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July 14, 2014

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 Answer of the New York State Public Service Commission to the Motion filed by the Independent Power Producers of New York, Inc. 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.)	

**ANSWER OF THE NEW YORK STATE PUBLIC SERVICE COMMISSION
IN OPPOSITION TO MOTION
OF INDEPENDENT POWER PRODUCERS OF NEW YORK**

INTRODUCTION

On May 10, 2013, the Independent Power Producers of New York, Inc. (IPPNY) filed a complaint alleging that the New York Independent System Operator, Inc. (NYISO) tariff fails to properly mitigate certain generation resources that would be "mothballed," but for financial support that those resources receive in return for assisting in the preservation of electric system reliability (Complaint). The New York State Public Service Commission (NYPSC) filed a Notice of Intervention and Protest to IPPNY's Complaint on May 30, 2013. IPPNY subsequently filed a Motion to Amend and Amendment to its Complaint (Motion to Amend) on March 25, 2014, seeking to include in its Complaint a proposed agreement between National Grid and Dunkirk Power, LLC for repowering the Dunkirk generating facility (Dunkirk repowering proposal). The NYPSC

filed an Answer and Protest to IPPNY's Motion to Amend on April 14, 2014.

On June 27, 2014, IPPNY filed a motion seeking to lodge a recent NYPSC Order approving the Dunkirk repowering proposal (Motion to Lodge). The NYPSC hereby provides its Answer to the Motion to Lodge filed by IPPNY, pursuant to Rule 213 of the Federal Energy Regulatory Commission's (FERC or Commission) Rules of Practice and Procedure.

The NYPSC opposes IPPNY's Motion to Lodge because it inappropriately attempts to circumvent the NYISO stakeholder process. In addition, the harm IPPNY sees in the Dunkirk repowering proposal is speculative in that the repowering is not anticipated to be in-service until at least September 1, 2015, and is therefore not ripe for a Commission determination.

IPPNY's Motion to Lodge also focuses on issues not sufficiently related to the Complaint. Assuming the Commission grants IPPNY's Motion to Lodge, the Commission should deny the relief requested in IPPNY's Complaint because market mitigation should not be imposed on generators that have been identified as needed for reliability purposes. The NYPSC addressed these issues in its Answer and Protest filed on April 14, 2014, but reiterates them here for the Commission's consideration.

DISCUSSION

I. The Commission Should Deny IPPNY's Motion to Lodge Because IPPNY Is Inappropriately Attempting to Circumvent the NYISO's Stakeholder Process

The Commission has consistently encouraged parties to attempt to resolve tariff-related disputes through independent system operators' stakeholder processes before filing a complaint with the Commission. This serves several purposes, including: 1) promoting the efficient use of Commission resources by only requiring Commission intervention for disputes that cannot be resolved at a local level;¹ 2) ensuring that all interested stakeholders are fully aware of the proposal and have the opportunity to participate in its consideration;² 3) creating a full record for any eventual Commission consideration;³ and, 4) allowing stakeholders to choose, in the first instance, between the variety of permissible market designs, with the Commission serving as a backstop preventing or reversing decisions that will lead to unjust or unreasonable rates.⁴ Where parties have come to the Commission without first engaging in the stakeholder process, the Commission has consistently dismissed their

¹ FirstEnergy Solutions Corp. v. PJM Interconnection, L.L.C., 138 FERC ¶61,158 at ¶61,642 (2012).

² New York Independent System Operator, Inc., 126 FERC ¶61,046 at ¶61,411 (2009).

³ ISO New England, Inc., 128 FERC ¶61,266 at ¶62,261, ¶¶62,263-64 (2009).

