

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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May 27, 2008

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. ER08-695-001 - New York Independent
System Operator, Inc.

Dear Secretary Bose:

For filing, please find the Comments 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,

David G. Drexler
Assistant Counsel

Attachment

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System) Docket No. ER08-695-001
Operator, Inc.)

COMMENTS OF THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NEW YORK

INTRODUCTION AND SUMMARY

On May 6, 2008, the New York Independent System Operator, Inc. (NYISO) submitted a compliance filing (May 6 Compliance Filing) to implement the Federal Energy Regulatory Commission's (FERC or Commission) March 7, 2008 Order,¹ which approved various market power mitigation measures applicable to the New York City Installed Capacity (ICAP) market. The New York State Public Service Commission (NYPSC) hereby submits its Comments on the May 6 Compliance Filing pursuant to the Commission's Notice of Filing, issued May 9, 2008.

The May 6 Compliance Filing, among other matters, proposes tariff language, as directed by FERC, implementing mitigation measures to prevent uneconomic entry by "Net Buyers"

¹ EL07-39-000, New York Independent System Operator, Inc., Order Conditionally Approving Proposal (issued March 7, 2008) (March 7 Order).

that may benefit from artificially depressed ICAP prices.² The NYISO, however, goes beyond the requirements of the March 7 Order, by arguing that the imposition of an offer floor on uneconomic entry "should not be limited to Net Buyers" and should apply instead to any new entrant.³ The NYISO indicates that it lacks the "expertise" to evaluate whether new ICAP resources are attributable to a Net Buyer, and suggests that there is "little or no risk to not undertaking an elaborate effort to detect Net Buyers and Affiliated ICAP," since "the worst that can happen is that new resources of ICAP would be required to be offered at competitive levels."⁴

Although the May 6 Compliance Filing only seeks to apply a bid floor to the "Attributable ICAP of a Net Buyer," the NYPSC disagrees with the NYISO's contentions that it is appropriate to apply such mitigation to all new entrants, and that there is "little or no risk" in doing so. First, the Commission's March 7 Order expressly limited the bid floor to new entry by a Net Buyer, since only a Net Buyer might have the

² A net buyer of capacity is a market participant whose capacity purchase obligation as a Load Serving Entity outweighs the amount of capacity supply it owns or controls. March 7 Order at n. 5.

³ May 6 Compliance Filing at p. 6. The NYISO also raised similar arguments in its Request for Clarification/Rehearing of the Commission's March 7 Order.

⁴ May 6 Compliance Filing at p. 6.

incentive and ability to engage in buyer market power. Second, there is a significant risk that applying a bid floor to all new entry, regardless of any affiliation with a Net Buyer, may act as a barrier to new entry because generation developers would face the risk of not receiving any ICAP payments at all. Ultimately, consumers may be harmed by this barrier to new entry, which could discourage new resources from coming on-line that may have legitimate lower costs and may provide important reliability and other benefits.

DISCUSSION

The Commission Should Only Apply A Bid Floor To Installed Capacity Deemed Uneconomic That Is Associated With A Net Buyer

The NYISO suggests that it is appropriate to apply the bid floor to all new entrants, regardless of whether they are associated with a Net Buyer. Such an approach would be overly-broad and inappropriate. As the Commission recognized in its March 7 Order, Net Buyers of capacity are "the only market participants with an incentive to sell their capacity for less than its cost."⁵ Given that only a Net Buyer might have the ability and incentive to introduce new entry that is deemed "uneconomic," the Commission appropriately limited the application of a bid floor to such entities.

⁵ March 7 Order at ¶106.

In suggesting that the bid floor should apply more broadly, the NYISO claims that "there is little or no risk in not undertaking an elaborate effort to detect Net Buyers and Affiliated ICAP [since] the worst that can happen is that new sources of ICAP would be required to be offered at competitive levels."⁶ Contrary to this claim, there is a significant risk that extending mitigation to all new entrants could act as a significant barrier to new entry. For example, the development of commercial demonstration projects, baseload units with lengthy development times, and other new sources of ICAP could be discouraged if it were possible that the developer would not receive any ICAP revenues because the market clearing price could fall below the bid floor.

The Commission should recognize that there are already significant challenges to siting new generation in New York City, such as limited availability of viable construction sites and high construction costs, and should therefore be careful to not impose any additional unnecessary barriers. The ramifications of creating additional barriers to new entry could have a significant impact upon consumers. In particular, consumers may be deprived of the reliability benefits associated with new generation, or the potential for lower prices, given

⁶ May 6 Compliance Filing at p. 6.

that a mandatory minimum bid floor may prevent new ICAP resources from clearing the market or may discourage the ICAP from being built altogether.

Finally, the NYISO asserts that the ability to identify any ICAP attributable to a Net Buyer requires the development of "a new expertise in assessing complex project development agreements." However, this "expertise" is no more sophisticated than what is required for the NYISO to analyze unit-specific reference prices for new entrants that are entitled to identify costs lower than the bid floor. Therefore, the NYISO's claims that it must develop a new expertise lack merit.

CONCLUSION

As discussed above, the Commission should reject the NYISO's arguments and should decline to impose mandatory minimum

bid requirements upon all new entry of generation in New York City.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter McGowan". The signature is written in a cursive, flowing style.

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

By: David G. Drexler
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Dated: May 27, 2008
Albany, New York

CERTIFICATE OF SERVICE

I, Ruth Tarrance, do hereby certify that I will serve on May 27, 2008, the foregoing Notice of Intervention of the Public Service Commission of the State of New York upon each of the parties of record indicated on the official service list compiled by the Secretary in this proceeding.


Ruth Tarrance

Dated: May 27, 2008
Albany, New York