⁴ IPPNY's concerns became more acute once the proposed methodology was fully defined and this additional information became known.⁵

³ Tariq N. Niazi, *Consumer Impact Analysis: Mechanism to Eliminate Capacity Zones (Localities)*, NYISO (Dec. 9, 2015), at 9, 11 ("Consumer Liaison Study"), http://www.nyiso.com/public/webdocs/markets_operations/committees/bic/meeting_materials/2015-12-09/CIA%20-%20Eliminate%20Capacity%20Zones.pdf.

⁴ Mark Younger, *NYISO Proposed On/Off Ramp Methodology*, Hudson Energy Economics, LLC (Jan. 9, 2018) ("Younger Presentation"), http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_icapwg/meeting_materials/2018-01-10/On-Off%20Ramp%20Test%20Methodology%2020180108%20HEE.pdf.

⁵ See, e.g., *Comments on NYISO On Ramps and Off Ramps Concept for Creating and Eliminating Capacity Zones*, Indep. Power Producers of N.Y., Inc. (Jan. 3, 2018), http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_icapwg/meeting_materials/2018-01-10/IPPNY%20Comments%20on%20On%20Ramps%20Off%20Ramps%20Proposal.pdf ("IPPNY January 3 Comments"); *Comments in Support of Younger Presentation*, Indep. Power Producers of N.Y., Inc. (Jan. 22, 2018),

The NYISO presented the Proposal at the Business Issues Committee's ("BIC") February 14, 2018 meeting, where IPPNY and others again pointed out its flaws.⁶ At the BIC meeting, the Proposal failed to receive the required 58% vote. At the February 28, 2018 MC meeting, Market Participants voted on the Proposal and, again, the motion failed to garner the requisite votes. Having been rejected by Market Participants, the Proposal, under these circumstances, cannot be filed by the NYISO with the Commission under FPA § 205.

II. THE APPELLANTS HAVE NOT PROVEN THAT THE CURRENT TARIFF RULES ARE UNJUST AND UNREASONABLE.

Appellants challenged the MC's rejection of the Proposal in their Notice of Appeal. Appellants argued that the Board should reverse the MC's decision "because the existing tariff rules for the creation of capacity zone localities are deficient and the absence of tariff rules providing for the elimination of capacity zone localities is unjust and unreasonable."⁷ Appellants claimed that the failure to adopt capacity zone elimination rules "create barriers to new entry through unnecessary mitigation rules, result in unwarranted higher costs for consumers, and hinder economic development opportunities."⁸ Appellants requested that the Board file the Proposal with the Commission under Section 206 of the FPA "on the grounds that the existing tariff rules do not result in just and reasonable prices in its capacity markets."⁹

Section 19.01 of the ISO Agreement governs the NYISO's authority to propose changes to its tariffs to the Commission. Unless there are exigent circumstances related to the reliability of the power system or market or the limited exceptions in the tariff specifically providing for

http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_icapwg/meeting_materials/2018-01-10/IPPNY%20Comments%20in%20Support%20of%20Younger%20Presentation%20012318.pdf ("IPPNY January 22 Comments"); *Stakeholder Comments on On Ramps & Off Ramps Market Design Proposal*, NYISO (Feb. 14, 2018), http://www.nyiso.com/public/webdocs/markets_operations/committees/bic/meeting_materials/2018-02-14/stakeholder%20comments%20on%20off%20ramps_rev.pdf ("BIC Meeting Comments").

⁶ See generally BIC Meeting Comments.

⁷ Notice of Appeal at 1–2.

⁸ *Id.* at 2.

⁹ *Id.* at 7.

unilateral Board action are triggered, which Appellants have not alleged in their Notice of Appeal, the NYISO cannot propose tariff changes under Section 205 of the FPA without the concurrence of the MC, i.e., a vote in favor of the proposed tariff changes of at least 58%. As the Proposal failed to garner the requisite 58% vote of the MC and there are no exigent circumstances, the only way for the NYISO to file the Proposal with the Commission under the ISO Agreement is pursuant to the much higher threshold requirements of FPA § 206.¹⁰

Under FPA § 206, unlike under FPA § 205, the proponent of a rate change bears “the burden of proving that the existing rate is *unlawful*.”¹¹ Even assuming, *arguendo*, the Commission determines that the existing rate is unlawful, the Commission must determine that the new rate must be just and reasonable.¹² The Board should reject Appellants’ request for the Board to take the extraordinary measure of filing the Proposal under FPA § 206 because the Appellants have failed to provide the necessary bases for the NYISO to prove that the existing tariff rules are unlawful. Nor could the Commission, as discussed in Section III below, meet its burden of proving that the Proposal is just and reasonable due to its significant flaws.

