

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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July 6, 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. EL11-42-000 - Astoria Generating Company, L.P., et al. v. New York Independent System Operator, Inc.

Dear Secretary Bose:

Attached, for filing, is the Notice of Intervention and 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

Astoria Generating Company, L.P.,)	
NRG Power Marketing LLC, Arthur)	
Kill Power LLC, Astoria Gas Turbine)	
Power LLC, Dunkirk Power LLC,)	
Huntley Power LLC, Oswego Harbor)	
Power LLC and TC Ravenswood , LLC)	
)	
v.)	Docket No. EL11-42-000
)	
New York Independent System)	
Operator, Inc.)	

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

NOTICE OF INTERVENTION

On June 3, 2011, and as amended on June 15, 2011, several incumbent generation owners in New York City¹ filed a complaint alleging that the New York Independent System Operator, Inc. (NYISO) is incorrectly applying the exemption test applicable to new entrants in the New York City Installed Capacity (ICAP) market (Complaint). They allege that the NYISO has incorrectly applied its Market Administration and Control Area Services Tariff (Services Tariff) by understating the

¹ The generation owners include Astoria Generating Company, L.P., TC Ravenswood, LLC, and NRG Power Marketing LLC, Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Oswego Harbor Power LLC (Incumbent Generation Owners or Complainants).

thresholds whereby new entrants may be exempted from mitigation, and thus allowed to bid competitively in the ICAP market.

Pursuant to the Commission's Notice of Extension of Time, issued June 30, 2011, and Rule 214 of the Commission's Rules of Practice and Procedure, the New York State Public Service Commission (NYPSC) hereby submits its Notice of Intervention and Comments. Copies of all correspondence and pleadings should be addressed to:

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BACKGROUND

In 2007, the Commission adopted various tariff provisions designed to address identified market power concerns by buyers and sellers of ICAP in NYC.² Given their ability to exert market power as pivotal suppliers, the Incumbent Generation Owners, or their predecessors, were subjected to more stringent bid caps. The Commission also established minimum bid requirements to prevent new entry from suppressing market

² Docket No. ER11-2224-001, NYISO, Order on Requests For Expedited Clarification and Rehearing, 134 FERC ¶61,178 (issued March 9, 2011).

clearing prices. Although this mitigation was initially narrowly targeted at buyers that may have the incentive and ability to artificially suppress clearing prices, the mitigation was subsequently expanded to include any new entrant in the NYC ICAP market.³

If a new unit does not pass the exemption test for new entry, it is subject to the mitigation rules. The New Entry Mitigation rules include a minimum bid requirement (i.e., an Offer Floor) equivalent to the lower of 75% of Mitigation Net Cost-of-New-Entry (Mitigation Net CONE),⁴ or the Unit-specific Net CONE (Unit Net CONE). The CONE is administratively determined by the NYISO every three years as part of the ICAP Demand Curve, which establishes the price for ICAP relative to the amount of available supply.⁵ Unless exempted from the Offer Floor, all new entrants are required to bid at or above the

³ Although the Incumbent Generation Owners refer to the mitigation thresholds as part of the "Buyer-Side Market Power Rules," this phrase is a misnomer given that the thresholds for mitigation are applied to all new entry, regardless of whether the new entrant has any relationship with a buyer (i.e., a Load-Serving Entity). Because a purely merchant generation owner that relies entirely on private equity is subject to the mitigation rule, regardless of whether they lack any incentive to suppress market prices, the phrase "New Entry Mitigation" is used herein.

⁴ Mitigation Net CONE is the CONE at the assumed excess level of capacity.

⁵ Services Tariff, Attachment H, §23.2.1.

Offer Floor until that portion of their Unforced Capacity (UCAP is translated from ICAP) has cleared in the ICAP Spot Market Auction for a total of 12 months.

