

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

PATRICIA L. ACAMPORA

Chairwoman

MAUREEN F. HARRIS

ROBERT E. CURRY JR.

CHERYL A. BULEY



PETER McGOWAN

Acting General Counsel

JACLYN A. BRILLING

Secretary

September 14, 2007

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. RM07-19-000 and AD07-7-000, -
Wholesale Competition in Regions with Organized
Electric Markets

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 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

Wholesale Competition in Regions) Docket Nos. RM07-19-000
With Organized Electric Markets) AD07-7-000

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

NOTICE OF INTERVENTION

On June 22, 2007, the Federal Energy Regulatory Commission (FERC or Commission) issued an Advanced Notice of Proposed Rulemaking (ANOPR) with regard to potential reforms to improve the operation of organized wholesale electric markets. The New York State Public Service Commission (NYPSC) hereby submits its Notice of Intervention in the above-captioned proceeding pursuant to the Commission's Notice of Extension of Time issued July 27, 2007, and Rule 214 of the Commission's Rules of Practice and Procedure.

Copies of all correspondence and pleadings should be addressed to:

David 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

Raj Addepalli
Chief, Resource Policy & Planning
New York State Department
of Public Service
Three Empire State Plaza
Albany, New York 12223-1350
rajendra_addepalli@dps.state.ny.us

INTRODUCTION AND SUMMARY

The ANOPR seeks comments on whether four specific issues should be addressed in order to improve the operation of organized wholesale electric markets. These issues are: 1) the role of demand response; 2) increasing opportunities for long-term power contracts; 3) strengthening market monitoring; and, 4) the responsiveness of Regional Transmission Organizations (RTO) and Independent System Operators (ISO).

The NYPSC commends the Commission's proactive efforts to improve the operation of organized wholesale markets. While these comments cover the four discrete issues identified in the ANOPR, we recognize that additional opportunities for improvement may need to be addressed separately.

In sum, we support wholesale Demand Response (DR) payments in addition to retail savings, given that retail prices alone do not necessarily reflect the system benefits in real time. Moreover, aggregators of DR load would likely lack sufficient incentive to participate in current New York Independent System Operator, Inc. (NYISO) programs without a separate payment, thereby jeopardizing over 600 MW of DR. We also recognize the potential benefits of allowing DR to provide ancillary services, although it may be necessary to conduct a pilot program to ensure such service providers can be integrated

without adversely impacting the reliability of the transmission system.

The NYPSC concurs with the Commission that long-term contracts are consistent with organized markets and are an important supplement to the spot-market by providing a hedge against price volatility for buyers and sellers. Long-term contracts also have the potential to improve reliability by facilitating additional new entry and to mitigate market power of existing entities. However, the Commission should not mandate standardized forward products, since mandating particular terms may be inefficient and unnecessarily raise costs for market participants. We strongly encourage the Commission to facilitate bilateral transactions amongst market participants by requiring RTOs and ISOs to dedicate a portion of their websites to the posting of offers to purchase and sell.

We also support the Commission's proposal that each RTO and ISO have its internal or external Market Monitoring Unit (MMU) report directly to the RTO's or ISO's board of directors, which should further ensure the independence of the MMU. In situations where an RTO or ISO maintains an internal MMU and external market advisor, the internal MMU should be allowed to assist the RTO or ISO in administering the tariff and mitigating improper behavior, while the external MMU may concentrate on providing market evaluations, reports, and advice. Further, we

support the Commission's initiative to establish minimum standards for data access by states, although the Commission should not limit states' access to additional data where sufficient safeguards are in place to protect against the disclosure of confidential information.

Finally, we support the Commission's proposal to provide stakeholders with effective direct access to the RTO's or ISO's board of directors, so that different views on major issues may be presented directly to the board. RTOs or ISOs may also achieve better responsiveness to interested parties by adopting executive management practices, effective stakeholder processes, and transparent budgeting processes. The NYISO has generally implemented these mechanisms, and they have worked reasonably well thus far.

DISCUSSION

I. The Role of Demand Response

A. Demand Response Customers Should Be Paid For Wholesale Demand Reductions In Addition To Receiving Savings On Retail Bills

The ANOPR requests comments on whether "aggregation of retail customers allows inappropriate compensation when a retail customer is paid for wholesale demand reduction and also saves in its retail bill from the same demand reduction."¹ According

¹ ANOPR at ¶73.

to the Edison Electric Institute (EEI), such compensation is not justified or is a form of "double payment."

