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January 15, 2015

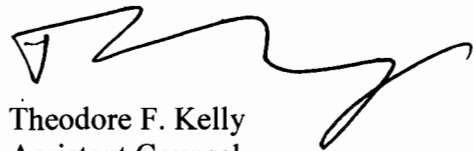
SENT VIA ELECTRONIC FILING
Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 1-A209
Washington, D.C. 20426

Re: Docket No. EL15-26 – Consolidated Edison of New York, Inc., Orange and Rockland Utilities, Inc., New York State Electric and Gas corp., Rochester Gas and Electric Corp., and Central Hudson Gas and Electric Corp. v. New York Independent System Operator, Inc.

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) 473-4953.

Very truly yours,



Theodore F. Kelly
Assistant Counsel

Attachment

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

Consolidated Edison Company)
of New York, Inc., Orange and)
Rockland Utilities, Inc.,)
New York State Electric and)
Gas Corp., Rochester Gas and)
Electric Corp., and Central)
Hudson Gas and Electric Corp.)
)
v.)
)
New York Independent System)
Operator, Inc.)

Docket No. EL15-26

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

NOTICE OF INTERVENTION

On December 4, 2014, Consolidated Edison of New York, Inc., Orange and Rockland Utilities, Inc., New York State Electric and Gas corp., Rochester Gas and Electric Corp., and Central Hudson Gas and Electric Corp. (the Complainants) filed a Complaint under Sections 206 and 306 of the Federal Power Act (the Complaint). The New York State Public Service Commission (NYPSC) hereby submits its Notice of Intervention and Comments in the above-captioned proceeding pursuant to the Federal Energy Regulatory Commission's (FERC or the Commission) Notice of Complaint issued December 5, 2014, Notice Granting Extension of Time issued December 19, 2014, and Rule 214 of the Commission's Rules of Practice and Procedure.¹

¹ 18 C.F.R. §385.214(a)(2).

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BACKGROUND

As more fully described in the Complaint, the New York Independent System Operator, Inc. (NYISO) manages New York State's Installed Capacity (ICAP) market pursuant to its FERC-approved Market Services Tariff (Services Tariff). The Services Tariff rules governing the ICAP market include buyer-side mitigation (BSM) measures.

The BSM rules apply screening tests to new capacity resources and to some retired capacity resources returning to service in the New York City and Lower Hudson Valley zones. These tests involve only a comparison between the estimated ICAP market revenues of the project, calculated by the NYISO, and either the default offer floor or the net cost of the project. As NYISO's Market Monitoring Unit has acknowledged, the current Services Tariff rules require the NYISO to use several irrational and unrealistic assumptions in the revenue forecasts

that drive the test.² Further, the tests do not reflect the identity of the resource owner, its sources of funding, or the motivations animating its development.

A resource that fails the BSM tests is subject to an offer floor; if the offer floor is above the ICAP market clearing price in a capacity auction, the resource will be unable to sell its capacity in that auction. The offer floor continues to adhere unless and until the resource's mitigated capacity has cleared the ICAP auctions for 12 months.

COMMENTS OF THE NYPSC

The purpose of BSM rules is to prevent entities with buyer-side market power from intentionally and unfairly suppressing capacity prices. BSM rules should neither be designed, nor allowed to be used as a vehicle, to shield incumbent generation resources from the effects of competition.³

For these reasons, BSM rules should only apply surgically to uneconomic resources whose entry actually reflects an unfair exercise of market power. They should not function as a barrier to entry to resources built without artificial and non-competitive out-of-market support; resources whose

² Potomac Economics, Ltd., Assessment of the Buyer-Side Mitigation Exemption Test for the Taylor Biomass Energy Project (March 7, 2014), available at http://www.nyiso.com/public/webdocs/markets_operations/services/market_monitoring/ICAP_Market_Mitigation/Buyer_Side_Mitigation/Class_Year_2011/MMU%20Report%20re%20MET%20for%20TBE_Final_3-7-14.pdf.

³ New York Independent System Operator, Inc., 124 FERC ¶61,301 (2008) at p. 8.

development could not possibly be motivated by price suppression due to their high cost, low capacity rating, or long construction lead time; resources intended to provide capacity directly to entities with no interest in price suppression; or resources planned in response to legitimate public policy goals like carbon reduction.

However, the BSM rules now in place improperly sweep into their ambit many current and potential market entrants that fall into the categories outside their proper scope. The tests applied under the rules lack any analysis of whether the capacity resource is owned or funded by any buyer-side market participant, and do not even reach the question of whether price suppression could possibly have been the motivation for the project.

