

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE  
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350  
www.dps.ny.gov

PUBLIC SERVICE COMMISSION

GARRY A. BROWN  
*Chairman*  
PATRICIA L. ACAMPORA  
MAUREEN F. HARRIS  
ROBERT E. CURRY JR.  
JAMES L. LAROCCA  
*Commissioners*



PETER MCGOWAN  
*General Counsel*

JACLYN A. BRILLING  
*Secretary*

April 30, 2012

SENT VIA ELECTRONIC FILING  
Hon. Bobbie J. McCartney  
Deputy Chief Administrative Law Judge  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Room 11F-21  
Washington, D.C. 20426

Re: Docket No. IN12-7-000  
Constellation Energy Commodities Group, Inc.

Dear Deputy Chief Judge McCartney:

Attached please find the Joint Motion for Determination of Eligibility of the New York Public Service Commission, the New York Office of Attorney General, and the New York Department of State's Utility Intervention Unit in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 474-1585.

Very truly yours,

Alan T. Michaels  
Assistant Counsel

Attachment

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Constellation Energy Commodities ) Docket No. IN12-7-000  
Group, Inc. )  
)  
)  
)

JOINT MOTION FOR DETERMINATION OF ELIGIBILITY OF  
THE NEW YORK PUBLIC SERVICE COMMISSION,  
THE NEW YORK OFFICE OF ATTORNEY GENERAL, and  
THE NEW YORK DEPARTMENT OF STATE, UTILITY INTERVENTION UNIT

The New York Public Service Commission ("NYPSC"), the New York Office of Attorney General ("NYAG"), and the New York Department of State ("NYDOS") make this joint motion for determination of eligibility to participate in the allocation and distribution of the fund created as a result of Constellation Energy Commodities Group, Inc. ("Constellation") disgorgement of unjust profits ("the Fund") in the above-captioned proceeding. Pursuant to the Federal Energy Regulatory Commission ("FERC" or the "Commission") Stipulation and Consent Agreement (approved in a March 9, 2012 Order Approving Stipulation and Consent Agreement), "any requests for apportionment of the monies in the Fund by the affected states within the NYISO, ISO-NE and PJM may only be made by the appropriate state agency or agencies of those respective states, including, for example, state public service commissions, state

attorneys general, or state consumer advocates, for the benefit of electric energy consumers.”<sup>1</sup> The NYPSC, NYAG and NYDOS are each New York State’s only public service commission, state attorney general and state consumer advocate, respectively. Therefore, we request a ruling that determines our eligibility to request apportionment of the monies in the Fund designated for the affected states within the NYISO for the benefit of electric energy consumers.

#### BACKGROUND

A 2008 FERC enforcement proceeding resulted in a settlement by which Constellation agreed to disgorge \$122 million in unjust profits. The settlement resolved FERC’s investigation regarding whether Constellation violated the Commission’s Anti-Manipulation Rule, 18 C.F.R. §1c.2, and the Commission’s regulation prohibiting the submission of inaccurate information, 18 C.F.R. §35.41(b).<sup>2</sup> Pursuant to the Agreement, the disgorgement would be divided between the three Independent System Operator (ISO) markets affected by Constellation’s actions.<sup>3</sup> Specifically, the New York ISO (“NYISO”), ISO-New

---

<sup>1</sup> *Constellation Energy Commodities Group, Inc.*, 138 F.E.R.C. ¶61,168 (Mar. 9, 2012), attached Stipulation and Consent Agreement (Mar. 8, 2012) at 8-9, ¶37.c (“the Agreement”).

<sup>2</sup> *Constellation Energy Commodities Group, Inc.*, 138 F.E.R.C. ¶ 61,168 (Mar. 9, 2012), hereinafter, the “Settlement Order”.

<sup>3</sup> Settlement Order at 5, ¶22.

England ("ISO-NE") and PJM Interconnection ("PJM ISO") were each apportioned a specific Fund amount to be used for the benefit of electric energy consumers in the affected ISOs. The Settlement Order further states that the distribution of Funds was based on FERC Staff's "assessment of relative harm imposed on each organized market as a result of CCG's trading." The Commission explained that the distribution of the Fund between the ISOs "was based on the megawatts associated with DA schedules flowing between the ISOs and virtual transactions within NYISO that were part of what [S]taff determined to be CCG's manipulative scheme."<sup>4</sup> The NYISO market's portion of the Fund was established at \$78 million.

On March 29, 2012 Deputy Chief Administrative Law Judge Bobbie J. McCartney presided over a pre-hearing conference in this matter. The purpose of the conference was to identify intervenors and determine in which ISO market each asserts an interest. Judge McCarthy set procedural rules and a schedule for the proceeding, requesting that each party asserting its eligibility to an apportionment of the Fund file a Motion for Determination of Eligibility.<sup>5</sup> With this Motion, the NYPSC, NYAG, and NYDOS comply with the Judge's request and jointly

---

<sup>4</sup> *Id.* at 5, ¶22.