The NYPSC disagrees with EEI's contention. In addition to retail savings, wholesale DR payments are appropriate since retail bill reductions alone fail to reflect the system benefits in real-time. This is, in part, because retail bill reductions typically reflect a predetermined price (e.g., tariff rate or day-ahead price), rather than a real-time wholesale price. However, during peak pricing periods, when curtailments are needed most, real-time wholesale prices typically go far above forward prices. Therefore, sufficient incentives for real-time load response should include compensation for DR participation, as well as associated retail savings.

Moreover, the NYISO administers several DR programs whereby aggregators may combine/aggregate customers, which would not otherwise be able to participate in such programs, in order to meet minimum MW load requirements. Absent payments for DR, there would be insufficient incentive for aggregators to participate in these programs. In addition, direct compensation is reasonable for these aggregators, since they provide benefits to the system and incur legitimate costs associated with undertaking the financial risk of customers not performing when called upon to curtail usage. Eliminating such compensation

could result in aggregators leaving New York and potentially jeopardize the participation of over 600 MW of DR currently available to the NYISO.

B. Demand Response Providers Should Be Allowed To Provide Ancillary Services So Long As There Are No Adverse Reliability Impacts

The ANOPR seeks comments on the proposal to "obligate each RTO or ISO to purchase demand resources in its markets for certain ancillary services."² However, the Commission has already directed the NYISO to implement the necessary modifications to allow DR resources to participate in ancillary services markets.³ While the NYPSC supports the concept of allowing DR to provide ancillary services, there is very little experience with having loads supply these services. Therefore, we encourage the Commission to move cautiously, to ensure that there will not be any associated adverse reliability impacts.

In order to gain the requisite experience and determine the impact on system reliability, it may be appropriate to conduct a pilot program limiting the amount of load MWs participating in the ancillary services markets. Moreover, we expect that the reliability implications of integrating DR into such markets will be evaluated by

² ANOPR at ¶59.

³ Docket ER04-230-010 et al., New York Independent System Operator, Inc., Amendment to Compliance Filing (issued January 26, 2006).

appropriate entities, such as ISOs and regional reliability councils, and that the participation of DR will be contingent on the results of that evaluation.

II. Increasing Opportunities For Long-Term Power Contracts

A. Long-Term Power Contracts Play An Important Role In Competitive Markets

The NYPSC agrees with the Commission that competitive wholesale markets need a strong infrastructure and that long-term contracts are an important tool to achieve and maintain that infrastructure. We have supported the establishment of New York's organized wholesale market, and the NYPSC is currently exploring the use of long-term contracts to facilitate entry of new resources and public policy goals for the state's electric infrastructure.

As the Commission notes, long-term power contracts are an important supplement to the spot market, which allow buyers to manage their exposure to uncertain future spot-market prices. They also provide suppliers an opportunity to reduce their exposure to the risk of volatile revenue streams, while investors can seek to be shielded from uncertain returns on their investments.

Long-term power contracts can be useful to facilitate new merchant infrastructure by providing a predictable revenue stream to developers in order to obtain financing. For example,

in New York City, despite having among the highest market prices for electricity in the nation, all of the resource infrastructure additions that have been built, with the limited exception of a 250 MW merchant unit, have required the support of long-term power contracts or public purpose entities, such as the New York Power Authority (NYPA). Further, long-term contracts can be an integral component to implementing important public policy objectives, such as the promotion of renewable technologies. Spot markets alone, or coupled with forward markets, may not suffice to address such public policy interests. Long-term contracts can also prove useful to address market power concerns by being structured in a manner that reduces the incentive for generators to exercise market power.

B. The Commission Should Pursue Efforts To Facilitate Long-Term Power Contracting

The ANOPR observes that the Commission lacks jurisdiction to compel buyers and sellers to enter into long-term contracts, and that the purchasing practices of load serving entities are dictated by state policies. Mindful of these limitations, the Commission seeks comment on various proposals.

1. The Commission Should Encourage Participation In Standardized Forward Products On A Voluntary Basis

The ANOPR suggests requiring or encouraging efforts to develop new standardized forward products, and solicits comments

on whether such standardized products would better facilitate long-term contracting.

While the Commission should encourage RTOs and ISOs to participate in developing forward markets, these entities should not be mandated to do so. Ideally, forward products should develop naturally based upon on a healthy working market, and should not be artificially constructed.

