

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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PUBLIC SERVICE COMMISSION

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PETER MCGOWAN
Acting General Counsel

JACLYN A. BRILLING
Secretary

November 3, 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. EL09-4-000 - Independent Power Producers of New York, Inc., Astoria Generating Company, L.P. a US Power Generating Company, ConsumerPowerLine, Inc., East Coast Power, LLC, Energy Curtailment Specialists, Inc., NRG Energy, Inc., TC Ravenswood, LLC

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,

Handwritten signature of David G. Drexler.

David G. Drexler
Assistant Counsel

Attachment

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

Independent Power Producers of)	
New York, Inc.)	
Astoria Generating Company, L.P.)	
a US Power Generating Company)	
ConsumerPowerLine, Inc.)	Docket No. EL09-4-000
East Coast Power, LLC)	
Energy Curtailment Specialists, Inc.)	
NRG Energy, Inc.)	
TC Ravenswood, LLC)	

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

Pursuant the Federal Energy Regulatory Commission's (FERC or Commission) Notice of Complaint, issued October 14, 2008, and Rules 211 and 214 of the Commission's Rules of Practice and Procedure, the New York State Public Service Commission (NYPSC) hereby submits its Notice of Intervention and Protest in opposition to the Complaint filed by Independent Power Producers of New York, Inc., Astoria Generating Company, L.P. a US Power Generating Company, ConsumerPowerLine, Inc., East Coast Power, LLC, Energy Curtailment Specialists, Inc., NRG Energy, Inc., TC Ravenswood, LLC (collectively Petitioners).

Copies of all correspondence and pleadings should be addressed to:

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INTRODUCTION

Petitioners seek a 38.8% increase in the Installed Capacity (ICAP) Demand Curve for New York City (NYC) to account for the elimination of real property tax abatements for new electric generating facilities under the NYC Industrial and Commercial Incentive Program (ICIP). According to Petitioners, the current Demand Curves, which are set to expire in 2011, are producing rates that are unjust and unreasonable and prohibiting investments in new infrastructure.

DISCUSSION

The NYPSC opposes Petitioners' request for an increase in the NYC ICAP Demand Curve. Petitioners merely seek a windfall in ICAP revenues since the purported basis for increasing the Demand Curves -- the elimination of NYC ICIP tax abatements -- would not affect existing generation facilities, which will still receive tax abatements under the ICIP. Moreover, notwithstanding the elimination of the NYC ICIP for

new generation facilities, they may still be eligible for other offsetting benefits, such as NYC Industrial Development Authority funding.¹

Assuming arguendo, that new generating units will be forced to pay the full rate for NYC property taxes and would not receive any offsetting benefits, Petitioners' proposal to raise ICAP rates for existing generators, in order to cover property taxes that only new generators may be required to pay, raises important issues of economic efficiency, as well as fairness. In ideal markets, efficiency requires that suppliers of comparable products should be paid the same price. However, ideal markets presuppose that suppliers play by the same rules. Here, however, existing generators would continue to receive property tax abatements, while new generators might not receive the same benefits. If existing generation units receive higher ICAP payments to compensate for taxes that they do not have to pay, this will represent a windfall gain for existing units. Finally, although this issue should not be considered in this proceeding upon Petitioners' complaint, stakeholders should address it during the upcoming reset of the Demand Curve.

¹ The appropriate treatment of property taxes under NYC's unique programs should be addressed in the next update of the Demand Curves.

The adequacy of ICAP price signals, and the appropriateness of reflecting the elimination of ICIP tax abatements, should and will be addressed during the next update of the Demand Curves. The purpose for resetting the Demand Curve upon three year intervals is to reflect updated assumptions and inputs through an extensive stakeholder process. It would be inappropriate to prejudge the outcome of that process, which is provided for under the New York Independent System Operator, Inc. (NYISO) tariff, by circumventing it through an end-run complaint to the Commission.² Surely, there are other estimates of variables that have been used in setting the Demand Curve, which, in actuality, have deviated from the suggested forecasts. But the Petitioners select only one variable that will benefit them and seek a favorable update to the Demand Curve based on it.

