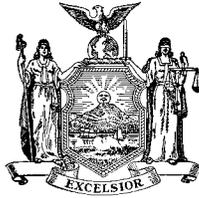


STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350
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PUBLIC SERVICE COMMISSION

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DAWN JABLONSKI RYMAN
General Counsel

JACLYN A. BRILLING
Acting Secretary

January 21, 2005

Honorable Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 1-A209
Washington, D.C. 20426

Re: Docket No. EL05-46-000 - Entergy Nuclear
Operations, Inc.

Dear Secretary Salas:

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) 473-7136.

Very truly yours,

Leonard Van Ryn
Assistant Counsel

Attachment

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Entergy Nuclear Operations, Inc.) Docket No. EL05-46-000
Entergy Nuclear Indian Point 2, LLC)
Entergy Nuclear Indian Point 3, LLC)

NOTICE OF INTERVENTION AND PROTEST

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:

Dawn Jablonski Ryman General Counsel Public Service Commission Of the State of New York Three Empire State Plaza Albany, New York 12223-1350	Howard Tarler, Chief, Bulk Transmission System New York State Department of Public Service Three Empire State Plaza Albany, New York 12223-1350
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In a complaint filed December 20, 2004, Entergy Nuclear Operations, Inc. (ENO), Entergy Nuclear Indian Point 2, LLC (ENI2) and Entergy Nuclear Indian Point 3, LLC (ENI3) (collectively, Entergy) ask that the Commission preclude Consolidated Edison Company of New York, Inc. (Con Edison) from charging for the retail standby electric services it supplies, under contract, to the ENI2 and ENI3 nuclear facilities. Entergy argues that the charges are superceded by the New York

Independent System Operators' (NYISO) station power tariff.¹

The argument lacks merit.²

ARGUMENT

The Commission Should Not Overturn the
Contract Entergy Entered Into for the Purchase
Of Station Use Services From Con Edison

As Entergy concedes, it has entered into Interconnection Agreements (IA) with Con Edison that provide for the purchase from the utility of standby station use electric services the ENI2 and ENI3 nuclear facilities use.³ Entergy, in effect, asks that the Commission overturn those contracts and allow Entergy to avail itself of the NYISO station use tariff.⁴

¹ New York Independent System Operator, Inc., 101 FERC ¶61,230 (2002)(NYISO Station Use Order).

² ENI2 purchased the Indian Point 2 Nuclear Facility from Con Edison on September 6, 2001, and ENI3 purchased the Indian Point 3 Nuclear Facility from the New York Power Authority on November 21, 2000.

³ Station power is the electrical energy used for the heating, lighting, air conditioning and office equipment needs of the buildings on a generating facility site and for operating the electric equipment that is on the generating facility site. PJM Interconnection, LLC, 94 FERC ¶61,251 (2001).

⁴ The NYISO's station use tariff, and the Commission's station use policies, are under judicial review in Niagara Mohawk Power Corporation v. Federal Energy Regulatory Commission, Docket No. 04-1227 (D.C. Circuit). By this filing, NYPSC is not waiving its appeal of any jurisdictional or other station power issue in that or any other judicial or administrative proceeding.

In seeking to justify the extreme and unusual remedy of abrogating the IA contracts, Entergy argues that the NYISO station use tariff should be deemed to supercede those contractual obligations. In addressing similar circumstances, however, the Commission has noted that, while its station use policies precluded requiring a merchant generator to purchase station power at retail, those policies did not prevent a generator from affirmatively choosing to take station power services from retail sources.⁵ Having made the choice to rely upon Con Edison's retail resources, Entergy should not be allowed to simply walk away from the contract binding it to its selection.⁶ To do so would undermine the certainty of contractual obligations, to the detriment of the development of the competitive markets that the Commission seeks to promote.⁷

Arguing that the Commission need not respect contractual arrangements, Entergy cites Niagara Mohawk.⁸ The

⁵ Midwest Generation, LLC, 99 FERC ¶61,166 (2002).

⁶ Entergy, in effect, seems to ask that the Commission apply the Mobile-Sierra doctrine and rescind the contract. See United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Comm'n v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

⁷ See, e.g., Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services By Public Utilities, Order No. 888, 97 FERC ¶31,781 (1997).

⁸ Niagara Mohawk Power Corporation, 109 FERC ¶61,169 (2004).

Commission ruled there, however, that contractual obligations did not affect resolution of the dispute at issue. It did not, as Entergy implies, decide to abrogate a contractual obligation by rescinding the underlying contract -- the relief Entergy desires here.

Accordingly, Entergy has failed to justify overturning the IA contracts it willingly entered into with Con Edison. Its complaint should be denied.

CONCLUSION

The Commission should deny the complaint filed by Entergy because it has not justified the extraordinary relief of rescinding a contract.

Respectfully submitted,

Dawn Jablonski Ryman
General Counsel

Leonard Van Ryn
Assistant Counsel
Public Service Commission
of the State of New York
Three Empire State Plaza
Albany, New York 12223-1350

Dated: January 21, 2005
Albany, New York

CERTIFICATE OF SERVICE

I, Janet Burg, do hereby certify that I will serve on January 21, 2005 the foregoing Notice of Intervention and Comments of the Public Service Commission of the State of New York by depositing a copy thereof, first class postage prepaid, in the United States mail, properly addressed to each of the parties of record, indicated on the official service list compiled by the Secretary in this proceeding.

Date: January 21, 2005
Albany, New York

Janet Burg