

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New York Independent System Operator, Inc.) Docket Nos. ER13-1380-000
ER14-500-000

**EMERGENCY MOTION OF
CENTRAL HUDSON GAS & ELECTRIC CORPORATION
FOR EXPEDITIOUS RULINGS OR, ALTERNATIVELY,
FOR A STAY OF CAPACITY AUCTIONS FOR THE
NEW CAPACITY ZONE IN NEW YORK'S
LOWER HUDSON VALLEY AND
MOTION FOR SHORTENED RESPONSE TIME OF THREE BUSINESS DAYS**

There are presently two closely related matters that have been pending for many months before the Federal Energy Regulatory Commission (“Commission”) in the captioned dockets pertaining to the New York Independent System Operator, Inc.’s (“NYISO”) implementation of a new capacity pricing zone (sometimes called the “NCZ”) centered in Central Hudson Gas & Electric Corporation’s (“Central Hudson”) service area in the Lower Hudson Valley (“LHV”).

One matter concerns Central Hudson’s request for rehearing of the Commission’s decision in Docket No. ER13-1380-000 to accept NYISO’s plan to implement the NCZ, which is comprised of NYISO load zones G through J (accordingly, the NCZ is sometimes referred to as the “G-J Locality”).¹ Central Hudson’s rehearing request in Docket No. ER13-1380-000 demonstrated that the Commission’s decision to accept the NCZ suffered from several serious errors of law, failed to give meaningful consideration to critical material facts that undercut the need for the NCZ, and failed to balance NCZ formation against legitimate consumer interests to achieve a just and reasonable result.

The other matter concerns the NYISO’s proposal to phase-in the implementation of the NCZ over a three-year transition period to mitigate the impact of capacity price increases faced

¹ *New York Independent System Operator, Inc.*, 144 FERC ¶ 61,126 (2013).

by consumers in the LHV as demonstrated in these proceedings by Central Hudson and other New York Transmission Owners, NYISO and the New York Public Service Commission (“NYPSC”).² NYISO’s proposal would have provided a modest 24% discount to the auction clearing prices in the first year and 12% in the second, but the Commission rejected it out of fear that unidentified bidders might be “discouraged” from participating. The Commission did not identify a single bidder that threatened to withhold capacity, and it disregarded its own precedent to use a three-year phase-in of the NYISO’s original switch to the “sloped” demand curve capacity pricing method to mitigate the resulting higher rates.³

Central Hudson, the New York Transmission Owners, NYISO and the NYPSC have all asked the Commission to reconsider its rulings in these cases, but their requests for rehearing have all languished for many months. In the meantime, the NYISO has begun holding its seasonal and monthly auctions for the NCZ. The results have been as expected, with capacity prices in the new zone coming in about twice as high as they would be without the NCZ and even higher than where these capacity auctions cleared last summer, which will ultimately lead to hundreds of millions of dollars in additional costs for consumers in the LHV. These higher capacity prices coupled with the Commission’s failure to address legitimate concerns raised in the rehearing requests has prompted dozens of calls and letters to the Commission from consumers, state regulators and legislators requesting action, but these pleas seem to have fallen on deaf ears. Thus far, the Commission has done nothing more than issue “tolling orders” to acknowledge its receipt of several requests for rehearing, but these “orders” merely paid lip service to the statutory directive requiring the Commission to “act” on rehearing requests within

² *New York Independent System Operator, Inc.*, 146 FERC ¶ 61,043 (2014).

³ *See New York Independent Transmission System Operator, Inc.*, 103 FERC ¶ 61,201, at P 6 (2003) (the Commission accepted NYISO’s three-year phase-in of the sloped demand curve to mitigate anticipated sharp price increases under the new capacity pricing method).

30 days.⁴ Accordingly, Central Hudson respectfully requests the Commission to take immediate action on Central Hudson’s requests for rehearing—to grant them for all of the compelling reasons that Central Hudson has offered, or to deny them so that Central Hudson can take an expeditious appeal and thereby ease the burden on other market participants if the Commission is required to reverse course following a remand.