As Appellants noted in their Notice of Appeal, they, along with the New York Public Service Commission, other transmission owners and consumers argued in their protests to the Commission of the NYISO’s filing to create the G-J Zone that the zone creation rules were unjust and unreasonable because they did not include rules providing for the elimination of capacity zones.¹³ They argued that “price separation will continue between the G-J Locality and

¹⁰ In their Notice of Appeal, Appellants request that the Board “exercise its authority and responsibility to set aside the decision of the Management Committee in this matter.” *Id.* at 3. They also request that the Board “exercise its authority to grant this appeal and overturn the Management Committee’s decision.” *Id.* at 7. Importantly, Appellants have not cited to a tariff provision or section of the ISO Agreement to support such claimed “authority.” None exists. The MC is a separate body authorized to take action that cannot be “set aside,” “overturned,” or otherwise reversed by the Board.

¹¹ See *Ala. Power Co. v. FERC*, 993 F.2d 1557, 1571 (D.C. Cir. 1993) (emphasis added) (citations omitted).

¹² See *New England Power Generators Assoc., Inc. v. FERC*, 879 F.3d 1192, 1200 (D.C. Cir. 2018).

¹³ Notice of Appeal at 2.

the Rest-of-State (ROS) region even after the deliverability constraints have been eliminated” and that this “will cause consumers in the G-J locality to pay too much for capacity and will send the wrong incentives to generation and transmission developers.”¹⁴ Appellants stated that the Commission, in its August 2013 Order accepting the new zone, “agreed that price separation may well continue after the constraint leading to the creation of a new capacity zone disappears.”¹⁵

Appellants proffered this same price separation argument in support of their request to the Board in their Notice of Appeal. They did not acknowledge, however, that the Commission ruled in the second half of the *same sentence* in its August 2013 Order that such price separation “is appropriate.” The Commission ruled:

Indicated NYTOs are concerned that, in the absence of a mechanism for the elimination of a capacity zone, price separation will continue between the new capacity zone and the Rest-of-State region even after deliverability constraints have been eliminated. We agree that price separation may well continue after the constraint leading to a new capacity zone disappears, *but we believe such potential distinction between prices is appropriate*. As indicated by Dr. Patton [of Potomac Economics, the NYISO’s independent Market Monitoring Unit (“MMU”)], once a new capacity zone is created, price will be based upon the ICAP demand curve for the new zone, which, in turn, is based upon the Locational Capacity Requirement. In other words, price separation reflects the cost of satisfying the Locational Capacity Requirement for the new capacity zone and is based upon reliability needs as indicated by LOLE. The deliverability test, in contrast, is not designed to provide an accurate indication of the reliability needs in the new capacity zone in that it is not formulated using the LOLE. *As Dr. Patton explains, as long as the cost of entry is higher in the new capacity zone than in the surrounding area, eliminating the new capacity zone and its associated higher demand curve when the deliverability constraint is temporarily eliminated, jeopardizes the market’s ability to attract and maintain*

¹⁴ *Id.* (citing *New York Independent System Operator, Inc.*, 144 FERC ¶ 61,126, at PP 69–73 (2013) (“August 2013 Order”)).

¹⁵ *Id.* (citing August 2013 Order at P 83).

*adequate resources for market reliability in the new capacity zone.*¹⁶

Contrary to Appellants' implied argument that the Commission anticipated a NYISO zone elimination proposal would be filed in the form of a complaint, the Commission was clear in its August 2013 Order that it expected the NYISO to work with its Market Participants to first determine whether zone elimination rules are necessary. Specifically, the Commission stated that the NYISO "is free to discuss with its stakeholders a mechanism to eliminate an unneeded capacity zone," that it "should work with its stakeholders, and *if* a mechanism for zone elimination is deemed necessary, [it] should file appropriate tariff revisions with the Commission."¹⁷

Due to their design, matters involving the zone creation rules have been directly before the Commission in two proceedings: in 2011, when the zone creation rules were approved, and again in 2013, when those rules were applied to implement the new G-J Zone. If the Commission believed that the zone creation rules were unjust and unreasonable without corresponding zone elimination rules, it would have ordered the NYISO to unilaterally file such rules under Section 205 of the FPA as a compliance filing when these matters were before it on two previous occasions.

