

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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PUBLIC SERVICE COMMISSION

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*Secretary*

May 18, 2007

SENT VIA ELECTRONIC FILING

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

Re: Docket No. EL07-39-000 - New York Independent  
System Operator, Inc.

Dear Secretary Bose:

For filing, please find the Answer of the New York State Public Service Commission in Opposition to the Motion of the Independent Power Producers of New York in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 473-8178.

Very truly yours,

David G. Drexler  
Assistant Counsel

Attachment

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System                    )     Docket No. EL07-39-000  
Operator, Inc.                                    )

**ANSWER OF THE NEW YORK STATE PUBLIC SERVICE COMMISSION  
IN OPPOSITION TO THE MOTION OF THE  
INDEPENDENT POWER PRODUCERS OF NEW YORK**

**INTRODUCTION**

Pursuant to Rule 213 of the Federal Energy Regulatory Commission's (FERC or Commission) Rules of Practice and Procedure, the New York State Public Service Commission (NYPSC) hereby submits its Answer in Opposition to the Motion of the Independent Power Producers of New York, Inc. (IPPNY), filed on May 4, 2007 (Motion), in the above-captioned proceeding.

IPPNY's Motion asks that the Commission investigate the New York City (NYC) Installed Capacity (ICAP) market rules by establishing an expedited paper hearing to receive written comments on all issues within 60 days and replies within 30 days thereafter. IPPNY suggests that such procedures, along with a technical conference as necessary, and if so, a subsequent round of initial and reply comments, will be adequate for the Commission to issue a final order in this proceeding.

## DISCUSSION

The NYPSC opposes IPPNY's Motion because it requests paper hearing procedures that will not provide a sufficient basis to resolve the parties' disputes over material facts. The issues involving the NYC ICAP market are extremely complex and controversial and involve significant disagreements over several material facts, such as the extent and financial impact of economic withholding by pivotal suppliers, the ability of competition to produce just and reasonable prices, and what price level is necessary to meet New York's standard for the adequacy of electric facilities. Therefore, the NYPSC supports the New York Transmission Owners' (NYTO) Answer to IPPNY's Motion, filed May 10, 2007, which requests that the Commission institute phased evidentiary hearing procedures to govern the resolution of disputed issues regarding material facts.<sup>1</sup>

As requested by the NYTOs, Phase I of the evidentiary hearing should address the market mitigation measures necessary to avoid further withholding of ICAP from the NYC market by pivotal suppliers. This phase would allow appropriate

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<sup>1</sup> In supporting the NYTO's Answer, and by participating in this proceeding, the NYPSC neither waives nor concedes its jurisdiction to "set and enforce compliance with standards for [the] adequacy...of electric facilities," as is reserved to States under the Federal Power Act. See, 16 U.S.C. §824o(i)(2).

mitigation measures to be developed and implemented in an expeditious manner, thereby preventing further financial harm to customers and avoiding a need for extensive refunds. Phase II of the evidentiary hearing should address the longer-term market issues, but should be held in abeyance in order to provide an opportunity for New York stakeholders to resolve these issues through the New York Independent System Operator, Inc's governance process.<sup>2</sup> This phase would be consistent with the Commission's intent to not postpone or discourage the stakeholder processes.<sup>3</sup> Moreover, given the significant impacts that redesigning the NYC ICAP market will have on the rest-of-state markets, deferring a resolution of the longer-term issues to the NYISO stakeholder process will ensure that the concerns of market participants, which are not active parties in this proceeding, can be considered and addressed.

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<sup>2</sup> We dispute IPPNY's suggestion that the Commission's "approval of capacity market reforms in neighboring markets provides fully vetted templates for many of the issues present in the in-City ICAP market." See, IPPNY Motion at 4. While those reforms may be informative, the issues facing NYC will likely require an approach tailored to the unique circumstances facing the region. We also note that the reforms in the neighboring regions consumed well over 90 days.

<sup>3</sup> Docket No. ER07-360-001 et al., New York Independent System Operator, Inc., 118 FERC ¶61,251, Order Denying Request For Clarification or Rehearing (issued March 28, 2007), at ¶4.

CONCLUSION

The Commission should deny IPPNY's Motion for a paper hearing and institute a phased evidentiary hearing consistent with the above discussion.

Respectfully submitted,



Peter McGowan  
Acting General Counsel  
Public Service Commission  
of the State of New York

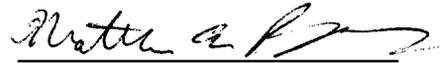
By: David G. Drexler  
Assistant Counsel  
3 Empire State Plaza  
Albany, NY 12223-1305  
(518) 473-8178

Dated: May 18, 2007  
Albany, New York

CERTIFICATE OF SERVICE

I, Matthew Baker, do hereby certify that I will serve on May 18, 2007, the foregoing Answer of the Public Service Commission of the State of New York in Opposition to the Motion of the Independent Power Producers of New York upon each of the parties of record indicated on the official service list compiled by the Secretary in this proceeding.

Date: May 18, 2007  
Albany, New York



Matthew Baker