



**Public Service
Commission**

Public Service Commission

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Three Empire State Plaza, Albany, NY 12223-1350
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April 20, 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. ER14-543-000 - New York Independent
System Operator, Inc.; Niagara Mohawk Power
Corporation

Dear Secretary Bose:

For filing, please find the Request for Clarification and, in the Alternative, Rehearing 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

New York Independent System)
Operator, Inc.) Docket No. ER14-543-000
Niagara Mohawk Power Corporation

REQUEST FOR CLARIFICATION AND,
IN THE ALTERNATIVE, REHEARING OF THE NEW YORK
STATE PUBLIC SERVICE COMMISSION

INTRODUCTION AND SUMMARY

The New York State Public Service Commission (NYPSC) respectfully requests clarification and, in the alternative, rehearing of the Federal Energy Regulatory Commission's (FERC or Commission) March 2015 Order, which established issues for hearing and settlement that include "whether National Grid's proposed Wholesale [Transmission Service Charge (TSC)] formula rate revisions, and the Dunkirk [Reliability Support Services Agreement (RSSA)] charges are just and reasonable."¹ The NYPSC seeks rehearing of the March 2015 Order pursuant to Section 313 of the Federal Power Act (16 U.S.C. §8251) and Rule 713 of the Commission's Rules of Practice and Procedure (18 C.F.R. §385.713).²

¹ Docket No. ER14-543-000, New York Independent System Operator, Inc., et al., Order Establishing Hearing and Settlement Judge Procedures, 150 FERC ¶61,206 (issued March 19, 2015) (March 2015 Order), p. 9.

² The NYPSC filed a Motion to Intervene on April 10, 2015. The views expressed herein are not intended to represent those of any individual member of the NYPSC. Pursuant to Section 12 of the New York Public Service Law, the Chair of the NYPSC is authorized to direct this filing on behalf of the NYPSC.

The NYPSC seeks to clarify that the Commission does not intend to assert jurisdiction over the Dunkirk RSSAs for purposes of modifying the charges incurred thereunder. A Commission determination that attempts to change the terms of the Dunkirk RSSAs would interfere with the NYPSC's on-going exercise of its authority in approving RSSAs. Instead, the Commission should maintain the focus of this proceeding on whether National Grid's proposed allocation of RSSA costs under its TSC is just and reasonable. This limited scope is appropriate where sophisticated parties have negotiated a bilateral contract at "arms length" and the contract has already been reviewed and approved by the State regulatory body.

In the alternative, the NYPSC seeks rehearing of the March 2015 Order because it ignores the fact that the NYPSC has an obligation under State law to ensure the availability of adequate generation facilities needed for reliability, and exercised its authority in approving the Dunkirk RSSAs. The Commission's assertion of jurisdiction over the underlying terms of the RSSAs would interfere with the NYPSC's authority, and

represents an impermissible overreach of the Commission's jurisdiction.³

BACKGROUND

The NYPSC maintains jurisdiction over "electric corporations," which include electric transmission, distribution, and generation facilities.⁴ Part of the NYPSC's responsibility includes ensuring such electric corporations provide reliable, safe, and adequate service.⁵ Since the NYPSC first authorized a lightened ratemaking regime for the new owners of generation facilities purchased from New York's vertically integrated utilities, the NYPSC has pursued a policy of preserving its authority to address reliability matters.⁶

³ The NYPSC raised similar arguments in response to the Commission's recent order directing the New York Independent System Operator, Inc. to implement "Reliability Must-Run" contract provisions, which are incorporated here by reference. See, Docket No. EL15-37-000, New York Independent System Operator, Inc., NYPSC Request for Rehearing (filed March 23, 2015).

⁴ PSL §2(13).

⁵ PSL §65(1), (2), (3); §66(1), (2), (5).

⁶ See, Case 98-E-1670, Carr Street Generating Station, L.P., Order Providing for Lightened Regulation (issued April 23, 1999); Case 99-E-0148, AES Eastern Energy, L.P. and AES Creative Resources, L.P., Order Providing For Lightened Regulation (issued April 23, 1999) (holding that generators subject to lightened ratemaking remain subject to the PSL with respect to matters such as enforcement, investigation, safety, reliability, and system improvement).