There are also no relevant changed circumstances since the Commission's August 2013 Order. Appellants have not pointed to any Commission precedent or any changes in the market since that time—nor could they—that would warrant a different outcome. They have merely repeated the same arguments that were made and rejected by the Commission nearly five years ago. Thus, having failed to provide any basis to demonstrate that the existing zone creation rules

¹⁶ August 2013 Order at P 83 (emphasis added), *reh'g denied in part*, 147 FERC ¶ 61,152 (2014), *appeal denied*, *Central Hudson Gas & Elec. Corp. v. FERC*, 783 F.3d 92 (2015).

¹⁷ *Id.* at P 82 (emphasis added).

are unjust and unreasonable, the Board should deny Appellants' Notice of Appeal to make a filing under FPA § 206.

III. THE PROPOSAL IS NOT JUST AND REASONABLE BECAUSE IT IS SIGNIFICANTLY FLAWED.

As discussed above, in addition to demonstrating that the existing tariff rules are unjust and unreasonable, the Commission must determine that the Proposal is just and reasonable to accept it. The MC acted appropriately in rejecting the Proposal because it is not just and reasonable due to its significant flaws.¹⁸ As Mr. Younger repeatedly explained throughout the stakeholder discussions, the Proposal would cause capacity zones to be eliminated prematurely, leaving generators without appropriate price signals.¹⁹ Further, capacity zones would be created too late to maintain reliability properly through the market.²⁰ These results could ultimately require the NYISO to retain what should properly be identified as economic resources via out-of-market reliability-must-run contracts without sending accurate price signals for that region.²¹

The Proposal is flawed because it uses a transmission security test to estimate a resource adequacy requirement. Specifically, the NYISO's proposed Locality Assessment Methodology for determining whether a capacity zone should be created or eliminated is inconsistent with its assessment methodology for the Transmission Security Limit ("TSL") based Minimum Capacity Requirements for a zone that was approved by Market Participants at the same MC meeting as part of the Alternative Method for Determining Locational Capacity Requirements ("LCRs").

¹⁸ Appellants' assertion that the Generation Owners and Other Suppliers sectors voted in opposition to the Proposal because they have a "clear commercial interest to maintain the highest possible capacity prices and prevent the elimination of capacity localities" is mere hyperbole. Notice of Appeal at 5. Generator Owners owning generation outside of new capacity zones and marketers in the Other Suppliers sector receive no benefit from high capacity prices in such capacity zones. They opposed the Proposal because it is flawed and harmful to the market.

¹⁹ BIC Meeting Comments.

²⁰ *Id.*

²¹ *Id.*

Unlike the Alternative LCR Methodology, which defines the optimal minimum level of unforced capacity (“UCAP”) within the capacity zone to ensure reliability, the NYISO’s proposed Locality Assessment Methodology does not account for unit forced outage risk. The cumulative impact of unit forced outages is a driving factor in setting New York’s installed reserve margin because unit forced outages increase the loss of load expectation. The failure to reflect unit forced outages causes the NYISO’s proposed test to significantly understate the resource adequacy based need for capacity in different regions. As Mr. Younger demonstrated, this understatement of need is large enough to consume most of the two generator “headroom” contingency that the NYISO proposed as the threshold for determining when a new capacity zone should be created, which correspondingly means that it would also erode a substantial portion of the headroom proposed by the NYISO for the four generator “headroom” contingency applied to the zone elimination test.²² Because this design flaw will substantially understate the capacity zone reliability need, the NYISO’s method would likely fail to create a new capacity zone until conditions were reached where such capacity zone, once created, would be clearing at capacity levels very close to the minimum requirements, thereby muting any market signal to address potential reliability needs in advance.²³ This, in turn, may require the NYISO to rely on reliability-must-run contracts to ensure reliability, a solution that the Commission has stated should be a last resort option for addressing reliability needs.²⁴

²² Younger Presentation at 12–14. Pursuant to the Proposal, a new capacity zone would be created if the transmission system does not meet transmission planning design criteria assuming the loss of the two generators with the greatest impact on transmission security. A capacity zone would be eliminated if the transmission system continues to meet transmission planning design criteria even after the four generators with the greatest impact on transmission security are lost. See Zach T. Smith et al., *On Ramps and Off Ramps: Complete Market Design*, NYISO (Feb. 14, 2018), at 8–13, http://www.nyiso.com/public/webdocs/markets_operations/committees/mc/meeting_materials/2018-02-28/On%20and%20Off%20Ramps%20021418%20BIC.pdf.