In the event the Commission is unable to rule on these pending rehearing requests immediately, Central Hudson respectfully requests the Commission to issue an immediate stay of further capacity auctions for the NCZ until the merits of the Commission’s decision can be tested in court. A stay is easily justifiable under the Commission’s familiar standard—market competition will not be harmed because, as NYISO has shown, there is ample planned generation in its current interconnection queue. The alternative, continuing the capacity auctions for the NCZ, will simply provide a wealth transfer to existing generators. Conversely, failing to stay the NCZ auctions will inflict significant economic harm on retail customers in the NCZ that may not be recompensed by future refunds, given the Commission’s refusal to order refunds in other cases that required changes to unlawfully conducted auction markets.⁵ Finally, granting a stay is necessary to preserve the opportunity for Central Hudson, the NYPSC and NYISO to press their legal case in court, where it is likely the Commission will be reversed for failing to render decisions that are supported by substantial evidence, fail to follow its precedents, and are otherwise unlawful.

⁴ 16 U.S.C. § 825*l*. Indeed, the tolling orders announce the Commission’s inability to “act” within the statutory deadline, and purport to grant the Commission an indefinite amount of time to “act” at a time of its own choosing.

⁵ Indeed, the Commission has been known to exercise its discretion to deny refunds on equitable grounds when it would otherwise be necessary for an organized market to re-run its markets months or years after the fact. *E.g., Consol. Edison Co. of New York, Inc. v. F.E.R.C.*, 510 F.3d 333 (D.C. Cir. 2007); *Ameren Services Company, et al., v. Midwest Independent Transmission System Operator, Inc.*, 127 FERC ¶ 61,121, at P 54 (2009). A theoretical rights to refund protection is thus a meaningless basis to deny a motion for stay.

Central Hudson respectfully requests the Commission to provide a shortened comment period of **three business days** for responses to this motion for a stay, and to issue a ruling within **one day** after it receives answers to the motion.

I. BACKGROUND

On August 13, 2013, in Docket No. ER13-1380-000, the Commission issued an order accepting the NYISO's proposed revisions to its Market Administration and Control Area Services Tariff and its Open Access Transmission Tariff to establish and recognize a new capacity zone that would encompass NYISO Load Zones G, H, I, and J. On September 12, 2013, Central Hudson's protest showed that the NYISO failed to take proper account of capacity deliverability when it established the NCZ, and thus unjustly and unreasonably allocated capacity costs in a manner that did not reflect cost causation. This flawed method set the table for consumers in the LHV to bear far more than their fair share of capacity prices in the NCZ—assuming that establishing the NCZ was justified in the first place.

The Commission's order accepting the NYISO's plan ruled that the Commission had already accepted the NCZ concept and thus implicitly also accepted the "Locational Installed Capacity Requirement," or "indicative LCR," which is the critical component for determining the borders of the NCZ, and is also a key factor in the allocation method for capacity costs in the NCZ. On rehearing, Central Hudson showed that the Commission's assumption about the indicative LCR was wrong because the NYISO developed it for the first time in Docket No. ER13-1380-000. Thus, the Commission's decision rested on a fundamental misunderstanding of the relationship between the indicative LCR calculation and the NCZ, or how that calculation would impact the allocation of capacity costs to consumers in the NCZ cost allocation proceeding to follow. Central Hudson urged the Commission to take swift action to correct the

error, but the Commission responded by issuing an order in October 2013 granting rehearing “for further consideration” and has otherwise failed to act.

In the meantime, NYISO filed its cost allocation plan for the NCZ in Docket No. ER14-500-000. The proposal forecast an approximately \$230 million capacity price increase for consumers in the LHV, but proposed to ease the pain by proposing a modest 24% price reduction for the capacity auction for the 2014/2015 capability year which spans May 1, 2014 through April 30, 2015. The Commission rejected this modest rate relief based on its speculative concern that a small subset of potential market participants might be “discouraged” from bidding into the auction while giving no obvious consideration to the impact on consumers. Indeed, there was no record evidence that any capacity supplier would avoid the auction if the market cleared at a small discount, while the NYISO’s evidence showed that the discount would not keep any supplier out of the market. For these and other reasons, Central Hudson and the New York Transmission Owners requested rehearing on February 27, 2014.

