

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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PUBLIC SERVICE COMMISSION

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Secretary

October 26, 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 No. ER04-449-016 - New York Independent
System Operator, Inc; New York Transmission
Owners

Dear Secretary Bose:

For filing, please find the Notice of Intervention and Protest 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,

A handwritten signature in black ink, appearing to read 'David G. Drexler', is written over a horizontal line.

David G. Drexler
Assistant Counsel

Attachment

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System)
Operator, Inc; New York) Docket No. ER04-449-016
Transmission Owners)

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

NOTICE OF INTERVENTION

On October 5, 2007, the New York Independent System Operator, Inc. (NYISO) and the New York Transmission Owners (collectively Petitioners) filed a proposal for implementing generator interconnection service with a deliverability component (Filing). The New York State Public Service Commission (NYPSC) hereby submits its Notice of Intervention and Protest in the above-captioned proceeding pursuant to the Federal Energy Regulatory Commission's (FERC or Commission) Combined Notice of Filings #1, issued October 12, 2007, and Rules 211 and 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	Howard Tarler Chief, Bulk Transmission System New York State Department of Public Service Three Empire State Plaza Albany, New York 12223-1350 howard_tarler@dps.state.ny.us
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BACKGROUND

In establishing standard interconnection procedures for generators larger than 20 MW, the Commission directed the provision of two levels of service, Energy Resource Interconnection Service (ERIS) and Network Resource Interconnection Service (NRIS).¹ ERIS service is for interconnection customers that only desire to transmit energy to the network. NRIS service is for customers that desire to use the additional infrastructure necessary to allow their energy to flow to multiple locations on the network.

Initially, Petitioners proposed a single interconnection service that combined elements of ERIS and NRIS, termed Network Access Interconnection Service (NAIS), which allowed the interconnection customer's power to flow onto the New York State transmission system. Although the proposal was approved, the Commission found that NAIS did not sufficiently address power flows to specific locations on the New York system, and therefore directed the NYISO to implement an NRIS

¹ RM02-1-000, Standardization of Generator Interconnections Agreements and Procedures, Order No. 2003, (issued July 24, 2003), order on reh'g, Order No. 2003-A (issued March 5, 2004), order on reh'g, Order No. 2003-B (issued December 20, 2004), order on reh'g, Order No. 2003-C (issued June 16, 2005).

service by offering a second level of interconnection service that incorporates a "deliverability component."²

INTRODUCTION

Petitioners' Filing proposes to implement ERIS. In addition, it would create a second level of generator interconnection service, referred to as Capacity Resource Interconnection Service (CRIS) within the New York Control Area (NYCA), to meet the NRIS requirement. CRIS would enable participation in the NYISO's Installed Capacity (ICAP), Energy, and Ancillary Services markets, while ERIS would limit generator participation to the last two markets.³ In order to qualify for CRIS, a generator must either: 1) be deemed "deliverable," or 2) fund, or commit to fund, transmission system upgrades necessary to make the generation deliverable.⁴

A generator is deemed "deliverable" if the NYISO determines that a generators' capacity is capable of being

² ER04-449-000, et al., New York Independent System Operator, Inc., Order Conditionally Accepting Large Generator Interconnection Procedures And Large Generator Interconnection Agreement, (issued August 6, 2004), order on reh'g, Order Denying Rehearing and Granting Request for Clarification (issued June 2, 2005).

³ Participation in ERIS would require compliance with the NYISO's current Minimum Interconnection Standard requirements.

⁴ Deliverability is broadly defined as the "ability to deliver the aggregate of NYCA capacity resources to the aggregate of the NYCA load under summer peak load conditions." Filing at 5.

delivered throughout the ICAP market or region in which the generator intends to participate.⁵ The Filing proposes to deem all existing generators "deliverable," and to allow such generators to transfer their capacity deliverability rights to new generators. Petitioners seek approval of this "conceptual framework" for their deliverability plan prior to developing specific tariff language implementing CRIS.

EXECUTIVE SUMMARY

The NYPSC is concerned that, in attempting to meet the Commission's directive, Petitioners' proposal inadvertently acts as a barrier to entry by requiring new entrants to pay for system upgrade costs whenever deliverability issues may arise, while effectively "grandfathering" existing generators and shielding them from any cost responsibility for deliverability. These upgrade costs may be significant, potentially rendering certain projects uneconomic and negating the intended purpose of the ICAP Demand Curves, by discouraging new entry that is more economically efficient and environmentally cleaner.

The Filing guarantees that existing generators, including less efficient and dirtier units, will continue to be eligible to receive ICAP payments, while new entrants that are

⁵ There are three separate ICAP markets/regions within the NYCA (i.e., New York City, Long Island, and Rest-of-State).

deemed undeliverable will be required to incur transmission upgrade costs in order to become eligible for those same ICAP payments. As an alternative, new entrants could pay whatever price an existing generator may charge for the rights to its "grandfathered" capacity deliverability rights, assuming the generator has rights available for transfer and is willing to sell them.⁶

Petitioners' proposed cost allocation methodology may also act as a barrier to new entry by forcing new entrants to pay for significant amounts of transmission capacity beyond what is required to achieve deliverability. While the Filing proposes that the cost to upgrade "highways" would be allocated to new entrants based on their proportionate share of project costs,⁷ new entrants would be required to pay the entire cost for upgrading "byways," even if the minimum upgrade size far exceeds the amount needed for deliverability.