Recognizing that generator retirements could raise reliability implications, and that it alone has jurisdiction to direct continuation of service notwithstanding a generator's desire to abandon it, the NYPSC issued an order in 2005 requiring generation owners to provide notice before proceeding with an abandonment.⁷ In doing so, the NYPSC reserved its authority to address reliability questions, while continuing its policy of limiting its regulation of generators that participate in competitive markets.

The NYPSC's Retirement Order requires a generator to provide notice at least 180 days prior to the time a retirement would be effectuated for a facility sized at 80 MW or more. This approximately six-month period equates with the minimum period that the NYISO has indicated as adequate to identify and resolve reliability concerns. Once notice is provided, the NYPSC, in coordination with the NYISO and any affected Transmission Owners, evaluates the impact of the retirement on reliability.

Where the generator is needed for reliability, the NYPSC has acted to ensure the generation owner is adequately compensated under an RSSA, and is prevented from abandoning

⁷ Case 05-E-0089, Policies and Procedures Regarding Generation Unit Retirements, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005) (Retirement Order).

service until adequate substitutes for preserving reliability are in-place. For example, NRG Energy, Inc. and Dunkirk Power LLC (collectively, NRG) filed a retirement notice with the NYPSC on March 14, 2012, stating that NRG intended to "mothball" its Dunkirk generating station.⁸ In response to NRG's Retirement Notice, National Grid determined that a portion of the Dunkirk generating station must remain available for an interim period in order to maintain system reliability.

On July 20, 2012, National Grid submitted a proposed "Term Sheet Agreement" to the NYPSC whereby NRG agreed to provide "Reliability Support Services" in return for a monthly fixed-cost payment from National Grid. The NYPSC approved initial and subsequent RSSAs supporting the continued availability of the Dunkirk facility, which was found necessary to meet local reliability needs.⁹ The RSSA rates compensate NRG for keeping the Dunkirk facility available, while leaving any FERC-jurisdictional wholesale sales to regulation under the NYISO tariff.

⁸ See, Case 12-E-0136, Petition of Dunkirk Power LLC and NRG Energy, Inc. for Waiver of Generator Retirement Requirements (Petition of NRG dated March 14, 2012).

⁹ See, Case 12-E-0136, Petition of Dunkirk Power LLC and NRG Energy, Inc. for Waiver of Generator Retirement Requirements, Order Deciding Reliability Issues and Addressing Cost Allocation and Recovery (issued August 16, 2012); see also, Case 12-E-0136, Petition of Dunkirk Power LLC and NRG Energy, Inc. for Waiver of Generator Retirement Requirements, Order Deciding Reliability Issues and Addressing Cost Allocation and Recovery (issued May 20, 2013).

Moreover, the NYISO's tariff recognizes the NYPSC's authority to approve the Dunkirk RSSAs. Pursuant to Attachment Y of the NYISO tariff, if the NYISO determines that market-based proposals and regulated proposals will not satisfy a reliability need, the NYISO will determine, in its Comprehensive Reliability Plan, that a Gap Solution is necessary. Gap Solutions may include generation, transmission, or demand side resources. If there is an imminent threat to the reliability of the New York State Power System, a Gap Solution may be presented outside of the normal planning cycle for consideration by the NYISO and the New York Department of Public Service (NYDPS).¹⁰ Furthermore, the NYISO tariff expressly provides that the "costs related to regulated non-transmission reliability projects will be recovered by Responsible Transmission Owners, Transmission Owners and Other Developers in accordance with the provisions of New York Public Service Law, New York Public Authorities Law, or other applicable state law."¹¹ In approving the NYISO's tariff, the Commission has acknowledged the State's jurisdiction to provide for the recovery of the costs of a generation solution to a reliability deficiency.

¹⁰ NYISO OATT, Attachment Y, §31.2.10.

¹¹ NYISO OATT, Attachment Y, §31.5.1.6.

