STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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November 28, 2011

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. EL12-6-000 - Seneca Power Partners, L.P. v. New York Independent System Operator, Inc.

Dear Secretary Bose:

For filing, please find the Notice of Intervention and Answer 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,

David G. Drexler
Assistant Counsel

Attachment

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Seneca Power Partners, L.P.	)	
	)	
v.	)	Docket No. EL12-6-000
	)	
New York Independent System Operator, Inc.,	)	

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

BACKGROUND

On October 27, 2011, Seneca Power Partners, L.P. (Seneca) filed a complaint (Seneca Complaint) against the New York Independent System Operator, Inc. (NYISO), alleging that the NYISO is violating its Tariff and engaging in unduly discriminatory conduct by improperly deriving and unilaterally modifying the reference prices used by the NYISO to compensate Seneca's Batavia generation facility, which has been identified as needed for reliability. Among the NYISO modifications to which Seneca objects is the NYISO's reduction to the local transportation rate for natural gas that is a component of the reference price.

Seneca states that it purchases gas transportation over an 11-mile intrastate natural gas pipeline lateral owned by its affiliate, Alliance Energy Transmission LLC (AET). Seneca argues that the gas transportation contract between it and AET, and another gas transportation contract between another of its affiliates, AG-Energy, L.P. (AGE), and St. Lawrence Gas Company, Inc. (St. Lawrence Gas), are relevant to the gas transportation rate that should be reflected in the referenced price.

The contracts that Seneca relies upon in support of the gas transportation rate it believes should be reflected in the reference price do not support its arguments. The Commission should not base its analysis of the transportation price component of the reference price on the prices identified in those contracts.

NOTICE OF INTERVENTION

The New York State Public Service Commission (NYPSC) hereby submits its Notice of Intervention and Answer to the Seneca Complaint pursuant to Rules 213 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§385.213 and 385.214), and the Commission's Notice of Complaint, issued on October 28, 2011. Copies of all correspondence and pleadings should be addressed to:

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DISCUSSION

The first gas transportation contract Seneca relies upon in support of its proposed reference price input is between itself and its AET affiliate. The contract has not been reviewed, much less approved, by NYPSC, and contracts between affiliates are notoriously unreliable indicators of the price either a market or regulation would yield. The second contract between AGE, another Seneca affiliate, and St. Lawrence Gas (attached as Exhibit E to the Petition), reflects circumstances that are different from Seneca's circumstances. Therefore, the Commission should disregard both contracts in ascertaining the reference price.

As Seneca admits, the contract for local gas transportation to its Batavia facility is entered into with its affiliate, AET. Seneca states that the contract is on file with NYPSC, implying that NYPSC has at least reviewed the contract, if not approved it. Notwithstanding the filing with it, NYPSC neither reviews nor approves contracts of the type between Seneca and AET.

NYPSC's authority over the contract between Seneca and AET is explained in its Lightened Regulation Order regarding the regulatory jurisdiction asserted over AET.[1] As described there, Seneca formerly owned both the Batavia generation facility and the pipeline, but, in 2009, transferred ownership of the pipeline to AET. After declining to assert jurisdiction over the transfer, NYPSC found that the contract between Seneca and AET need not be reviewed, and that the relationship between the two need not be closely supervised, because they operated in a competitive environment and were sophisticated business entities capable of protecting their own interests. As a result, the arrangements between Seneca and AET were subject to reduced regulatory scrutiny and requirements.

While AET was required to file annual reports on the service it provided, that reporting requirement was limited to cumulative volumes of gas delivered and overall revenues earned. Like the contract, the annual reports are not reviewed.

Therefore, the gas transportation contract between Seneca and AET is largely outside the scope of traditional utility rate regulation, and the prices in it have neither been reviewed nor approved by NYPSC. Moreover, it is not under these circumstances a reliable indicator of the prices a competitive market would produce. Instead, the contract is between

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1 NYPSC Case 09-G-0490, Alliance Energy Transmission LLC and Seneca Power Partners, L.P., Declaratory Ruling on Review of a Transfer Transaction and Order Providing For Lightened Regulation (issued November 17, 2009)(attached as Exhibit F to the Petition).

affiliates, and affiliate relationships are a poor indicator of competitive market outcomes, because, as is well known, affiliates will engage in self-dealing to further the interests of their overall parent. As a result, prices in the contract between the Seneca and AET affiliates, while binding on those affiliates and not subject to NYPSC review because entered into in a competitive environment, are not reliable evidence of what the gas transportation rate component of the reference price should be.

Moreover, reference prices are based on marginal costs, which are the incremental costs to the generator of producing the generation it is asked to produce. Fixed costs are not appropriately included in reference prices. Seneca has failed to demonstrate that the gas transportation rate it pays its AET affiliate does not include fixed costs, or that it has not sought to reflect fixed costs in the reference price through its proposed gas transportation rate component.

Seneca also complains that NYISO did not question the inclusion of the price from its gas transportation contract with AET in the reference price when the contract was entered into in 2008, and objected to the price only as of November 23, 2010. Contrary to Seneca's implication, NYISO's acceptance of the price in 2008 is not the same thing as NYISO's review and approval of the price. That NYISO did not fully examine and thoroughly review the price until 2010 does not demonstrate that the price was reasonable in the period prior to that time.

The price in the gas transportation contract between AGE and St. Lawrence Gas is similarly unreliable as justification for the gas transportation rate included in the reference price, albeit for different reasons. While, as discussed in its Order Modifying Gas Rate,[2] NYPSC recently reviewed that contract and reduced the price, the NYPSC also noted that the contract reflects the fixed cost of building the gas transportation pipeline covered by the contract. As discussed above, fixed prices are not appropriately reflected in NYISO reference prices, so this contract may not be relied upon by Seneca as evidence for the gas transportation rate that should be reflected in the reference price either.

Moreover, the prices set in the gas transportation contract between AGE and St. Lawrence Gas reflect the costs to St. Lawrence Gas of providing service to AGE over a dedicated pipeline that is of different length, vintage, and in a different location from the AET pipeline to Seneca. The prices otherwise reflect circumstances that differ between the two pipelines and their customers. As a result, the comparison of the prices St. Lawrence Gas charges AGE under their contract to

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[2] Case 09-G-0320, Ag-Energy, L.P., Order Modifying in Part Gas Transportation Rates (issued September 21, 2009).

the costs actually incurred for use of the AET line in delivering gas to the Batavia generation facility are not analogous.

CONCLUSION

In accordance with the foregoing discussion, the Commission should not rely upon either the gas transportation contract between Seneca and AET or the contract between AGE and St. Lawrence as indicators of the appropriate costs of gas transportation services that should be reflected in the reference price. It should reject Seneca's arguments to the contrary.

Respectfully submitted,

Peter McGowan
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Public Service Commission
of the State of New York

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Dated: November 28, 2011
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
November 28, 2011

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