

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

PUBLIC SERVICE COMMISSION

WILLIAM M. FLYNN

Chairman

PATRICIA L. ACAMPORA

MAUREEN F. HARRIS

ROBERT E. CURRY JR.

CHERYL A. BULEY



DAWN JABLONSKI RYMAN

General Counsel

JACLYN A. BRILLING

Secretary

August 7, 2006

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

Re: Docket No. RM04-7-000 - Market-Based Rates for Wholesale Sales of
Electric Energy, Capacity and Ancillary Services By Public Utilities

Dear Secretary Salas:

For filing, please find the Notice of Intervention and 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) 474-6513.

Very truly yours,

s/Kimberly A. Harriman

Kimberly A. Harriman
Assistant Counsel

Attachment

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

Market-Based Rates for Wholesale Sales of)
Electric Energy, Capacity and Ancillary)
Services By Public Utilities) Docket No. RM04-7-000

**NOTICE OF INTERVENTION AND COMMENTS
OF THE NEW YORK STATE PUBLIC SERVICE COMMISSION**

The New York State Public Service Commission (NYSPSC) hereby submits its Notice of Intervention and Comments pursuant to the Notice of Proposed Rulemaking for the above-captioned proceeding published on June 7, 2006, in the Federal Register and Rule 214 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure.

Copies of all correspondence and pleadings should be addressed to:

Kimberly A. Harriman
Assistant Counsel
New York State Department
of Public Service
Three Empire State Plaza
Albany, NY 12223-1350
kimberly_harriman@dps.state.ny.us

Raj Addepalli
Manager, Staff ISO Team
New York State Department
of Public Service
Three Empire State Plaza
Albany, NY 12223-1350
rajendra_addepalli@dps.state.ny.us

BACKGROUND AND SUMMARY

The June 7, 2006 Notice sets forth the Commission's proposal to revise and codify its standards for review of applications for market-based rates for sales of electric energy, capacity, and ancillary services. In reviewing an application for market-based rates (MBR), the Commission proposes modifications to its standards for horizontal market power and proposes to continue its presumption that there is no vertical market power where there is an Open Access Transmission Tariff (OATT).

In New York, the investor owned transmission owners (TOs) have divested substantially all of their generating assets located in the State.¹ However, a recent merger has been proposed between KeySpan and National Grid, which, if approved as proposed, would create a vertically integrated utility in New York. Therefore, we have a concern about the Commission's proposed presumption that vertically integrated utilities with an OATT do not have market power and should be permitted to charge market-based rates.

As discussed below, a vertically integrated utility may exercise market power in a manner that would not necessarily violate its OATT. We recommend that the Commission require vertically integrated utilities with an OATT to demonstrate that they do not have the incentive and ability to engage in such behavior before they are granted MBR status.

DISCUSSION

The Commission determined that an OATT mitigates a seller's transmission market power sufficiently to satisfy the Commission with regard to transmission market power. Further, only in the event of an OATT violation will the Commission consider revocation of market-based rate authority (Notice, ¶11). We agree that the presence of an OATT may mitigate a seller's transmission market power, but only with respect to generator access to the transmission system. However, a TO may exercise vertical market power without violating its OATT. There are at least three ways for a TO to exercise vertical market power which would not run afoul of the OATT.

Transmission Repair Practices

Work on a transmission line that has failed or is being routinely maintained can directly impact the price of electric energy for the geographic markets being served by the transmission

¹ The New York Power Authority, a public authority, owns transmission and generation.

line. Specifically, for areas with locational prices, such as New York, the loss of a transmission line serving a constrained area, such as a load pocket, typically results in an increase in prices for electricity inside the load pocket. Thus, a TO that is affiliated with generation that resides in a load pocket has an incentive to repair its transmission facilities slowly, for the purpose of benefiting its affiliated generation. Such behavior would unnecessarily increase the price of electric energy, despite the fact that the TO is subject to an OATT. For example, a New York utility recently completed repairs on a crucial transmission line two weeks ahead of schedule, and just hours before New York set an all-time record peak load (July 17). As a result, New York consumers received many millions of dollars in savings. If a similar situation arose for a TO that had a generation affiliate, that TO would have had a strong financial disincentive to complete the repairs two weeks ahead of schedule. While regulatory oversight might discourage TOs from unduly postponing or delaying repair and maintenance of lines, there are limitations, including the ability of regulators to second guess the reasonableness of a TO's repair time.

Transmission Investment

A TO is responsible for determining the timing and extent of its investment in its bulk electric transmission system. A TO with affiliated generation could exercise market power by simply delaying or minimizing the TO's investment in the bulk electric system. For example, it would be profitable for a TO with affiliated generation located in a load pocket to delay or minimize the amount of transmission investment made to alleviate or reduce congestion associated with the transmission constraint in the load pocket. The affiliated generation facilities within the load pocket would continue to reap scarcity prices for energy and capacity in the load pocket beyond the time it would be economically rational for a TO, without generation assets, to make transmission investment.

Even Commission Staff recognized this possibility when it stated that “transmission owners may resist building transmission facilities if they also own generation and if the proposed upgrades would increase competition in their sheltered markets.”² While other entities such as independent transmission companies might step in to build transmission where a utility is failing to do so, this approach is unproven. Not only does this behavior reap rewards for all generators in the market, but load serving entities and their retail customers would be directly harmed by the TO’s exercise of vertical market power in the form of higher energy and capacity prices.

Voltage Support

Voltage requirements necessary for reliability are being addressed in New York through the Comprehensive Reliability Planning Process. However, vertical market power may also be exercised by a TO inadequately supporting voltage requirements for the bulk system. A TO may purposely act slowly to correct voltage support shortcomings on its local system, which effectively reduce the transfer capability on the bulk power system. For example, lack of adequate voltage along the path to New York City could limit power transfer into the City. As power transfers into the City decrease, prices for energy and capacity increase in the City. Therefore, a TO owning facilities along the path to New York City with affiliate in-City generation may have a disincentive to invest in adequate voltage support because its in-City generators reap the benefits from the higher prices.

² Docket No. AD05-17-000, Draft Report to Congress on Competition in the Wholesale and Retail Markets for Electricity (issued November 18, 2005), ¶ 3.

CONCLUSION

The NYSPSC respectfully urges the Commission to carefully reconsider its presumption that TOs with an OATT cannot engage in vertical market power even when a generator and a TO are affiliated. Instead, the Commission should require these utilities to demonstrate that they do not have the incentive or ability to engage in such behavior, before they are granted MBR status.

Respectfully submitted,

s/Dawn Jablonski Ryman

Dawn Jablonski Ryman
General Counsel
New York State
Public Service Commission

By: Kimberly A. Harriman
Assistant Counsel
Three Empire State Plaza
Albany, NY 12223-1350
(518) 473-8123

Dated: August 7, 2006
Albany, New York

CERTIFICATE OF SERVICE

I, Jacquelynn Walen , do hereby certify that I will serve on August 7, 2006, the foregoing Notice of Intervention and Comments 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.

Date: August 7, 2006
Albany, New York

s/ Jacquelynn Walen
Jacquelynn Walen