

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE  
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350  
Internet Address: <http://www.dps.state.ny.us>

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September 3, 2010

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 Nos. ER10-2220-000 - New York Independent System Operator, Inc.

Dear Secretary Bose:

For filing, please find the Notice of Intervention and Comments of the New York State Public Service Commission in the above-entitled proceedings. Should you have any questions, please feel free to contact me at (518) 473-8178.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'David G. Drexler'.

David G. Drexler  
Assistant Counsel

Attachment

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System                    )   Docket No. ER10-2220-000  
Operator, Inc.                                    )

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

NOTICE OF INTERVENTION

The New York State Public Service Commission (NYPS&C) hereby submits its Notice of Intervention and Comments in accordance with the Federal Energy Regulatory Commission's (FERC or Commission) Combined Notice of Filings #1, issued on August 13, 2010, and Rule 214 of the Commission's Rules of Practice and Procedure. Copies of all correspondence and pleadings should be addressed to:

David G. Drexler  
Assistant Counsel  
New York State Department  
of Public Service  
Three Empire State Plaza  
Albany, New York 12223-1350  
david\_drexler@dps.state.ny.us

William Heinrich  
Chief, Policy Coordination  
New York State Department  
of Public Service  
Three Empire State Plaza  
Albany, New York 12223-1350  
william\_heinrich@dps.state.ny.us

## BACKGROUND

On May 20, 2010, the Commission accepted the New York Independent System Operator, Inc.'s (NYISO) September 4 Filing,<sup>1</sup> which proposed additional mitigation measures applicable to three generators exercising market power when committed for reliability purposes.<sup>2</sup> The September 4 Filing proposed significantly tighter thresholds applicable to the three generators that the NYISO determined were engaging in anticompetitive behavior.<sup>3</sup> However, the Commission noted its "concern[]" with the absence of a generally-applicable mitigation measure to address the exercise of market power in those instances where a generator is the only solution to a

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<sup>1</sup> Docket No. ER09-1682-000, New York Independent System Operator, Inc., Order on Proposed Application of Mitigation Measures and Compliance Filings (issued May 20, 2010) (May 20 Order) (accepting the NYISO's proposed mitigation measures filed on September 4, 2009 (September 4 Filing)).

<sup>2</sup> Generators that are selected to operate for reliability purposes are entitled to a guarantee payment that allows for recovery of startup and minimum generation costs that are not recovered in the dispatch day. However, these payments do not include an opportunity to recover "fixed" costs. As Dr. David Patton testified, submitting bids that incorporate a fixed cost component is not consistent with conduct that would be expected under competitive market conditions. September 4 Filing, Attachment B, Affidavit of Dr. David Patton.

<sup>3</sup> When the thresholds are exceeded, the NYISO proposed to substitute a default bid at the generators' reference levels, which serve as a proxy for bids that would be expected to be submitted under competitive conditions.

reliability need," and therefore encouraged the NYISO to develop such a measure to address market power concerns related to market participants located outside of New York City.<sup>4</sup>

On August 13, 2010, the NYISO addressed the Commission's concerns by filing generally-applicable mitigation measures that apply to all generators outside of New York City that can exercise market power when they are committed or dispatched to maintain system reliability.<sup>5</sup> Furthermore, the measures only apply if a generator engages in bidding conduct that is substantially inconsistent with competitive conduct, as measured by proposed thresholds generally consistent with those already applied to the three generators.<sup>6</sup> Once accepted by the FERC, the NYISO intends that these generally-applicable mitigation measures would supersede the measures adopted for the three generators.

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<sup>4</sup> May 20 Order, ¶¶ 1, 101.

<sup>5</sup> Docket No. ER10-2220-000, New York Independent System Operator, Inc. - Proposed Market Power Mitigation Measure (filed August 13, 2010) (August 13 Filing).

<sup>6</sup> The thresholds proposed in the NYISO's August 13 Filing contain some minor deviations from those adopted in the May 20 Order.

## DISCUSSION

The NYPSC supports the adoption of the mitigation measures proposed in the NYISO's August 13 Filing. It is apparent that the New York Rest-of-State (ROS) market (i.e., the market outside of New York City and Long Island) is susceptible to market power problems in certain situations. Therefore, it is essential that the mitigation measures proposed by the NYISO are in place to identify any ROS generator that, as a result of being needed for reliability, possesses market power, and to protect against such generators inappropriately exercising market power by bidding in a manner that departs from conduct that would be expected under competitive market conditions.

The proposed measures will act to bring market outcomes closer in line with competitive conduct, reduce the ability of generators to exercise market power, and help ensure rates are just and reasonable. As the Commission found in accepting the mitigation measures applicable to the three generators, the "tighter mitigation thresholds are reasonable for ensuring competitive bidding even when market conditions are not competitive."<sup>7</sup> For the same reasons, the Commission should accept the proposed tighter thresholds to ensure generators may

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<sup>7</sup> May 20 Order, ¶93.

not inappropriately exercise market power when they are needed to maintain reliability.

As indicated in the August 13 Filing, the NYISO Board of Directors was presented with claims by generation owners that existing cost recovery mechanisms do not provide an adequate opportunity for must-run units to recover their fixed costs. We anticipate that generation owners may raise similar claims before the Commission. However, the Commission should not delay the acceptance of the proposed mitigation measures based on these claims.

As the NYISO Board of Directors determined, the claims of deficient compensation had not been substantiated, and the "Gap Solution" process in Attachment Y to the NYISO's Open Access Transmission Tariff "contemplates that non-transmission Gap Solutions will receive "full and prompt recovery of all reasonably-incurred costs."'"<sup>8</sup> Thus, the NYISO Board of Directors found that there was no basis to delay the filing of the mitigation measures proposed in the August 13 Filing. Notwithstanding the generation owners' unsubstantiated claims, the NYISO Board of Directors directed NYISO management to work

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<sup>8</sup> August 13 Filing, p. 8.

with stakeholders in the governance process to examine these claims further.

The NYPSC is prepared to work with the NYISO and stakeholders to review the Attachment Y process by which Gap Solutions are implemented and permanent solutions to identified reliability needs are implemented. However, we agree with the NYISO Board of Directors that the proposed mitigation measures should be approved without delay to address the possible exercise of market power by generators in the ROS market that are committed for reliability.

#### CONCLUSION

As discussed above, the Commission should accept, without delay, the mitigation measures proposed in the NYISO's August 13 Filing. These measures will help ensure rates remain

just and reasonable, and protect consumers against the  
inappropriate exercise of market power.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "P. McGowan for".

Peter McGowan  
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: September 3, 2010  
Albany, New York

CERTIFICATE OF SERVICE

I, David G. Drexler, do hereby certify that I will serve on September 3, 2010, the foregoing Notice of Intervention and Comments of the New York State Public Service Commission upon each of the parties of record indicated on the official service list compiled by the Secretary in this proceeding.

Dated: September 3, 2010  
Albany, New York

  
David G. Drexler