Subsequently, the Commission’s docket sheets in these proceedings chronicle long lists of several dozen letters and phone calls from outraged consumers, regulators and legislators demanding that the Commission reconsider its decisions. Nevertheless, the Commission has yet to act on the rehearing requests. The Commission’s inaction allowed the NYISO’s new capacity auctions to move forward without proper review under the statutory process by either the Commission or a court to determine whether the Commission’s initial decisions are legally defensible. The result is that NYISO’s three capacity auctions conducted thus far—for Summer 2014, May 2014 and the May 2014 spot market—have produced capacity prices that are twice as high as the “New York Control Area” which formerly included the new G-J Locality.⁶ The

⁶ Available at http://www.nyiso.com/public/markets_operations/market_data/icap/index.jsp.

following table summarizes the results and cost impact to consumers from these auctions only for the Month of May:

Auction	UCAP Price per kW-Month	UCAP Awarded (MW)	Cost to Consumers in LHV	Excess Cost to LHV Above NYCA
Summer 2014	G-J: \$9.96 NYCA: \$5.15	G-J: 476.1	\$4,741,956	\$2,290,041
May 2014	G-J: \$10.33 NYCA: \$5.50	G-J: 435.4	\$4,497,682	\$2,102,982
May 2014 Spot	G-J: \$12.38 NYCA: \$6.68	G-J: 2,384.8	\$29,523,824	\$13,593,360
Bilateral Contracts*	G-J: \$8.71* NYCA: \$5.15	G-J: 741.5	\$6,338,110	\$2,584,755
Total Excess Cost to LHV in the First Month:				\$17,520,123** \$20,622,416*

* Assumes a 50% discount off reference price as a proxy for a Bilateral Agreement price.

**This impact does not include the impact of capacity purchased through Bilateral Contracts which although lower than the clearing prices adds further to the impact of the NCZ.

II. REQUEST FOR A RULING IMMEDIATELY

The NYISO's capacity auctions have so far cost consumers in the LHV an additional \$17.5 million above what they would have paid if their new capacity zone had remained part of the New York Control Area as in the past. If these trends continue they will cost consumers more than \$100 million just this summer. These results from just the first three capacity auctions show that consumers in the LHV are on track to pay hundreds of millions of dollars above what they otherwise would have paid if the auctions continue, as Central Hudson, NYISO and the NYPSC warned.

Despite these sharply higher capacity prices, the Commission has yet to respond to the merits of Central Hudson's request for rehearing in Docket No. ER13-1380-000, filed on September 12, 2013, and has likewise failed to act on the New York Transmission Owners'

request for rehearing on the phase-in filed on February 27, 2014. The Commission's failure to act in a timely manner on these requests for rehearing that raised serious doubts about the propriety of the Commission's rulings in these dockets is tantamount to a denial given that consumers are already feeling the impact. Consumers in the LHV are entitled to have their objections heard in a meaningful timeframe, either by having the Commission reverse its erroneous decisions, or by having the Commission give them a direct answer to their objections so that they can test the Commission's reasoning in court. The Commission's failure to give any answer despite having many months to do so is deeply troubling, given the dozens of calls and letters from consumers, regulators and legislators in New York expressing their deep concerns with the Commission's inaction. Accordingly, Central Hudson respectfully submits this formal motion for the Commission to issue its orders on the pending rehearing requests immediately.

III. MOTION FOR STAY

Under Section 705 of the Administrative Procedure Act (APA), the standard for granting a stay by an administrative agency is whether "justice so requires."⁷ In deciding whether justice requires a stay, the Commission generally considers several factors, which typically include: (1) whether the party requesting the stay will suffer irreparable injury without a stay; (2) whether issuing the stay may substantially harm other parties; and (3) whether a stay is in the public interest.⁸ The Commission gives particular weight to the risk of irreparable harm.⁹

Here, the Commission has deferred acting on the pending rehearing requests for months as the NYISO's capacity auction for the NCZ rapidly approached, even though Central Hudson's

⁷ 5 U.S.C. § 705.

