

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

KeySpan-Ravenswood, Inc.) Docket No. EL01-50-000

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

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the Public Service Commission of the State of New York (NYPSC) hereby submits its Notice of Intervention and Protest in the captioned proceeding.

Copies of all documents and correspondence should be sent to:

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KeySpan-Ravenswood, Inc. (KeySpan), in a Complaint filed on March 8, 2001, asks that the Commission accept pro forma tariff sheets for the New York Independent System Operator that would allow merchant generators to net station power consumed at generation facilities against their generation output, even when a facility is not operating. The Commission,

however, recently addressed the netting issue when it considered tariffs filed by the PJM Interconnection, LLC (PJM).¹

In the PJM Order, the Commission rejected KeySpan's theory -- that "negative generation" consumed to supply station use when a generation facility is not operating may be netted against generation produced when the facility is operating. The Commission found that service supplied by a state-regulated utility to a generator is a retail service subject to State jurisdiction.²

Because the relief KeySpan requests in its Complaint conflicts with the Commission's decision in the PJM Order on the PJM tariffs, the Complaint should be rejected. In any event, there are distinctions between PJM and NYISO operations that would require additional revisions to KeySpan's proposed tariffs before they could be accepted.

ARGUMENT

I. KeySpan's Proposed Tariff Revisions Conflict With the Commission's PJM Order.

According to KeySpan, its proposed tariffs would enable a merchant generator to net the station power it uses to operate its generation facility against generation actually

¹ Docket No. ER00-3513-000, 94 FERC ¶61,251 (March 14, 2001)(PJM Order).

² 94 FERC ¶61,251, Slip Opinion, pp. 27-32.

supplied in the NYISO wholesale market, even at times when the generation facility is not operating. KeySpan characterizes the electricity consumed when a facility is out of service as "negative generation" that may be subtracted from generation produced by a facility when it is operating. KeySpan emphasizes that its proposed tariffs, providing for the netting of "negative generation," are "patterned after those adopted in PJM."³

In the PJM Order, however, the Commission required PJM to file revised tariffs. Accordingly, KeySpan's proposed tariffs should not be accepted at this time.

II. Even if Revised, the PJM Tariffs Are Inappropriate for Use in the NYISO.

In the PJM Order, the Commission also ruled that merchant generators could net station use at an out-of-service generation facility against generation produced at other facilities a merchant generator owns.⁴ The Commission reasoned that when a generator netted station use at one facility against production from another generating resource it owned at a remote location, it was self-supplying station power and there was no energy sale.

³ Complaint, p. 4.

⁴ 94 FERC ¶61,251, Slip Opinion, pp. 19-21.

The Commission justified this analysis on the grounds that it was:

consistent with the FPA, will better ensure comparable treatment, and will address the concerns of the merchant generators that some vertically-integrated utilities are favoring their own or affiliated generating facilities to the competitive disadvantage of merchant generators.⁵

The Commission was concerned that integrated utilities may reduce costs for their affiliated generation by netting station use for them, while denying netting to merchant generators.⁶ The potential for this form of anti-competitive behavior is absent from the state-wide NYISO wholesale market.

In contrast the the PJM wholesale market, where most PJM utilities are vertically integrated, almost all of the formerly-integrated NYISO utilities have already sold most of their generating assets. The process for selling most of the few remaining significantly-sized generation assets continues.

⁵ 94 FERC ¶61,251, Slip Opinion, p. 25.

⁶ Rehearing or clarification of this determination may be needed, because it might be inconsistent with the FPA or the Commission's Order in Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services By Public Utilities, Docket No. RM95-8-000, Order No. 888, 97 FERC ¶31,781 (1997). The United States Supreme Court has agreed to hear NYPSC's appeal of the Commission's assertion of jurisdiction in Order No. 888 over retail transmission. By this filing, NYPSC is not waiving its appeal of any jurisdictional issue in any proceeding.

Unlike the PJM market, it does not appear that there is the potential in the overall NYISO market for anti-competitive behavior from integrated utilities that reduce costs for their own generation through netting while denying that mechanism to merchant generators.

Moreover, the Commission declined to decide one issue in the PJM Order that affects KeySpan and many other New York merchant generators. As the Commission analyzed it, some generating stations may be incapable of self-supplying station power because of their particular interconnection configurations, and so would be ineligible for the option of self-supply through netting against other remote generators belonging to the same entity. The Commission found it could not decide this factual issue on the pleadings before it.⁷

KeySpan's proposed tariffs do not address this issue. Those tariffs should not be accepted until KeySpan demonstrates it is eligible for the self-supply option, if such an option is deemed warranted for NYISO's circumstances.

CONCLUSION

KeySpan's Complaint, proposing tariffs that provide for the netting of "negative generation" against generation facility output, should be rejected, because the relief

⁷ 94 FERC ¶61,251, Slip Opinion, p. 26.

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requested conflicts with the Commission's decision in the PJM Order. Moreover, because there are distinctions between PJM and NYISO, KeySpan's proposed NYISO tariff would require further revisions beyond those directed in the PJM Order.

Respectfully submitted,

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Dated: March 28, 2001