



**Public Service
Commission**

Public Service Commission

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Three Empire State Plaza, Albany, NY 12223-1350
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July 17, 2015

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. EL13-62-000 - Independent Power
Producers of New York, Inc. v. New York
Independent System Operator, Inc.

Dear Secretary Bose:

For filing, please find the Comments of the New York State Public Service Commission in the above-entitled proceeding. The parties have also been provided with a copy of this filing, as indicated in the attached Certificate of Service. Should you have any questions, please feel free to contact me at (518) 473-8178.

Very truly yours,

David G. Drexler
Assistant Counsel

Attachment
cc: Service List

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Independent Power Producers)	
of New York, Inc.)	
)	
v.)	Docket No. EL13-62-000
)	
New York Independent System)	
Operator, Inc.)	

COMMENTS OF THE NEW YORK STATE
PUBLIC SERVICE COMMISSION

INTRODUCTION

On June 17, 2015, the New York Independent System Operator, Inc. (NYISO) submitted its compliance report setting forth the NYISO's analysis of, and the outcome of stakeholder discussions on, whether buyer-side mitigation rules for new entry are warranted in the Rest-of-State (ROS) Installed Capacity (ICAP) market (June 2015 Compliance Filing), as directed by the Federal Energy Regulatory Commission's (FERC or Commission) March 2015 Order.¹ The NYISO's analyses indicated that buyer-side market power mitigation measures for new

¹ Docket No. EL13-62-000, Independent Power Producers of New York, Inc. v. New York Independent System Operator, Inc., Order Denying Complaint, 150 FERC ¶61,214 at ¶71 (issued March 19, 2015) (March 2015 Order) (directing the NYISO to "establish a stakeholder process to consider (1) whether there are circumstances that warrant the adoption of buyer-side mitigation rules in the rest-of-state; and (2) whether resources under repowering agreements similar to Dunkirk's have the characteristics of new rather than existing resources, triggering a buyer-side market power evaluation because of their potential to suppress prices in the capacity market and what mitigation measures need to be in place to address such concerns").

entrants are not warranted in the ROS ICAP market at this time. The NYISO's report also indicated that it is premature to address the need for buyer-side mitigation rules to address concerns with repowering and uneconomic retention at this time. The NYISO recommends that consideration of those issues should await the outcome of the NYISO's compliance filing in response to the Commission's February 2015 Order, which directed the NYISO to include Reliability Must-Run (RMR) provisions in its tariff.²

COMMENTS

The New York State Public Service Commission (NYPSC) hereby submits its comments on the NYISO's compliance report pursuant to the Commission's Notice of Extension of Time, issued on June 24, 2015.³ The NYPSC agrees with the NYISO's conclusion that buyer-side market power mitigation rules are not needed or warranted in the ROS ICAP market. As the NYISO indicated, it has not, to date, observed any market behavior to suggest that such rules are needed or that further analyses are required to

² Docket No. EL15-37-000, New York Independent System Operator, Inc., Order Instituting Section 206 Proceeding and Directing Filing to Establish Reliability Must Run Tariff Provisions, 150 FERC ¶61,116 (issued February 19, 2015) (February 2015 Order).

³ The views expressed herein are not intended to represent those of any individual member of the NYPSC. Pursuant to Section 12 of the New York Public Service Law, the Chair of the NYPSC is authorized to direct this filing on behalf of the NYPSC.

address this matter. In the event such rules are needed in the future, the NYISO is required to apply appropriate buyer-side mitigation rules.⁴

In compliance with FERC's March 2015 Order, the NYISO undertook a study to analyze whether buyer-side mitigation is needed in the ROS market. While the NYPSC maintains that the NYISO's assumptions are reasonable, the Commission should acknowledge that some of its assumptions were extremely conservative, rendering even more remote the potential that mitigation measures might be needed. Specifically, the NYISO's analysis assumed that if the abuse of market power were to occur, it would happen if the two largest Load-Serving Entities (LSEs) were working in concert with each other. In the case of the ROS market, the two largest LSEs comprise 30% of the total market share. The suggestion that the two largest LSEs would work with one another implies that they either: 1) have a joint contract amongst themselves, or 2) the LSEs implicitly collude. These scenarios are not supported by any prior experience or supporting data, and are unlikely to occur. Instead, improper behavior by the largest LSE, which has a 19.8% market share, is a more plausible scenario.

⁴ Section 23.1.2 of the Services Tariff obligates the NYISO to file new mitigation measures under Section 205 of the Federal Power Act if it identifies conduct that constitutes an abuse of market power and is not addressed by other tariff provisions.

But, looking at a single LSE, as a more realistic assumption about potential market manipulation, means that it would be even more difficult for that LSE, standing alone, to profitably exert market power than what the NYISO considered in its report. This suggests that the NYISO's analysis was conservative in its approach, and should sufficiently allay concerns about the potential exercise of buyer-side mitigation in the ROS market.

A second assumption in the NYISO report is that it would take three years for a full supply response to a price change. As the NYISO's data shows, there is considerable price elasticity in the ROS market to support this assumption as realistic. In particular, this data indicates that price decreases would result in an increase in unoffered capacity, and would thus result in an increase in ROS prices.

Moreover, the NYISO found that there is a price sensitivity related to ISO-New England's monthly auctions. As the NYISO stated, "ROS capacity transacted in the Monthly [Reconfiguration Auction] was responsive to the price spread relative to the [New York Control Area Unforced Capacity] Spot prices."⁵ Importantly, the NYISO also identified recent changes to the ISO-New England market design, including a sloped demand curve that may affect imports/exports with ISO-New England.

⁵ June 2015 Compliance Filing, p. 2.

Thus, it is reasonable to assume that, as a result of the ISO-New England market changes, there would be increased sensitivity to the price spread between regions and thus increased market response.


While a decrease in capacity prices may result in marginally economic generators either mothballing or retiring, a three year supply response is very conservative given that New York has a three month or six month retirement notice requirement, depending on the size of the generator, so the market reaction can, in practice, react much faster than three years. Indeed, there have been many instances of supply responses to low prices in much less than three years, making a three year supply response time a reasonable estimate of reaction time to price fluctuations.

In addition, the Commission should recognize that a buyer attempting to profit from the use of market power would also need to account for a large degree of uncertainty in a profitability analysis. First, it would need to take into account that the generation fleet in the ROS is relatively old, which leads to a higher likelihood of forced outages or catastrophic failures. Second, the buyer would need to consider unanticipated load growth that could send prices upward. Third, unexpected changes in the capacity market design could thwart any calculated attempt to unfairly manipulate capacity prices.

These factors make it unlikely that an attempt at price suppression would succeed.

Finally, the NYPSC supports the NYISO's recommendation to undertake additional analysis and to address the repowering/uneconomic retention issue after its upcoming RMR compliance filing, which is due October 19, 2015. Accordingly, the Commission should accept the NYISO's June 2015 Compliance Filing in compliance with its March 2015 Order.

Respectfully submitted,

Kimberly A. Harriman 

Kimberly A. Harriman
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Public Service Commission
of the State of New York
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Dated: July 17, 2015
Albany, New York

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated: Albany, New York
July 17, 2015



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