

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

**KeySpan Energy Development Corporation,)
KeySpan-Ravenswood, LLC, New York)
Power Authority, Electric Power Supply)
Association, Independent Power Producers)
of New York, Inc.)**

Complainants,)

Docket No. EL02-125-000

v.)

New York Independent System Operator, Inc.,)

Respondent.)

**BRIEF ON EXCEPTIONS
OF THE NEW YORK PUBLIC SERVICE COMMISSION**

Dawn K. Jablonski, General Counsel
David Drexler, Assistant Counsel
Steven Blow, Assistant Counsel
Three Empire State Plaza
Albany, NY, 12223-1350
(518) 474-2510

Dated: May 22, 2003

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**BRIEF ON EXCEPTIONS
OF THE NEW YORK PUBLIC SERVICE COMMISSION**

Pursuant to the Federal Energy Regulatory Commission’s (FERC or Commission) Rules of Practice and Procedure and the Presiding Judge’s Initial Decision (issued May 8, 2003) in the above-captioned proceeding, the New York Public Service Commission (“NYPSC”) hereby submits its Brief on Exceptions.

BACKGROUND

On August 28, 2002, KeySpan Energy Development Corporation and KeySpan-Ravenswood, LLC filed a Complaint in this proceeding seeking an order compelling the New York Independent System Operator, Inc. (“NYISO”) to perform a revised cost allocation for new

interconnection facilities in the 2001 class year. The Complaint sought findings that the NYISO did not perform the 2001 cost allocation in accordance with Attachment S of the NYISO's Open Access Transmission Tariff ("OATT"), resulting in an allegedly unfair allocation of costs between transmission owners and project developers.

Attachment S of the NYISO's OATT provides the methodology for identifying and allocating costs between transmission owners and project developers. The two principle components of Attachment S are: (1) the Annual Transmission Baseline Assessment (ATBA), which is used to identify the System Upgrade Facilities (SUFs) that transmission owners are expected to need, even without new projects, during the time period covered by the ATBA (in this instance the Class of 2001) to comply with applicable reliability requirements, and reliably meet the load growth and changes in load pattern projected for New York; and (2) the Annual Transmission Reliability Assessment (ATRA), which is used to determine the SUFs required for each generation and merchant transmission project included in the ATRA. The ATBA requires the NYISO to develop a "baseline" representation of existing New York State generating capacity and to compare existing generation with predicted load growth and changes in load patterns over a five-year study period. If the amount of capacity provided by existing generation units is inadequate, then the ATBA must identify additional "generic" generation units to satisfy the shortfall, as well as the SUFs required to integrate these "generic" units into the transmission system.

The NYPSC filed a notice of intervention and protest on September 24, 2002 and was granted party status. On October 30, 2002, the Commission entered an Order establishing hearing procedures for the case, and narrowing the issues presented to three: (1) the NYISO's selection of "generic" units for the 2001 ATBA; (2) the NYISO's selection of existing system generating units for the 2001 ATBA; and (3) the impacts of an updated Pennsylvania Jersey

Maryland (“PJM”) system model on the results of the NYISO’s short-circuit study.¹ On May 8, 2003, the presiding Administrative Law Judge (Judge) issued an Initial Decision on the October 30, 2002 hearing order.

ARGUMENT

I. The Judge Erred In Recommending That "Generic" Generation Units Be Able To Be Installed In Any Given Year

The first issue, as addressed in the Initial Decision, suggests that “the Commission should require that any "generic" generator identified by the NYISO be able to be built and in service for the year for which there is an associated deficiency identified.”² Yet, Attachment S does not require that "generic" units be able to be installed in any given year. Given that the 2001 baseline study was designed to identify facilities needed to meet load in 2006, and the in-service dates of "generic units" are irrelevant for identifying such facilities, it is not necessary to identify in service dates for "generic" units, although the Judge suggested otherwise.³ Thus, a requirement that "generic" units be able to be installed in any given year is unnecessary.

II. The Judge Erred In Recommending Revisions To Attachment S

The Initial Decision suggests that the NYISO should have followed different procedures than those outlined in Attachment S. Accordingly, the Judge made several recommendations for revising Attachment S.⁴ However, it was not the role of the Judge here to second-guess the propriety of a tariff provision, which FERC has approved.

¹ KeySpan Energy Dev. Corp., et al. v. New York Independent System Operator, Inc., 101 FERC ¶ 61,099 (2002).