The development of mandatory standardized forward products requires great care because poorly defined products may fail to achieve the intended results, or may do so at an unnecessarily high cost. With respect to the mandatory forward capacity markets recently approved for ISO-NE and PJM,⁴ those products were developed through many years of stakeholder negotiations, and it will be some time before their costs and effectiveness can be fully evaluated.

While the NYPSC is willing to consider new mechanisms for securing capacity, such complex products should not be imposed without being thoroughly vetted by all parties. Moreover, as the Commission recognized, states play a large role in long-term power contracting. In fact, the NYPSC has instituted a proceeding to evaluate the role long-term contracts

⁴ ANOPR at ¶90.

might play in the acquisition of infrastructure and other resources.⁵ Therefore, the Commission should refrain from imposing inflexible mandates that might interfere with the ability of states to encourage efficient long-term contracts.

2. The Commission Should Require RTOs and ISOs to Dedicate A Portion Of Their Websites To Posting Offers To Purchase And Sell Bilaterally

The Commission proposes having a portion of each ISO's or RTO's website dedicated for market participants to post offers to buy or sell power long-term and invites comments on whether this would prove helpful or whether it is a service that is better provided by the market.

An ISO or RTO website dedicated to posting long-term power offers is a low-cost approach to facilitate such transactions and we strongly support such an effort. Therefore, the Commission should direct ISOs and RTOs to accommodate the posting of offers to buy or sell power long-term on their websites.

⁵ Case 06-M-1017, Utility Commodity Supply Service To Residential and Small Commercial and Industrial Customers, Order Requiring Development Of Utility-Specific Guidelines For Electric Commodity Supply Portfolios And Instituting A Phase II To Address Longer-Term Issues (issued April 19, 2007).

III. Strengthening Market Monitoring

A. MMUs Should Report To A Board Of Directors, While Internal MMUs Should Be Allowed To Mitigate Improper Behavior Under The Tariff

The Commission proposes that "each RTO and ISO, in addition to maintaining a market monitoring function, be required to have its MMU report either directly to the RTO's or ISO's board of directors."⁶ As the ANOPR explains, this requirement would apply to internal and external MMUs. The Commission also seeks to encourage objective reporting by the MMUs by "requiring that MMUs refrain from assisting the RTO or ISO in tariff administration, from participating in RTO/ISO market operations, and from taking direct actions to influence the market."⁷

While we support having both internal and external MMUs report to the board of directors in order to increase the independence of the MMUs, assuming both types of MMUs are present, internal MMUs should be allowed to mitigate improper market behavior. Since mitigation of such behavior may be interpreted as tariff administration, participation in market operations, and influencing the market, the ANOPR would prohibit internal MMUs from performing this critical function. However,

⁶ ANOPR at ¶113.

⁷ ANOPR at ¶119.

internal MMUs are best equipped with the real-time data necessary to monitor the markets and to take steps to address actions that are in violation of the tariff. The external MMU should instead concentrate on providing market evaluations, advice, and reporting objectively on whether the RTO or ISO has done an appropriate job in designing and administering wholesale power markets.

B. State Regulatory Commissions Should Be Provided Access To Information Possessed By RTOs and ISOs So Long As Confidential Information Is Protected From Disclosure

The ANOPR proposes general areas of information which could be provided to states, and seeks comment on whether additional kinds of information should also be provided. Specifically, FERC proposes that MMUs report to states regarding aggregate market and RTO/ISO performance, while states would be permitted to make requests for additional information from the MMU, albeit regarding general market trends and performance. State commissions would remain free, on a case-by-case basis, to request that the Commission authorize the release of other data so long as there is a compelling need for the information and commercially sensitive material can be adequately protected.⁸

Although the proposed scope of information to be provided to state commissions may form an acceptable minimum

⁸ ANOPR at ¶¶125 and 128-29.

standard for states that do not currently have access to such data, the Commission should not limit the present or future access of states to information possessed by RTOs/ISOs. As the Commission acknowledges, this information is needed by state commissions "to assist them in performing their regulatory functions, given the integral relationship between wholesale and retail rates."⁹

Maintaining current access to such information is critical to the NYPSC so that we may fulfill our regulatory responsibilities. In particular, New York's Public Service Law assigns the NYPSC with the responsibility to ensure that electric corporations, such as the NYISO, furnish safe and adequate service at just and reasonable rates.¹⁰ Moreover, we have observed that "the manner in which bids are made, generators are committed, and the performance of generators in meeting those commitments, can and often do have profound impacts on the reliability of electric service in New York State and, ultimately, on retail rates."¹¹

⁹ ANOPR at ¶¶123.

