

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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Secretary

March 5, 2010

SENT VIA ELECTRONIC FILING
Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 1-A209
Washington, D.C. 20426

Re: Docket No. AD10-5-000 - RTO/ISO Performance Metrics

Dear Secretary Bose:

For filing, please find the Notice of Intervention and Comments of the New York State Public Service Commission in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 473-8178.

Very truly yours,

A handwritten signature in cursive script that reads 'David G. Drexler'.

David G. Drexler
Assistant Counsel

Attachment

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

RTO/ISO Performance Metrics) Docket No. AD10-5-000

NOTICE OF INTERVENTION AND COMMENTS
OF THE NEW YORK STATE
PUBLIC SERVICE COMMISSION

BACKGROUND

In September 2008, the United States Government Accountability Office (GAO) issued a report entitled "Electricity Restructuring: FERC Could Take Additional Steps to Analyze Regional Transmission Organizations' Benefits and Performance" (GAO Report). The GAO Report recommends that the Federal Energy Regulatory Commission (FERC or Commission) develop standardized measures that track the performance of Regional Transmission Organizations (RTO) and Independent System Operators (ISO) operations and markets, and report the performance results to Congress and the public annually, while also providing an interpretation of (1) what the measures and reported performance communicate about the benefits of RTOs and, where appropriate, (2) changes that need to be made to address any performance concerns.

On February 3, 2010, the Commission issued a "Notice Requesting Comments on RTO/ISO Performance Metrics" (Notice). The Notice identifies a set of proposed performance metrics that Commission staff developed in consultation with the RTOs/ISOs across the country, and seeks comments on whether the metrics will effectively track the performance of RTO/ISO operations and markets. These metrics would be used to report annually to the Commission.

NOTICE OF INTERVENTION

The New York State Public Service Commission (NYPSC) hereby submits its Notice of Intervention and Comments in accordance with the Notice and Rule 214 of the Commission's Rules of Practice and Procedure. Copies of all correspondence and pleadings should be addressed to:

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INTRODUCTION AND SUMMARY

Since the formation and start-up of the New York Independent System Operator, Inc. (NYISO) over ten years ago, the NYPSC has been working with the NYISO and interested parties

to ensure the proper design and operation of competitive markets, while simultaneously maintaining the reliability of the bulk power system. At the same time, we have sought to ensure that end-use consumers receive electric service at just and reasonable rates. As experience has shown, these are often difficult goals to achieve. Therefore, we welcome the Commission's efforts to develop metrics that will allow the public and regulators to track the performance of RTO/ISO operations and markets, and to identify areas where improvements can be made.

The proposed set of performance metrics are a good start, although we recommend that certain metrics be clarified, as they may inappropriately suggest an RTO/ISO has been ineffective when, in fact, no problem exists. Similarly, the metrics may suggest an RTO/ISO has been effective, yet there may be room for improvements. As an initial matter, we recommend that the Commission include a short summary of the purpose for each proposed metric explaining how the information will be interpreted and utilized to draw conclusions about the effectiveness of the RTO/ISO. This explanation should prevent parties from drawing inappropriate conclusions about RTO/ISO operations and markets, and assist in providing useful information.

To illustrate the confusion that might be created by trying to interpret the metrics, we note that the proposed metric for long-term reliability transmission planning related to the "[n]umber of facilities approved to be constructed for reliability purposes" may be open to different meanings. To some, a low number of facilities approved may suggest the RTO's/ISO's planning process is ineffective in ensuring reliability, while others may take a low number to mean that locational-based marginal prices are providing sufficient signals to site generation in needed locations.

In addition to the proposed metrics, the NYPSC supports the inclusion of additional metrics so that a comprehensive report on RTO/ISO performance can be developed. For example, we suggest that the Commission include metrics to measure the competitiveness of the markets and the effectiveness of mitigation measures. This analysis should bolster public confidence in the markets, and help ensure that market prices are just and reasonable. Moreover, we recommend the inclusion of metrics to assess the performance of Installed Capacity markets and the effectiveness of demand response programs. These and other suggestions are discussed below.

DISCUSSION

The Commission Should Include Additional Performance Metrics In Order To Assess The Effectiveness of RTOs/ISOs

1. Competition and Mitigation

A core function of RTOs/ISOs is administering competitive markets. In fact, sufficiently competitive markets are the basis for assuming that market-based rates are just and reasonable.¹ Where markets lack adequate competition, the successful implementation of appropriate mitigation measures is necessary to ensure rates remain just and reasonable. Given that sufficient competition and mitigation measures are fundamental elements for "market" prices, the Commission should develop metrics to assess the competitiveness of the markets and the effectiveness of mitigation measures.