²³ This result is particularly problematic in New York where there is no forward capacity market structure.

²⁴ *N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,116 (2015), at P 16.

Importantly, the NYISO's MMU has also repeatedly objected to the Proposal because it does not account for unit forced outages.²⁵ Despite these objections, the NYISO made no attempt to adequately address this concern. The magnitude of the potential impact to the capacity market of the NYISO's proposed concept for creating and eliminating capacity zones cannot be understated. Merchant generators rely heavily on capacity market price signals to make investments. The potential that a capacity zone would be eliminated prematurely will significantly hinder future investment as well as create the risk that needed capacity within the capacity zone would retire after the capacity zone is eliminated because it would not get an adequate price signal to remain in the market. The NYISO has proposed to finalize its Proposal and work through tariff revisions so that these rules are in place by mid-2018 to allow the NYISO to apply them in the next demand curve reset process and the 2020 Reliability Needs Assessment cycle.²⁶ However, the uncertainty the Proposal creates will be materially harmful to generators and immediately detrimental to the NYISO's capacity market if the Board grants the Notice of Appeal.

As discussed in Point II above, there has been no showing that zone elimination rules are necessary. Indeed, the work to date demonstrates the very real risks to system reliability if these rules do not operate as intended while the NYISO's own studies have shown there is very little risk to keeping the zones in place.²⁷ Neither the NYISO nor its Consumer Liaison has produced any study refuting the cost/benefit analysis the Consumer Liaison performed when the zone elimination rules were being considered in isolation, which, as noted *supra*, demonstrated that eliminating a zone prematurely would foist hundreds of millions of dollars in unnecessary costs

²⁵ IPPNY January 3 Comments; IPPNY January 22 Comments at 1–2; BIC Meeting Comments.

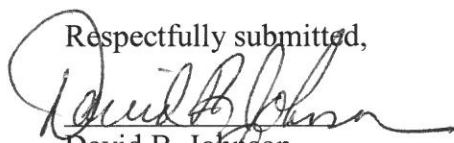
²⁶ Given that the 2018 Reliability Needs Assessment cycle is already well underway and the NYISO is currently mid-Demand Curve Reset cycle, the NYISO's proposed implementation date and process application reflected the earliest options.

²⁷ Consumer Liaison Study at 9, 11.

on New York consumers but maintaining an unneeded zone would have very limited cost impacts.²⁸ Thus, the NYISO should also reject Appellants' alternative request that the Board return this issue to the stakeholder process.

IV. CONCLUSION

Continued, reliable market operation is contingent, in part, upon the development of market rules to establish transparent price signals that attract private investment in new and needed existing generation resources in locations where it is required most. As demonstrated above, Appellants have failed to demonstrate that the NYISO's existing tariff rules are unjust and unreasonable, a required showing for the NYISO to propose tariff revisions under Section 206 of the FPA. While the existing zone creation rules may not be perfect, replacing one flawed methodology for another is no improvement. Therefore, to support capacity price signals being set at levels adequate to attract investment when needed, the Board must fully consider the concerns raised herein and reject the requests in the Appellants' Notice of Appeal to either file the Proposal under FPA § 206 or return the Proposal to the stakeholder process.

Respectfully submitted,

David B. Johnson
Read and Laniado, LLP
Counsel for Independent Power
Producers of New York, Inc.
25 Eagle Street
Albany, New York 12207
Telephone: 518-465-9313
Facsimile: 518-465-9315
DBJ@readlaniado.com

Dated: March 21, 2018

²⁸ See *id.*; Tariq N. Niazi, *Consumer Impact Analysis: On Ramps & Off Ramps with Rules to Create and Eliminate Localities*, NYISO (Nov. 6, 2017), at 9–13, http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_icapwg/meeting_materials/2017-11-06/CIA%20-%20On%20Ramps%20and%20Off%20Ramps.pdf.