The Mitigation Exemption Test exempts new entrants from the Offer Floor if the NYISO projects that either: a) the average ICAP Spot Market Auction price for 12 months, beginning with the Starting Capability Period (i.e., the Summer Capability Period commencing three years from the start of the year of the new resource's Class Year), will be higher with the inclusion of the new supplier than the highest Offer Floor for that supplier based on the Mitigation Net CONE; or, b) the price that is equal to the average ICAP Spot Market Auction price in the six Capability Periods beginning with the starting Capability Period is projected to be higher with the inclusion of the new supplier than the reasonably anticipated Unit Net CONE of that supplier.⁶

Complainants allege various errors in the NYISO's proposed evaluation of the Offer Floor and Mitigation Exemption Test, including the understatement of Unit Net CONE, future ICAP prices, and Net CONE, and the failure to review wholesale contracts for purposes of calculating Unit Net CONE. The Incumbent Generation Owners seek to prohibit new entrants from

⁶ Services Tariff, Attachment H, §23.4.5.7.2.

moving forward with their projects by delaying approval of interconnection class years until their Complaint is resolved.

SUMMARY OF POSITION

As discussed below, the NYPSC requests that the Federal Energy Regulatory Commission's (FERC or Commission) deny the Incumbent Generation Owners' complaint, which inappropriately seeks to impede new entry and hinder competition in the New York City ICAP market. Contrary to the Incumbent Generation Owners' claims, the Services Tariff is clear and unambiguous regarding the matters raised in the Complaint. The Service Tariff specifically directs the methodology to be used in calculating the parameters for potential exemption from New Entry Mitigation, which the NYISO has indicated it will apply.

If the Incumbent Generation Owners are successful in impeding new entry into the ICAP market, it will likely interfere with appropriate signals for the retirement of older, less-efficient generation. This would unfortunately hinder the realization of one of the key potential benefits of moving to competitive markets, i.e., the replacement of less efficient and higher-polluting generation with more efficient, cleaner-emitting energy sources. By protecting Incumbent Generation Owners from competition from new market entrants, and ensuring them a significant revenue stream, as the Complaint seeks to

accomplish, the full benefits of competitive markets would not be allowed to materialize.

DISCUSSION

I. The NYISO's Expressed Methodology For Calculating Unit Net CONE Is Consistent With The Services Tariff

As noted above, unless an applicable exemption exists, a new entrant is subject to an Offer Floor equivalent to the lower of 75% of the Mitigation Net CONE or its Unit Net CONE until its capacity has cleared the market for a sufficient period of time. Unit Net CONE is defined as the "localized levelized embedded costs of a specific Installed Capacity Supplier, including interconnection costs...net of likely projected annual Energy and Ancillary Services revenues, as determined by the ISO, translated into a seasonally adjusted monthly UCAP value using an appropriate class outage rate."⁷

Incumbent Generation Owners claim that the "NYISO now apparently intends to ignore the requirement to calculate Unit Net CONE using 'levelized embedded costs.'"⁸ Complainants argue that the calculation of Unit Net CONE for new entrants must be escalated to reflect inflation.

⁷ Services Tariff, Attachment H, §23.2.1.

⁸ Complaint, p. 26.

Despite the Incumbent Generation Owners' insistence that Unit Net CONE must be escalated to reflect inflation, the NYISO has already indicated that "Unit Net CONE will be expressed in the years' dollars of the Mitigation Study Period."⁹ This approach will ensure that an appropriate value is established for Unit Net CONE that is sufficiently escalated to take inflation into account.

II. The Services Tariff Clearly Identifies The Appropriate Demand Curve For Developing The Mitigated Net CONE Offer Floor For Mitigating New Entry

Complainants argue that the NYISO intends to use an outdated Demand Curve in developing the Mitigated Bid Floor and conducting the Mitigation Exemption Test. While the NYISO has indicated it will utilize the NYC ICAP Demand Curve for the 2010/2011 Capability Year, which is the most recent Demand Curve approved by the Commission, the Incumbent Generation Owners insist that the NYISO utilize the recently-filed Demand Curves that are currently pending Commission approval.

The Complainants argument is meritless given that it ignores the Services Tariff language that clearly defines Mitigation Net CONE as the "capacity price on the currently effective In-City Demand Curve..."¹⁰ The NYISO plans to utilize

⁹ Complaint, Ex. MDY-3.

