

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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Acting Secretary

May 30, 2013

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 Notice of Intervention and Protest 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,

A handwritten signature in cursive script that reads 'David G. Drexler'.

David G. Drexler
Assistant Counsel

Attachment

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.)	

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

NOTICE OF INTERVENTION

On May 10, 2013, Independent Power Producers of New York, Inc. filed a complaint alleging that the New York Independent System Operator, Inc. (NYISO) tariff fails to properly mitigate certain generation resources that would be retired, but for the provision of financial support to maintain those resources for reliability purposes (Complaint). The New York State Public Service Commission (NYPSC) hereby submits its Notice of Intervention and Protest in the above-captioned proceeding pursuant to the Federal Energy Regulatory Commission's (FERC or Commission) Notice of Complaint, issued on May 14, 2013, and Rule 208 (18 C.F.R. §385.214) of the Commission's Rules of Practice and Procedure.

Copies of all correspondence and pleadings should be

addressed to:

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BACKGROUND

Since the transition to competitive markets, the NYPSC has taken an active role in ensuring that the retirement of independently-owned generation resources does not threaten the continued provision of reliable electric service. The NYPSC accordingly requires that generators provide notice of a proposed retirement so that the potential impact of the retirement may be analyzed and solutions devised if it appears system reliability may be adversely affected.¹

¹ Case 05-E-0889, Policies and Procedures Regarding Generating Unit Retirements, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005). Generators sized equal to or greater than 80 MW that are subject to regulation under the New York Public Service Law must provide notice at least 180 days prior to the proposed retirement. For purposes of the notice requirement, a retirement is defined broadly to include mothballing and other actions where a generating unit is taken out of service for a substantial period of time, excluding scheduled maintenance and forced outages.

While numerous independent generation owners have submitted retirement notices pursuant to the NYPSC's rule since 2005, most of these cases have not presented the prospect of adverse effects on reliability. The two exceptions to this are NRG Energy, Inc's coal-fired Dunkirk generating station in Dunkirk, NY (Dunkirk), and Cayuga Operating Company, LLC's coal-fired Cayuga generating facility in Lansing, NY (Cayuga), which proposed to mothball their respective units until economic conditions improved.

In both cases, the Transmission Owners identified adverse local reliability impacts associated with the generators' proposed mothballing. The NYPSC required each affected Transmission Owner to look at potential solutions to address the reliability problem and ultimately determined that the units should remain operational for an interim period until longer-term solutions could be implemented. The NYPSC therefore approved Reliability Support Services (RSS) agreements covering the minimum number of units within the Dunkirk and Cayuga

generating stations that were identified as needed for reliability.²

IPPNY's Complaint alleges that the RSS agreements are artificially suppressing Installed Capacity (ICAP) prices because they constitute "out-of-market" payments. IPPNY suggests that any generator that is needed for reliability and receives payments under an RSS agreement should be excluded from participation in the ICAP market, or required to bid into the ICAP market at a mandatory minimum bid level. IPPNY further seeks to limit the participation of these generators in energy markets, by requiring the NYISO to only call on them to operate to the extent they are needed for reliability.

DISCUSSION

The Commission Should Reject IPPNY's Complaint And Not Impose ICAP Market Mitigation Measures Upon Generators That Have Been Identified As Needed For Reliability Purposes

The NYPSC objects to IPPNY's suggestion that Dunkirk and Cayuga should be precluded from participating in the NYISO-administered capacity markets. The participation of generators

² 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); Case 12-E-0400, Petition of Cayuga Operating Company, LLC to Mothball Generating Units 1 and 2, Order Deciding Reliability Issues and Addressing Cost Allocation and Recovery (issued December 17, 2012).

such as Dunkirk and Cayuga on those markets is just and reasonable, regardless of whether such generators are receiving "out-of-market" payments. Such participation is entirely consistent with the primary purposes of the ICAP market to incent the retention of generation needed for reliability.³

IPPNY states that it "understands that in limited circumstances, it may be necessary for some limited period to override price signals telling an existing resource to exit if that resource is still needed to address an identified system condition."⁴ Despite its "understanding," IPPNY ignores the facts that the Dunkirk and Cayuga RSS agreements arise from exactly those circumstances (i.e., where contractual support is necessary to address identified system reliability issues, and is structured for the minimum MW level and for a limited period until longer-term solutions are implemented). IPPNY does not dispute the need for the RSS agreements, the amount of generation covered under those agreements, or the length of their terms. IPPNY simply and inconsistently asserts that the contracts are "uneconomic" because they are "out of market."

³ The NYPSC attributes the decisions to "mothball" the Dunkirk and Cayuga facilities to the significant decline in natural gas prices over the past few years, coupled with low load growth, which has put added stress on existing generators, particularly coal-fired units.

⁴ IPPNY Complaint, p. 4.