⁴ New York Independent System Operator, Inc., 126 FERC ¶61,046 at ¶61,411 (2009).

complaints or otherwise referred their concerns back to the stakeholder process.⁵

The question of how repowering projects should be treated for mitigation purposes under the NYISO tariff has recently been considered in the NYISO stakeholder process, with the participation of IPPNY and its members. Despite the fact that IPPNY has not fully exercised the stakeholder procedures that are available, IPPNY has chosen to unilaterally petition for Commission intervention.⁶

In response to a similar criticism of its Complaint,⁷ IPPNY suggested that the market impact of the Reliability Support Services (RSS) agreements required quicker action than the stakeholder process allowed, and that the results of preliminary discussions among stakeholders had led it to believe its proposed tariff amendments had little chance of success.⁸ Regardless of whether this explanation supported IPPNY's initial Complaint, its excuse does not apply here. The Dunkirk repowering is not expected to be completed and commence

⁵ Southwest Power Pool, Inc., 141 FERC ¶61,048 at ¶61,274 (2012); 138 FERC ¶61,158 at ¶61,642; 126 FERC ¶61,046 at ¶61,411; 128 FERC ¶61,266 at ¶62,261, ¶¶62,263-64.

⁶ See, Docket No. ER12-360-001, New York Independent System Operator, Inc., Order Conditionally Accepting Proposed Tariff Revisions (issued June 6, 2013).

⁷ National Grid Motion to Dismiss and Protest (filed May 30, 2013); Answer of the NYISO (filed May 30, 2013).

⁸ IPPNY Request for Leave to Answer and Answer (filed June 14, 2013).

participation in the NYISO markets until September 1, 2015, at the earliest.⁹ This period should provide ample time for IPPNY to proffer a proposal in the stakeholder process and obtain an ultimate decision from the NYISO Board.

IPPNY also acknowledges in its Motion to Amend that there may be several different permissible ways to address the issues it raises. Despite its admission, IPPNY requests that the Commission adopt and apply IPPNY's preferred tariff language without a full opportunity for stakeholder engagement. IPPNY should instead engage the stakeholder process to address its concerns and only request Commission action if it can demonstrate that the final decision has failed to ensure just and reasonable rates.

II. The Commission Should Reject IPPNY's Motion to Lodge Because the Issues Raised by the Dunkirk Repowering Are Not Ripe for Commission Consideration

Commission intervention is appropriate to remedy a present harm or a certain and immediately threatened harm, but not to provide an advisory opinion or a preliminary injunction based on an inchoate threat. Complaints which allege only threatened or possible future action are premature and not ripe

⁹ Case 12-E-0577, Term Sheet and Statement in Support.

for Commission review.¹⁰ In particular, the Commission has required complainants to provide evidence of actual harm, rather than accepting mere speculation that an action will cause harm when taken and requiring that respondents shoulder this Sisyphean task of proving that a negative proposition cannot occur.¹¹ Premature and unripe complaints should be dismissed to avoid waste of Commission resources, issuance of advisory opinions, and excessive burdens on respondents.

IPPNY's Motion to Lodge is premature for several reasons. Specifically, the NYISO has not yet had cause or opportunity to fully address the treatment of repowered plants in general, or the Dunkirk repowering proposal in particular. Moreover, there is no present market deficiency that the NYISO has failed to address which would justify Commission action. Notably, IPPNY makes no claim that there is a current market impact from the Dunkirk repowering proposal that requires an immediate remedy. As noted above, the repowered facility is not expected to be completed and commence participation in the NYISO markets until September 1, 2015, at the earliest, making IPPNY's claims of market effects unripe and highly speculative.

¹⁰ CSOLAR IV South, LLC v. California Independent System Operator Corporation, 142 FERC ¶61,250 at ¶¶62,590-92 (2013); Chevron Products Company v. SFPP, L.P., 138 FERC ¶61,115 at ¶61,493 (2012); Port Jefferson v. National Grid Generation LLC, 141 FERC ¶61,123 at ¶61,652 (2012).

¹¹ Entergy Services, Inc., 145 FERC ¶61,247 at ¶62,356, ¶62,367 (2013).