¹⁰ N.Y. PUB. SERV. LAW §65 (McKinney 2000).

¹¹ Case 00-E-1380, Provision By The New York Independent System Operator, Inc., of Information and Data to Department Staff, Order Directing Provision of Data and Information (issued August 14, 2000). Attachment A-2 of the NYISO's Market Administration and Control Area Services Tariff lists dozens of sub-transmission facilities secured by the NYISO, but part of the Transmission Owners' retail distribution systems.

Access to information regarding many aspects of the electric system's operation, including the reasons for price levels and volatility, price spikes, and the commitment and dispatch of units, allows the NYPSC to assess concerns about retail customers' rates, retail access efforts, as well as long-term system reliability. The NYPSC must also understand the operation of the electric markets so that we can make informed decisions about mergers among market participants.

To carry out our statutory responsibilities, necessary information may include, for example, bid data, equipment availability and performance data, other operational data, and details about software logic. This information allows the NYPSC to understand the interrelationship among software, market design, tariff provisions, operating rules and bids, and to assess the efficiency of the system's operation.

The Commission's primary concern with providing information to state commissions appears to be related to confidentiality concerns. The Commission notes that "[p]ublic disclosure of certain information, such as participant-specific offers or cost data, could harm market participants or could facilitate collusion under some circumstances. The Commission

must therefore balance state concerns regarding information access with these countervailing confidentiality concerns."¹²

While the NYPSC shares the Commission's confidentiality concerns, there is no basis to limit access to information in states, such as New York, which maintain sufficient safeguards against public disclosure. For instance, New York's Public Service Law specifically prohibits "any employee or agent" of the NYPSC or Department of Public Service (DPS) from "divulg[ing] any confidential information."¹³ Further, any confidential information within the NYPSC's possession is treated as trade secret or confidential commercial information, and is thus exempt from public disclosure under the Freedom of Information Law.¹⁴ Moreover, we have developed protocols with the NYISO whereby a limited number of NYPSC

¹² Id.

¹³ Unauthorized disclosure of confidential information is a misdemeanor. N.Y. PUB. SERV. LAW §15 (McKinney 2000).

¹⁴ See N.Y. PUB. OFF. LAW §89(5)(a)(3) (McKinney 2000); see also Case 00-E-1380, Provision By The New York Independent System Operator, Inc., of Information and Data to Department Staff, Order Clarifying Information and Data to be Provided and Measures Regarding Protection of Confidential Information (issued August 23, 2000).

personnel may access confidential data, and most or all of the information remains in the possession of the NYISO.¹⁵

IV. The Responsiveness of RTOs and ISOs

The Commission Should Adopt Adequate Mechanisms To Ensure The Responsiveness Of RTOs and ISOs

In order to increase the responsiveness of RTOs/ISOs, the ANOPR suggests that a mechanism be implemented to ensure that customers and other stakeholders have effective direct access to the board of directors.¹⁶ The Commission also seeks comment on whether RTOs or ISOs could achieve better responsiveness through improvements in the areas of 1) executive management practices, 2) effective stakeholder processes, and 3) transparent budgeting processes.¹⁷

The NYISO has already adopted many of these suggestions. For example, the NYISO Management Committee includes a liaison subcommittee that meets periodically with the board of directors, so that different views on major issues may be exchanged directly with the board. In addition, the NYISO supports a robust stakeholder process that includes various

¹⁵ Market participants are routinely informed by the NYISO regarding the NYPSC's requests for access to confidential data, and are afforded an opportunity to object to such requests. To date, we are unaware of any objections being raised by market participants.

¹⁶ ANOPR at ¶148.

¹⁷ ANOPR at ¶156.

opportunities for market participants to present their positions during committee meetings, to propose and vote upon proposals, and to appeal committee decisions to the board of directors for further consideration. The NYISO's budgeting process also affords market participants with opportunities to present their positions, vote upon the proposed budget, and to raise concerns directly with the board of directors. These approaches have worked reasonably well thus far in New York.

CONCLUSION

The Commission should issue a Notice of Proposed Rulemaking in accordance 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: September 14, 2007
Albany, New York

CERTIFICATE OF SERVICE

I, David Drexler, do hereby certify that I will serve on September 14, 2007, 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 14, 2007
Albany, New York


David G. Drexler
David G. Drexler