Because the allocation of deliverability rights involves a limited and valuable resource, alternatives to merely

⁶ It is unlikely that a "market" for grandfathered rights can ever be established, since there will be a limited number of generators considering retirement at any one time, if at all. We also note that existing generators may refuse to sell their rights or demand an exorbitant price, which could raise concerns in New York City, where existing generators maintain control over many of the viable sites for generation.

⁷ Where a new entrant's share is 90 percent or more of the total size of the upgrade, the entire cost will be allocated to it.

giving those rights away to existing generators should be explored. For example, deliverability rights could be pro-rated among all generators that are located in a constrained area, thereby ensuring that all generators in that constrained area are deliverable to some extent and eligible to receive comparable ICAP payments.

Finally, the NYPSC is concerned that existing generators would continue to be eligible for ICAP payments, even though it is recognized there may be issues affecting deliverability from such generators.⁸ Although the significance of any such issues is uncertain, we seek to avoid a situation where ratepayers make payments for ICAP where the relevant capacity cannot be delivered. Alternatively, to the extent there are valid reasons to continue providing such ICAP payments, similar treatment should be considered for new generation. Therefore, the NYISO should be directed to quantify the extent to which existing ICAP supplies are undeliverable and to work with stakeholders to address any issues that may exist.

⁸ Filing, Attachment I at ¶5.

DISCUSSION

I. The Filing Creates Inappropriate Barriers To New Entry

The Filing would create barriers to new entry by providing existing generators with a windfall of "grandfathered" rights, while new entrants that are deemed undeliverable would be required to pay for system upgrades needed to allow for deliverability. Specifically, the Filing assumes that all existing generators can, in theory, deliver their capacity.⁹ Existing generators would be assigned deliverability rights, thereby guaranteeing their continued eligibility to receive ICAP payments. Further, existing generators would be allowed to transfer their assigned transmission capacity rights, under certain circumstances, in exchange for compensation.

In contrast, new entrants would be subjected to a deliverability analysis, and if the NYISO deems them undeliverable they would be required to pay for system upgrades in order to be eligible to receive ICAP payments. If those upgrades involve "byways," new entrants would be required to pay for the entire cost of the upgrade, even though the upgrade may yield significant amounts of transmission capacity beyond that required to achieve deliverability for the generator. Alternatively, new entrants could purchase transmission capacity

⁹ It is unclear whether all existing generators are in fact deliverable, which is discussed below.

rights assigned to existing generators, assuming those generators are eligible to transfer their rights and are willing to sell them at a price that does not prevent new entry.

The costs to upgrade the system or to purchase capacity deliverability rights may be significant, potentially rendering certain projects uneconomic. As a result, CRIS could act as a barrier to new entry. The additional costs imposed on new entrants could also negate the intended purpose of the ICAP Demand Curves, which is to create incentives that encourage new entry by providing ICAP payments to generators based upon the cost of constructing a new peaking unit. Because ICAP payments do not reflect the additional costs for system upgrades required under CRIS, new entrants would unlikely be willing to undertake significant cost investments associated with such upgrades.¹⁰ The unintended consequence of the Filing would be to favor existing generation that may be inefficient or dirty, at a time when New York is looking to add new generation resources that are more economically efficient and cleaner from an environmental viewpoint.

¹⁰ It would be inappropriate for ICAP payments to reflect the costs of required system upgrades, since those costs are specific to each individual project and cannot be estimated on a generic basis.

II. The Commission Should Direct Petitioners To Evaluate Alternatives That Avoid Barriers To New Entry

It is unclear from the Filing whether Petitioners evaluated alternatives to the proposed deliverability plan that would avoid creating new barriers to entry. For instance, there may be an option in which deliverability rights could be pro-rated among all generators located in a constrained area, thereby ensuring that all generators are deliverable to some extent and eligible to receive comparable ICAP payments.¹¹ Therefore, the Commission should direct Petitioners to evaluate other alternatives to assigning existing generators with "grandfathered" rights, or to explain why such a proposal is the best approach among the potential alternatives.

III. The Commission Should Direct The NYISO To Evaluate The Deliverability Of Existing Generators And Address Any Identified Issues

The Filing proposes an exemption for existing generators from the system upgrade requirements, yet acknowledges that the "pre-existing system...demonstrates deliverability issues."¹² Because the significance of such

¹¹ Providing ICAP payments to generators as a proportion of their capacity relative to total generating capacity multiplied by deliverable capacity would provide a level playing field for new and existing generators. A pro-rata reduction in capacity payments would also provide a capacity price signal to both new and existing generation in constrained areas that reflects the lower value of capacity in those areas, without the need to create a separate capacity sub-zone.

¹² Filing, Attachment I at ¶5.

deliverability issues is unknown, it is possible that ratepayers are not receiving the benefits of ICAP payments because some existing capacity related to those payments cannot be delivered as intended. Alternatively, assuming a de minimus amount of generation is undeliverable, or there are other valid reasons to continue providing ICAP payments, similar treatment should also be considered for new generation. The Commission should address this potential issue by directing the NYISO to evaluate and quantify the extent to which existing ICAP supplies are undeliverable, and to work with stakeholders to address any issues that are identified.

CONCLUSION

In accordance with the above discussion, the Commission should reject the Filing and direct Petitioners to modify their proposal to address the concerns raised herein. Although the Filing may, on its face, appear to satisfy the

Commission's directive to implement a deliverability component,
it would result in an unjust and unreasonable outcome.

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: October 26, 2007
Albany, New York

CERTIFICATE OF SERVICE

I, Ruth Tarrance, do hereby certify that I will serve on October 26, 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: October 26, 2007
Albany, New York


Ruth Tarrance