Our experience in New York has shown that markets can be gamed or become uncompetitive at times,² and that more

¹ See, Farmers Union Cent. Exchange, Inc. v. FERC, 734 F.2d 1486, 1510 (D.C. Cir. 1984) (finding that FERC could not meet its statutory mandate without empirical proof that "existing competition would ensure that the actual price is just and reasonable").

² See, Docket No. ER07-360-000, New York Independent System Operator, Inc., Notice of Intervention and Comments of the NYPSC (filed January 24, 2007); see also, U.S. v. KeySpan Corporation, 10-cv-1415 (S.D.N.Y.); 75 Fed. Reg. 9946 (March 4, 2010) (proposing \$12 million penalty to settle antitrust claims).

stringent mitigation measures are often needed to address those situations. However, until such measures can be implemented, consumers are exposed to the prospect of unjust and unreasonable prices. Therefore, the Commission should also develop a metric to assess the performance of RTOs/ISOs in identifying actual or potential exercises of market power, the time required to institute sufficient mitigation measures, and whether any relief, such as refunds, was or could be made available under applicable tariff provisions to address any harm that occurred. Essentially, the metrics should be developed to not only evaluate the effectiveness of the markets, but to also evaluate the effectiveness of an RTO/ISO in administering those markets.

We believe these proposed metrics would be extremely useful in the Commission's efforts to ensure market-based rates are just and reasonable. Moreover, the metrics should be designed to instill public confidence in the marketplace.

2. Demand Response

The proposed performance metrics for Demand Response (DR) include the percentage of DR of total MW capacity, and the percentage of DR of total ancillary services MWh. However, these metrics won't gauge the effectiveness of DR in responding to RTO/ISO requests to supply energy and ancillary services. Therefore, we recommend an additional metric regarding the

category, number, and duration of events where DR is called upon to provide energy and ancillary services, and the deviation of the amount of DR that actually performed compared to what was called upon. The level of DR participation in real-time markets should also be addressed.

3. Installed Capacity Markets

One of the key components of wholesale market prices in New York is Installed Capacity. While the NYISO administers an Installed Capacity market, not all RTOs/ISOs run such markets. In particular, the California ISO, Midwest ISO, and the Southwest Power Pool do not administer a capacity market.³ However, these ISOs likely utilize other mechanisms to ensure the adequacy of resources, such as Reliability Must-Run contracts. We encourage the Commission to include metrics that will evaluate and provide a comparison of the costs and advantages/disadvantages of the various approaches across the country to ensuring resource adequacy. We believe this information will be extremely useful to market participants and RTOs/ISOs that are considering or refining capacity market structures.

³ GAO Report, p. 14, Table 1: Selected RTO Responsibilities.

4. National or Regional Reliability Standards Compliance

As identified under the Additional Suggestions section of the proposed Performance Metrics, a metric should be included that identifies reliability fines in dollars. This information will complement the metrics already identified for Reliability regarding the number of reliability violations identified through self-reporting and audits, the total number of violations, and the severity of each violation.

5. Market Seams

Metrics should also be developed to assess the efficiency and effectiveness of trades between RTO/ISO markets. While RTO/ISOs may focus on the efficiency of their individual markets, benefits to consumers will not be maximized unless trade between the markets is similarly efficient. The elimination of seams issues and other inefficiencies between markets (and also with non-market areas) should therefore be addressed.

CONCLUSION

As discussed above, the Commission should provide explanations for each metric so that parties can understand how the information will be interpreted and utilized in evaluating

the effectiveness of the RTO/ISO. The Commission should also include additional metrics in its evaluations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter McGowan". The signature is written in a cursive style with a large initial "P" and "M".

Peter McGowan
General Counsel
Public Service Commission
of the State of New York

By: David G. Drexler
Assistant Counsel
3 Empire State Plaza
Albany, NY 12223-1305
(518) 473-8178

Dated: March 5, 2010
Albany, New York

CERTIFICATE OF SERVICE

I, David G. Drexler, do hereby certify that I will serve on March 5, 2010, the foregoing Comments of the New York State Public Service Commission upon each of the parties of record indicated on the official service list compiled by the Secretary in this proceeding.

Dated: March 5, 2010
Albany, New York


David G. Drexler