<sup>5</sup> *Constellation Energy Commodities Group, Inc.*, Order Confirming Rulings from Prehearing Conference (issued April 2, 2012) (hereinafter, the "Prehearing Order").

assert their eligibility to apportion the monies in the Fund attributed to the NYISO.

#### DISCUSSION

The Agreement approved by the Commission established that the FERC would consider requests for distribution of the Fund among the states affected by Constellation's actions provided the requestor(s) meet(s) certain criteria. Specifically, the Agreement provides that only the appropriate state agencies in each affected state are eligible to make a request for apportionment of the monies in the Fund.

The NYPSC, the NYAG, and the NYDOS are each a New York State agency that is individually qualified to request apportionment of the NYISO portion of the Fund in accordance with ¶37.c of the Agreement. Moreover, while each of these three state agencies individually meets the criteria of an "appropriate state agency" to make this eligibility request, the NYPSC, NYAG, and NYDOS do not dispute one another's status as an appropriate state agency and intend to present a proposal in the coming weeks for use of the NYISO apportionment for the benefit of electric energy consumers to the Presiding Judge in this matter.

Meeting the eligibility criteria and agreeing to coordinate and develop a proposal for apportionment means no eligibility

dispute exists among New York's three eligible agencies. For the reasons set forth below, NYPSC, NYAG, and NYDOS respectfully request that each of them be recognized as an "appropriate state agency" to present a plan for apportionment of the monies in the Fund for the benefit of consumers within the NYISO market.

**1. NYPSC**

The NYPSC regulates electric utilities in New York State and is the only state utility commission within the boundaries of the NYISO. The NYPSC has broad authority to statutorily ensure safe and adequate electric service at just and reasonable rates for New York's electric energy consumers.<sup>6</sup> In addition, the NYPSC has broad authority over electric services in New York State.<sup>7</sup> Moreover, pursuant to New York Public Service Law, counsel to the State Commission has statutory authority to represent and appear on behalf of the people of the State and the State Commission in all actions and proceedings including any question under the New York Public Service Law.<sup>8</sup>

Therefore, the NYPSC is appropriately named as a state agency in New York eligible to make an apportionment of the Fund for the benefit of electric energy consumers.

---

<sup>6</sup> See, New York Public Service Law §5(1) (hereinafter, "PSL"); PSL §65.

<sup>7</sup> See generally, PSL, including but not limited to, PSL Art. VII (siting of major electric transmission facilities), PSL Art. X (siting of generation plants), and PSL § 66 (general supervision over all electric corporations).

<sup>8</sup> PSL §12.

## **2. NYAG**

The New York State Attorney General is the chief legal officer of the people of the State of New York and enforces, among other things, New York's antitrust, consumer protection, securities, and environmental protection statutes. Moreover, the New York Attorney General has actively addressed issues affecting the electricity and securities markets in New York, including enforcing state laws to end abusive retail power marketing practices and appearing before the NYPSC as an advocate for ratepayers, and participating in FERC dockets concerning the NYISO. For these reasons, the New York Attorney General is an appropriate state agency in New York that is eligible to make a request for apportionment of the Fund for the benefit of electric energy consumers.

## **3. NYDOS**

Pursuant to New York State Executive Law §94-a, which became effective on April 1, 2011, NYDOS's Utility Intervention Unit ("UIU") is assigned the "power and duty" to "represent the interests of consumers of the state before federal, state and local administrative and regulatory agencies engaged in the regulation of energy services." The UIU is a component of NYDOS's Division of Consumer Protection. Moreover, in April 2011, the NYISO Board specifically designated the UIU, the statutory successor to the New York State Consumer Protection

Board, as the Statewide Consumer Advocate for purposes of NYISO governance. For these reasons, the NYDOS is an appropriate state agency in New York eligible to make a request for apportionment of the Fund for the benefit of electric energy consumers.

CONCLUSION

Based on the foregoing, NYPSC, NYAG, and NYDOS are each appropriate state agencies eligible to request apportionment of the monies in the Fund for the benefit of electric energy consumers. This joint request to be named the state agencies authorized to distribute the NYISO portion of the Fund should, therefore, be granted.

Respectfully submitted,



Peter McGowan  
General Counsel  
Public Service Commission  
of the State of New York  
3 Empire State Plaza  
Albany, NY 12223-1305  
(518) 474-1585





Hon. Eric Schneiderman  
Attorney General for the  
State of New York  
By: Charlie Donaldson  
Assistant Attorney General  
120 Broadway  
New York, NY 10271-0332  
(212) 416-8334



Susan L. Watson  
General Counsel  
New York State Department of  
State  
One Commerce Plaza  
99 Washington Avenue  
Albany, NY 12231  
(518) 474-5016

Dated: April 30, 2012  
Albany, New York

CERTIFICATE OF SERVICE

I, Alan T. Michaels, do hereby certify that I will serve on April 30, 2012, the foregoing Joint Motion for Determination of Eligibility of the New York Public Service Commission, the New York Attorney General, and the New York Department of State upon each of the parties of record indicated on the official service list compiled by the Secretary in this proceeding.

Dated: April 30, 2012  
Albany, New York

  
Alan T. Michaels