⁸ *CMS Midland, Inc.*, 56 FERC ¶ 61,177, at pp. 61,630-31, *aff'd sub nom. Michigan Municipal Cooperative Group v. FERC*, 990 F.2d 1377 (D.C. Cir. 1993), *cert. denied*, 510 U.S. 990 (1993).

⁹ *City of Holland, Michigan v. Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,105, at P 20 (2005).

requests for rehearing demonstrated both that its customers face substantial harm and that the Commission's rulings are not supported by the facts or the law. Now that the NYISO has begun to conduct capacity auctions for the NCZ, the harm to consumers is no longer theoretical. It is, moreover, potentially, even probably, irreparable because there is no certainty the Commission will ever require the NYISO to take the steps necessary to put consumers in the position they would have been absent the Commission's erroneous decisions to accept the NCZ, or at the very least to require the NCZ to be implemented with a phase-in. The Commission has been known to deny refunds that would require regional organizations like the NYISO to resettle market auctions.¹⁰ Although resettling the NYISO's auctions at this early stage should not be a significant obstacle, there is a growing risk that the Commission will cite complexity as a rationale for denying refunds (as it has in the past) if the NYISO auctions are allowed to continue. Accordingly, the Commission must immediately stay the NYISO's future auctions for the G-J Locality and direct the NYISO to conduct its monthly and spot market auctions as though the G-J Locality is part of the New York Control Area as NYISO did before the Commission's orders at issue here to mitigate the growing harm to consumers and ensure that refunds remain a viable remedy to protect them against unjust and unreasonable rates as required by the Federal Power Act.

Conversely, a stay will not harm competitive markets. Drawing in new capacity is the primary objective behind setting up the NCZ in the first place. As the NYISO has shown, during the next few years there is ample capacity in its generation interconnection queue that plans to locate in the NCZ and there is no reason to believe that any of this capacity will withdraw from the queue if the Commission stays the NYISO's auction for the NCZ. Rather, proceeding with

¹⁰ *Consol. Edison Co. of New York, Inc. v. F.E.R.C.*, 510 F.3d 333 (D.C. Cir. 2007); *see also Ameren Services Company, et al., v. Midwest Independent Transmission System Operator, Inc.*, 127 FERC ¶ 61,121, at P 54 (2009).

the NCZ capacity auction will simply provide a wealth transfer of tens (perhaps hundreds) of millions of dollars to existing generators that will not have their continued availability to the NYISO affected one way or the other by a stay of the Commission's orders.

Finally, granting a stay will preserve the status quo and give the parties the opportunity to present their arguments in court, and thereby obtain a definitive ruling on whether the Commission's rulings were correct. The timing of this review process is largely within the Commission's control. If the Commission affirms its decisions, Central Hudson and other interested parties can take an immediate appeal, which the Commission can expedite by joining in a motion to the court for an expeditious review. The Commission, therefore, can minimize the disruption that might arise from its failure to issue orders on rehearing in a timely manner.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, Central Hudson respectfully requests that the Commission issue orders immediately on the pending requests for rehearing in Docket Nos. ER13-1380-000 and ER14-500-000. Alternately, Central Hudson respectfully moves for an order staying the NYISO's separate capacity auctions for the G-J Locality beginning with the June monthly and strip auctions, and directing NYISO to include the G-J Locality within the New York Control Area for all future capacity auctions until the Commission issues its orders on rehearing and those orders have been subject to court review. Central Hudson requests the Commission to set a shortened response time to this motion for a stay of **three business days** and to issue its order on the motion **one day thereafter**.

Respectfully submitted,
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Dated: April 30, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Washington, D.C. this 30th day of April, 2014.

/s/ Carlos L. Sisco

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