For example, as more fully discussed in NYPSC comments filed January, 15, 2015 in Docket No. EL15-33, NYISO determined that the proposed Champlain Hudson Power Express (CHPE) project would be subject to mitigation even though CHPE is a purely merchant project, receiving no subsidies or financial support from governmental sources or load-serving entities. In addition, the 17 MW Taylor Biomass Project was subjected to mitigation even though, as a small generator employing a renewable resource, there is no reason to believe it was built for the purpose of artificially suppressing capacity prices, or

even could potentially suppress prices in any meaningful way.⁴ And, on January 14, 2015, NYISO announced that yet another project -- the proposed Berrians GT III (a combined cycle unit sized at 250 MW) -- was not exempt from mitigation, raising the question of what, if anything, is not subject to the risk of mitigation. A market where every new entrant is mitigated plainly is not functioning properly.

The competitive entry exemption described in the Complaint would improve the Services Tariff by limiting the unjust and unreasonable application of BSM rules. As stated in the Complaint, the application of BSM to capacity resources built without any non-competitive, out-of-market subsidization is unjust and unreasonable because it undermines the fundamental premise of a competitive market -- that competitors will make investment decisions based on their own expectations of revenues rather than forecasts imposed by regulatory fiat. In a truly competitive market, a new entrant would not be subject to rules dictating how it can price its product. To describe a project as uneconomic and penalize it purely because NYISO forecasts suggest it will not receive sufficient revenue is to impose NYISO's judgment for independent investors' assessments of the market, even though the NYISO's own market monitor admits that

⁴ Potomac Economics, Ltd., Assessment of the Buyer-Side Mitigation Exemption Test for the Taylor Biomass Energy Project (March 7, 2014)

the NYISO's forecasts incorporate illogical assumptions.⁵ As described in the Complaint, the Market Monitoring Unit has also recognized other flaws in the BSM rules and recommended changes including the addition of a competitive entry exemption, as has the NYISO itself.

Furthermore, mitigation of competitive entrants cannot be said to actually prevent, as is intended, the abuse of buyer-side market power. There can be no such exercise when a competitive entrant, which bears the full risk of its investment assumptions, decides to enter the market. If its investors are wrong in their assumptions, they will lose money. That a new or incumbent competitor might be forced out of the market is merely a consequence expected of competitive markets.

By contrast, the continued application of the BSM process to merchant entrants will obstruct the free and fair functioning of the NYISO markets; instead of ensuring a free market open to new entry as it should be, the rules establish a barrier to entry, impeding the proper functioning of the markets. Consequently, the NYISO's BSM process will reach an unjust and unreasonable result in each and every case where it mitigates a merchant entrant. Again, the CHPE project represents such a case, as more fully described in the NYPSC comments filed January, 15, 2015 in Docket No. EL15-33.

⁵ Id.

For all of the reasons above, the NYPSC supports the Complainants' request that a Competitive Entry Exemption to BSM be added to the Services Tariff. However, even the well-designed Competitive Entry Exemption proposed by the Complainants cannot on its own remedy all of the problems described above. All new capacity resources will continue to find themselves subjected to an onerous process and may be subject to mitigation even if they could not possibly have been built to artificially suppress capacity prices.

In approving capacity market designs elsewhere, the Commission has recognized that application of BSM to resources that cannot artificially suppress prices is inappropriate.⁶ Broader changes to the BSM rules in the Services Tariff are necessary to prevent unjust and unreasonable treatment of market participants. Because the adverse impacts attending that result extend to harming utility customers in New York, the NYPSC intends to seek relief from the defects afflicting the current BSM rules in a separate filing to the Commission.

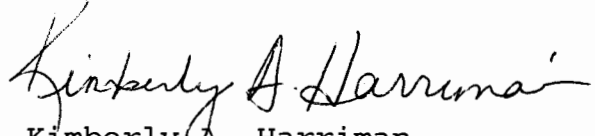
CONCLUSION

In accordance with the foregoing Comments, the Commission should issue an order granting the relief requested

⁶ See Order Accepting Proposed Tariff Revisions, 135 FERC 61,022 at 45 (April 12, 2011); Order on Compliance Filing, 137 FERC 61,145 at 33-35; Order Conditionally Accepting in Part, and Rejecting in Part, Proposed Tariff Revisions, 143 FERC 61,090 at 47-56 (May 2, 2013).

in the Complaint, subject, however, to the additional relief
NYPSC intends to request in the near future.

Respectfully submitted,



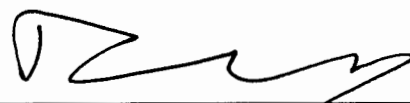
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By: Theodore F. Kelly
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Dated: January 15, 2015
Albany, New York

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: January 15, 2015
Albany, New York



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