The key finding, which is a prerequisite for the application of the type of "buyer-side" mitigation that IPPNY seeks in its Complaint, is a finding that a resource is uneconomic. In these instances, the only feasible short-run option was paying the generators to remain in service during the interim period when no other solutions were feasible. Given the lack of other options, the retention of Dunkirk and Cayuga during this period is clearly economic compared to experiencing a reliability deficiency. IPPNY's claims that the RSS agreements are uneconomic completely fail to recognize that Dunkirk and Cayuga were identified as the only options, and therefore the most economic options, available to meet the identified reliability needs in the short term. With respect to the longer term, the NYPSC has required the local Transmission Owners to engage in a competitive process, including the use of "Request for Proposals" to seek alternative generation, transmission, and demand response solutions to help determine the most economically efficient solutions, which is consistent with the NYISO's Comprehensive Reliability Planning Process.

IPPNY inappropriately cites to arrangements in PJM in support of its proposition that capacity associated with reliability must-run arrangements should be prohibited from

being offered into the capacity market.⁵ We note as an initial matter that IPPNY appears to be citing to settlement agreements in PJM, so it is unclear what the basis is for such agreements. Moreover, the Dunkirk and Cayuga plants announced their intent to mothball, making a return to the market possible, as opposed to the apparent generator decisions in PJM to retire and permanently exit the market upon the expiration of the must-run arrangements. Thus, the PJM arrangements are not analogous to this case.

The NYPSC also objects to IPPNY's alternative suggestion that Dunkirk and Cayuga should be required to bid "no lower than those resources' [going-forward costs (GFCs)]." IPPNY suggests defining GFCs using the current definition under the NYISO tariff, with revisions to "clarify that the offset for energy and ancillary services must be limited to those revenues that are 'derived from the markets.'"⁶

In general, spot market capacity offers should reflect the suppliers' short-run GFCs, since all that an existing generator needs to do to qualify as a NYISO capacity provider is to offer to supply energy into the day-ahead market during the coming month. In the case of both Dunkirk and Cayuga, the RSS

⁵ IPPNY Complaint, p. 29.

⁶ IPPNY Complaint, p. 35 (citing Younger Affidavit, ¶ 100).

agreements require that each generator make its energy available for local reliability needs and compensates the generator for the cost of doing so. Given that the generator is already committed by the RSS agreements to be available, the GFCs associated with taking the additional step of participating in the NYISO's Statewide capacity market are negligible.

The RSS Term Sheet Agreement for Dunkirk that was presented to the NYPSC for consideration simply stated that offers by Dunkirk into the capacity market must be equal to "going-forward costs." However, the term "going-forward costs" was not defined. Rather than leave the contract vague and subject to later disagreement over how it should be interpreted, the NYPSC clarified its understanding of the term. In particular, the NYPSC noted that "the incremental costs (i.e., the costs above those set in the RSS Term Sheet Agreement, which establishes the costs NRG will incur in providing local reliability service itself) of Dunkirk Units 1 and 2 supplying capacity (i.e., bidding into the capacity market) appear de minimus."⁷ Thus, the NYPSC expected that the capacity associated with Dunkirk Units 1 and 2 would be bid into the capacity market at a correspondingly de minimus price.

⁷ 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), p. 24.

In addition, the NYPSC opposes IPPNY's proposal because it would have the unjust and unreasonable effect of artificially increasing rest-of-state ICAP prices, while doing nothing to address the underlying local reliability needs. The result of IPPNY's proposal would be to create an artificial scarcity in the statewide capacity market, thereby sending an improperly high price signal.

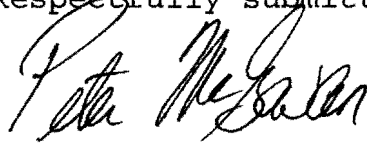
IPPNY's Complaint and proposed solution ignores the fact that the exit of existing generators has already begun to tighten the upstate capacity market, with predictable impacts on NYCA capacity prices. For example, the recent retirement of the Danskammer facility and the mothballing of most of the Dunkirk plant have decreased upstate supply by nearly 1,000 MW, which alone would increase NYCA prices by about \$2/kW-month, based on the NYISO's current NYCA demand curve. In fact, the May 2013 NYCA spot market cleared at \$5.76/kW-month, almost \$3/kW-month above the May 2012 price and more than triple the 10-year average price, contradicting IPPNY's claim of "severe artificial suppression of prices" in the NYISO's upstate capacity market.⁸

⁸ IPPNY Complaint, p. 2. We note that IPPNY's Complaint quoted a May price of \$3.01/kW-month, which was an incorrect price that was corrected by NYISO on May 4, almost a week before IPPNY's Complaint was filed.

CONCLUSION

IPPNY has failed to meet its burden that the NYISO tariff should mitigate the participation of Dunkirk and Cayuga in the ICAP markets. Accordingly, the Commission should reject IPPNY's Complaint.

Respectfully submitted,



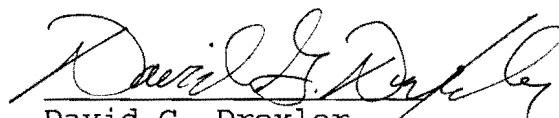
Peter McGowan
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By: David G. Drexler
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Dated: May 30, 2013
Albany, New York

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
May 30, 2013



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