REQUEST FOR CLARIFICATION AND,
IN THE ALTERNATIVE, REHEARING

I. STATEMENT OF ISSUE

Whether the Commission erred by interfering with the NYPSC's on-going exercise of its authority to make resource adequacy determinations and approve RSSAs with generating facilities needed for reliability.¹²

II. DISCUSSION

The Commission Should Grant Clarification, Or Alternatively Grant Rehearing, To Ensure The March 2015 Order Does Not Interfere With the NYPSC's Continuing Exercise of Authority Over Matters Affecting Generation Facilities, Resource Adequacy, and Reliability, and Approval of RSSAs

The NYPSC seeks the Commission's clarification as to the intended scope of the March 2015 Order, which established issues for hearing and settlement pertaining to whether "the Dunkirk RSSA charges are just and reasonable."¹³ While the Commission indicated that "the hearing need not address issues regarding the Commission's jurisdiction over RMR agreements,"¹⁴ it is unclear whether the Commission seeks to modify the charges allowed under the Dunkirk RSSAs. So expanding the scope of the hearings would be overly-broad and could interfere with the NYPSC's approval of the Dunkirk RSSAs.

¹² In reviewing agency determinations, courts shall "hold unlawful and set aside agency action, findings, and conclusions found to be...arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,...or, unsupported by substantial evidence." 5 U.S.C. §706.

¹³ March 2015 Order, p. 9.

¹⁴ March 2015 Order, fn 27.

The NYPSC's approval of the Dunkirk RSSAs comports with the NYISO tariff provisions, which recognize the NYPSC's responsibility to select among non-transmission alternatives and to determine compensation under State law.¹⁵ The March 2015 Order, however, appears to open to further review the NYPSC's now-final determination approving the Dunkirk RSSAs, including the charges paid thereunder, and could present a direct jurisdictional conflict.¹⁶ The Commission should not hinder the NYPSC's exercise of its authority to ensure that a generator does not deactivate or retire when needed for reliability and to determine the appropriate level of compensation for a generator that is directed to remain available because it is needed to ensure reliability. Because FERC has accepted a process under the NYISO tariff that accommodates this authority, it is appropriate to provide deference where the NYPSC has reviewed and approved a contract negotiated at arms length. The Commission should therefore clarify, or revise accordingly, the

¹⁵ NYISO, Attachment Y, §31.5.1.6.

¹⁶ The FPA explicitly provides that the Commission "shall not have jurisdiction, except as specifically provided in [the FPA], over facilities used for the generation of electric energy or over facilities used in local distribution." 16 U.S.C. §824(b)(1). The Commission's authority to approve "reliability standards" reiterates these exclusions from FERC's jurisdiction, by explicitly excluding Commission jurisdiction to "set and enforce compliance with standards for [the] adequacy or safety of electric facilities or services." 16 U.S.C. §824o(i)(2).

March 2015 Order to properly address FERC and NYPSC jurisdiction.

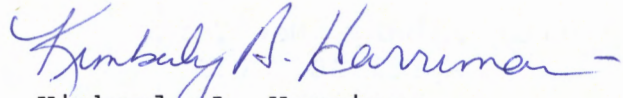
As noted above, the NYPSC possesses the requisite authority to ensure generating facilities do not abandon service prematurely and has long exercised its jurisdiction to prevent premature abandonment of a public service.¹⁷ The Commission should not impermissibly intrude upon the NYPSC's actions to approve RSSAs necessary to preserve reliability when faced with a potential generator retirement that would have adverse impacts on the public health, safety, and welfare.

¹⁷ Case 28316, Rochester Gas and Electric Corporation, Opinion and Order Concerning Steam Service and Determining Revenue Requirement, Opinion No. 84-19 (issued July 11, 1984).

CONCLUSION

In accordance with the foregoing discussion, the NYPSC respectfully requests that the Commission grant rehearing of its March 2015 Order.

Respectfully submitted,



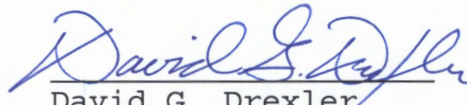
Kimberly A. Harriman
General Counsel
Public Service Commission
of the State of New York
By: David G. Drexler
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Dated: April 20, 2015
Albany, New York

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: Albany, New York
April 20, 2015

A handwritten signature in blue ink that reads "David G. Drexler". The signature is written in a cursive style and is positioned above a horizontal line.

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