III. The Commission Should Deny IPPNY's Motion to Lodge Because The Dunkirk Repowering Is Not Sufficiently Related to the Complaint

The Commission has rejected motions to amend where permitting the proposed amendment would result in confusion or inefficiency in the proceeding or would be unjust to other parties.¹² Proposed amendments should be rejected when they focus on claims that do not arise out of the same transaction or occurrence as the complaint.¹³ Motions to amend may also be denied to avoid unreasonably burdening opposing parties or delaying a proceeding.¹⁴

IPPNY's Complaint was initially focused on RSS agreements approved by the NYPSC to address immediate reliability concerns. The RSS agreements were already in effect when IPPNY filed its Complaint and IPPNY argued that they had already impacted prices in the capacity market. IPPNY asserted, in essence, that the NYISO's tariff rules were unreasonable because they did not provide for the mitigation of capacity associated with generation resources needed to meet reliability needs.

¹² Missouri Basin Municipal Power Agency v. Midwest Energy Company, 55 FERC ¶61,464 (1991); Grynberg Production Company v. Mountain Fuel Resources, 42 FERC ¶61,061 (1988).

¹³ 42 FERC ¶61,061 at ¶¶61,301-03.

¹⁴ 55 FERC ¶61,464 at ¶62,533 (finding amendment improper because the proceeding was sufficiently advanced).

In contrast, IPPNY's Motion to Lodge seeks to draw the Commission into a different issue and a different set of facts. The NYPSC Order approving the Dunkirk repowering proposal authorizes cost recovery for a long-term repowering agreement that resulted from a State initiative to examine the costs and benefits of repowering certain facilities.¹⁵ As the order itself demonstrates, the NYPSC accepted the Dunkirk repowering proposal for a number of reasons beyond the near-term local reliability need that underlies the current Dunkirk RSS agreement.¹⁶ Thus, while the same parties as the Complaint are involved, the Dunkirk repowering agreement is not part of the same transaction or occurrence as the RSS agreements. For these reasons, the potential questions presented by the NYPSC order accepting the Dunkirk repowering project should not be considered in the same proceeding as the issues presented in the Complaint. Combining these dissimilar topics in one case would cause confusion in the proceeding and would not promote efficiency.¹⁷ Furthermore, adding these new and unrelated matters to the proceeding almost

¹⁵ Case 12-E-0577, Repowering Alternatives to Utility Transmission Reinforcements, Order Addressing Repowering Issues and Cost Allocation and Recovery (issued June 13, 2014) pp. 3-6.

¹⁶ Id. at pp. 30-35.

¹⁷ Cf. 42 FERC ¶61,061.

one year after the filing of the Complaint would unnecessarily delay the proceeding.¹⁸

IV. Assuming, Arguendo, That The Commission Grants IPPNY's Motion to Lodge, The Commission Should Deny IPPNY's Complaint Because Mitigation Is Not Warranted For Generators That Have Been Identified As Needed For Reliability Purposes

Assuming the Commission grants IPPNY's Motion to Lodge and finds that the Dunkirk repowering proposal is similar to the RSS agreement, the Commission should deny the relief requested in IPPNY's Complaint because market mitigation should not be imposed on generators that have been identified as needed for reliability purposes. As explained in the NYPSC's Protest filed on May 30, 2013, generators identified as needed for reliability purposes should not be subjected to buyer-side mitigation. As discussed in that Protest, IPPNY's requests hinge on the description of such generators as "uneconomic," which is inappropriate given that it ignores the reliability needs the plant will provide. The payments through RSS agreements or other "outside-of-market" measures, such as the Dunkirk repowering proposal, reflect those reliability needs and should therefore be included in determining whether a generator is "economic."