² Initial Decision at ¶140.

³ Id.

⁴ Initial Decision at ¶ 149.

For example, the Judge went beyond the scope of this proceeding and specifically opined that the NYISO should be required to “identify, on a year-by-year basis, the deficiencies which make it necessary to develop ‘feasible solutions’ in the first place.”⁵ While we do not think it is necessary to require such an annual analysis, the Commission, if it is so inclined, must first give the parties an opportunity to address the Judge's proposed changes to Attachment S before they are adopted by the Commission. Consequently, the various recommendations in the Initial Decision to revise Attachment S should be rejected as being beyond the scope of this proceeding and unsupported by the record.

III. The Judge Erred In Suggesting The Inclusion Of Certain Generating Units

In performing the ATBA, the NYISO excluded generating units such as some of the New York Power Authority’s (NYPA) gas turbines and Consolidated Edison Company of New York, Inc's Hudson Avenue No. 10 unit. The Judge’s decision on this second issue found the exclusion to be “unsupported.”⁶ However, the record clearly indicates that those units should be excluded. Specifically, the Hudson Avenue No. 10 unit was not included in the ATBA given that its environmental permit expires in October 2004 and as such would not be available to meet load in 2006. Therefore, it was appropriate to substitute a "generic" unit in its place in preparing the ATBA, which was done.⁷ Because Attachment S does not require that generators requesting interconnection be included in the ATBA, the NYPA gas turbines were also properly excluded.⁸

⁵ Id.

⁶ Initial Decision at ¶172.

⁷ Transcript at 1117.

⁸ Khu Direct at 9: 8-14.

Further, FERC Staff's witness concurred with the NYISO that it was technically consistent to include three NYPA units as "generic" generators while excluding the other seven NYPA units.⁹

IV. The Judge Erred In Suggesting That Facility Service Agreements Should Be A Prerequisite For Inclusion In the Study

Regarding issue three, the Initial Decision recommended the use of signed Facility Service Agreements (FSAs), as the prerequisite for inclusion in the short circuit analysis.¹⁰ FSAs are a preliminary step in the study process. While PJM provided the NYISO with a list of projects with signed FSAs, the rest of the data in NYISO's 2001 ATBA (i.e., ISO-NE and NYISO) reflected projects whose developers had signed Interconnection Service Agreements (ISAs).¹¹ The use of ISAs provides a better indicator than FSAs that generators will be built and interconnected to the system, given that ISAs are typically one of the final steps in the process. Although the Judge found that Mr. Herling's testimony was not necessary to a full and fair adjudication, Mr. Herling testified on behalf of PJM that the most realistic sample of projects to model are not available until after the ISAs have been executed and approximately two-thirds of all originally queued projects have dropped out.¹² As such, the NYISO's decision to study those projects with signed ISAs was proper. Moreover, the use of signed ISAs in all three ISOs provided consistency in the NYISO's ATBA. Using data from projects in the NYISO

⁹ Khu Direct at 9: 18-29.

¹⁰ Initial Decision at ¶197. FSAs are agreements by developers to pay the costs associated with interconnection.

¹¹ ISAs are agreements which allow owners of generation and transmission facilities to interconnect with the transmission system.

¹² Transcript at 775; KeySpan Energy Development Corp. et al. v. NYISO, Order Ruling on Proffered Testimony (issued March 12, 2003).

control area based on one set of assumptions and data from projects in the PJM control area based on another set of assumptions would have improperly skewed the result of the study.

Only the NYISO presented updated study results using consistent data on signed ISAs.¹³ Neither the complainants nor Commission staff presented studies contradictory to the NYISO study. On the record compiled in this proceeding, the Commission should accept the study results shown in Exhibit NYI-14.

CONCLUSION

As discussed above, the Commission should reject the Initial Decision and find that the NYISO's cost allocation was consistent with Attachment S of NYISO's OATT.

Respectfully submitted,

Dawn K. Jablonski
General Counsel

By: David Drexler, Assistant Counsel
Steven Blow, Assistant Counsel
Public Service Commission
of the State of New York
3 Empire State Plaza
Albany, NY 12223-1305
(518) 474-6955

Dated: May 22, 2003
Albany, New York

¹³ Exhibit NYI-14.

CERTIFICATE OF SERVICE

I, Lori Ann Baker, do hereby certify that I will serve on May 22, 2003, the foregoing Brief on Exceptions 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: May 22, 2003
Albany, New York

Lori Ann Baker