¹⁰ Services Tariff, Attachment H, §23.2.1.

the most recent Commission-approved Demand Curves in accordance with the Services Tariff. Until the recently-filed updates to the Demand Curves are approved by the Commission, the NYISO is required to use the NYC ICAP Demand Curve for the 2010/2011 Capability Year for purposes of developing the Mitigation Bid Floor.

Complainants also seek to hold the NYISO's interconnection cost allocation process for new entrants in abeyance until their Complaint is resolved. This extraordinary measure could impede new entry and would be patently unfair to new entrants seeking to develop their projects in a timely manner. Accordingly, the Commission should reject this unduly burdensome request.

III. The NYISO Takes Appropriate Contract Information Into Account When Developing Cost Calculations For Unit Net CONE

The Incumbent Generation Owners' claim that the NYISO and Market Monitoring Unit (MMU) must "require new entrants to provide all contracts necessary for the NYISO to verify their respective estimates of Unit Net CONE." They suggest this information is necessary to identify any arrangement providing subsidies, or that gives the new entrant an incentive to bid

below costs or that would make them indifferent to ICAP clearing prices.¹¹

Complainants incorrectly suggest that the NYISO does not take relevant contract information into account when estimating Unit Net CONE. As an initial matter, estimating Unit Net CONE is primarily a formulaic process. The Services Tariff clearly defines the costs to be considered as part of Unit Net CONE.¹² The NYISO has provided further detail, in response to generation owner questions, on the specific cost components and how the cost calculations will be performed. To the extent other information is relevant, including contracts, the NYISO has indicated that it requires the new entrant to provide supporting documentation.¹³

IV. The Services Tariff Should Not Be Administered By The Market Monitoring Unit

Complainants suggest that "the MMU, rather than the NYISO, calculate and verify new entrants' Unit Net CONEs in the future."¹⁴ This approach, however, would be inconsistent with

¹¹ Complaint, p. 40.

¹² Services Tariff, Attachment H, §23.2.1.

¹³ Complaint, Ex. MDY-3.

¹⁴ Complaint, p. 46.

the responsibilities and duties of the MMU, which are appropriately specified to include review and comment.¹⁵

The NYISO's Market Monitoring Plan was recently revised to comply with FERC Order 719.¹⁶ The Market Monitoring Plan details the duties of the internal Market Mitigation and Analysis Department (MMA) and the MMU. Pursuant to the Market Monitoring Plan, the calculations for, and implementation of, the New Entry Mitigation rules are clearly delineated duties of the MMA.¹⁷ The MMU should not be responsible for administering the NYISO's Service Tariff as suggested by the Complainants.

The Complaint inappropriately seeks to shift responsibilities to the MMU, in hopes of a more favorable outcome. The Incumbent Generation Owners have failed to provide sufficient information to support their allegations that the NYISO is unwilling to apply effective New Entry Mitigation.¹⁸

¹⁵ Services Tariff, Attachment H, §23.4.5.7.3.3)

¹⁶ Services Tariff, Attachment O; Docket No. ER09-1144-004 et al., NYISO, Order on Compliance Filing (issued November 20, 2009), Order on Clarification and Rehearing (issued May 6, 2010), Order on Compliance Filing (issued June 4, 2010), Order Accepting Compliance Filing (issued October 21, 2010), Order Denying Rehearing and Granting Clarification (issued November 5, 2010).

¹⁷ Services Tariff, Attachment O, §30.3.3.

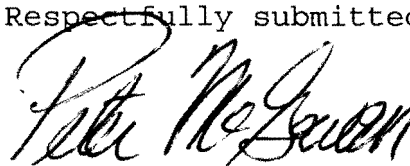
¹⁸ Complaint, pp 2-3.

Based on the information presented, there is no basis for revising the NYISO's Market Monitoring Plan.

CONCLUSION

For the reasons noted above, the Commission should deny the Incumbent Generation Owners' Complaint.

Respectfully submitted,



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

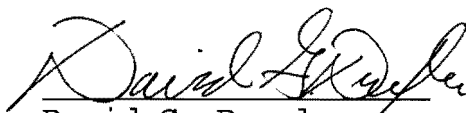
By: David G. Drexler
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Dated: July 6, 2011
Albany, New York

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
July 6, 2011


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