The Commission and various independent system operators have recognized that mitigation is not an appropriate

¹⁸ Cf. 55 FERC ¶61,464.

response to the subsidization of generation based on genuine state policy goals. The PJM tariff, which was recently revised and approved by the Commission, contains several exemptions to buyer-side mitigation for this reason.¹⁹ Those exemptions were adopted in spite of arguments from interest groups in PJM territories similar to the arguments that IPPNY makes in its filings.²⁰ For example, the PJM Power Providers Group argued that exempting renewables from buyer-side mitigation would result in price suppression by state-subsidized renewables.²¹ PJM and the Commission rejected this argument, finding that buyer-side mitigation rules should focus on resources that pose a substantial risk of price suppression.²² The Commission has encouraged consideration of these policies.²³

The Commission has also recognized that the mere fact that an action could lower capacity prices does not mean that

¹⁹ See, Order Conditionally Accepting in Part, and Rejecting in Part, Proposed Tariff Revisions, 143 FERC ¶61,090 at 47-56 (2013).

²⁰ Id.; see also, Order Accepting Proposed Tariff Revisions, 135 FERC ¶61,022 at 45 (2011).

²¹ 135 FERC ¶61,022 at 45.

²² Id.

²³ Docket No. ER12-360-001, Order Conditionally Accepting Proposed Tariff Revisions.

the action constitutes unlawful price suppression.²⁴ The Commission has repeatedly stated that state actions motivated by legitimate policy goals do not constitute price suppression merely because they might reduce capacity prices.²⁵ The Commission has held that the mere fact that some subsidized generators may bid into a market does not render that market ineffective or the rates produced by that market unjust or unreasonable.²⁶

IPPNY has a singular motivation: to protect its members' profits by maximizing the value of capacity, including through the means of minimizing the supply of capacity. IPPNY views any action that could increase supply and thereby lower capacity market prices as illegitimate price suppression. These include actions such as supporting renewable energy, protecting reliability needs, and siting merchant transmission lines.²⁷ Moreover, since IPPNY has no responsibility for ensuring system

²⁴ See, e.g., Order Conditionally Accepting in Part, and Rejecting in Part, Proposed Tariff Revisions, 143 FERC 61,090 (recognizing that not all subsidized entry into a market constituted unlawful price suppression). Courts upholding Commission decisions have also made this point. See, e.g., Connecticut Department of Public Utility Control v. FERC, 569 F.3d 477, 481 (D.C. Cir. 2009).

²⁵ Id.

²⁶ Id.

²⁷ See, e.g., IPPNY Complaint; IPPNY Filing; Case 10-T-0139, Application of Champlain Hudson Power Express, Inc. for a Certificate of Environmental Compatibility and Public Need, Recommended Decision (filed December 27, 2012) (describing IPPNY's position on a proposed transmission line).

reliability, it would not be harmed if system reliability suffers. IPPNY's sole pecuniary interest fails to recognize the public interest at large.

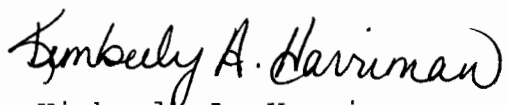
IPPNY's proposed tariff amendments effectively serve its singular motivation. However, other organizations, including the Commission, the NYPSC, and the NYISO, have broader responsibilities. These include responsibilities to serve the public interest, to ensure safe and adequate service at just and reasonable rates, to protect consumers, and to support the continued stability, reliability, and improvement of the entire electric system.²⁸ Accepting IPPNY's tariff amendments would serve the interests of IPPNY and its members at the expense of consumers, the general public, and the electric system.

²⁸ See generally, Federal Power Act; New York State Public Service Law.

CONCLUSION

In accordance with the discussion above, the NYPSC respectfully requests that the Commission deny IPPNY's Motion to Lodge and Complaint.

Respectfully submitted,



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Public Service Commission
of the State of New York
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(518) 473-8178

Dated: July 14, 2014
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 lists compiled by the Secretary in these proceedings.

Dated: Albany, New York
July 14, 2014



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