The NYPSC is particularly concerned with the impact on ratepayers of increasing the current NYC Demand Curve given that it will merely amount to a windfall for existing generators. The NYISO estimates that including an additional tax component in the Demand Curve to reflect the elimination of the ICIP tax

² Pursuant to the NYISO's tariff, the NYISO is required to conduct a review every three years to determine appropriate parameters for the ICAP Demand Curves over the next three Capability Years. NYISO Services Tariff, §5.14.1(b), Sheet 157.

abatements could increase the net Cost-of-New-Entry by approximately 39%. As a result, market-clearing prices would be expected to increase by approximately the same percentage. The potential windfall to existing generators could amount to nearly \$100 million for 2008 and 2009, and exceed \$300 million beginning in 2010.³

The Commission should also reject Petitioners' argument that the existing NYC Demand Curve is "unjust and unreasonable" and therefore "unlawful."⁴ Petitioners appear to claim that they are being deprived of some right accorded under

³ The estimates assume 6000 MW of unhedged Unforced Capacity (UCAP) in NYC. For 2008, summer UCAP rates averaged about \$6/kW-month, so a 39% increase would result in an additional \$2.35/kW-month for six months. Applying this increase to 6000 MW yields \$86 million per year for 2008 and 2009. The projected shutdown of Poletti 1 by February 1, 2010 is expected to tighten the NYC market, increasing the NYC UCAP price to approximately the Demand Curve Reference Price (based on the Cost of New Entry). The reference price for summer 2010, is set at \$15.99/kW-month; increasing this by 39% yields an increase of \$6.24/kW-month, or an increase of about \$228 million over six summer months. In addition, winter UCAP prices would be expected to increase about \$2.95/kW-month (from \$7.55 to \$10.49), which would apply to about 6700 MW of unhedged winter supply; this would add another \$120 million over six winter months. The total increase for 2010 would thus be about \$348 million.

⁴ Petitioners' Complaint at p.2.

the law. However, such a claim should be rejected because there is no statutory entitlement to ICAP payments.⁵

Finally, the Commission should dismiss Petitioners' implication that unless the Demand Curve is increased immediately, investments in new resources needed to meet reliability needs could be discouraged. The anticipated in-service date for a new facility in NYC, however, is after the Demand Curve is scheduled for a reset.⁶ Moreover, the NYISO's 2008 Comprehensive Reliability Plan (CRP) indicates that adequate amounts of resources will be available to meet reliability needs through 2013.⁷ Furthermore, the NYISO's 2008 CRP does not rely upon any of the units that Petitioners claim are at risk if the Demand Curve is not revised upward prior to the reset. As a result, it is highly unlikely that new generation facilities will obtain compensation under the current Demand Curve for any significant period of time, if at all.

⁵ See, Sithe New England Holdings v. FERC, 308 F.3d 71, 77 (1st Cir. 2002) (indicating that ICAP payments "are simply not part of the compensation to sellers required by the [Federal Power Act]").

⁶ Due to construction lead-times, it is expected that no new large generation facilities will be coming on-line before the NYC demand curve is re-set in 2011.

⁷ We also note that the Draft 2009 RNA indicates that, under base case assumptions, New York State does not have bulk power system reliability needs during the study period from 2009 to 2018.

CONCLUSION

For the reasons discussed above, the Commission should deny Petitioners' Complaint.

Respectfully submitted,



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

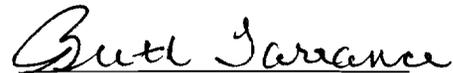
By: David G. Drexler
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(518) 473-8178

Dated: November 3, 2008
Albany, New York

CERTIFICATE OF SERVICE

I, Ruth Tarrance, do hereby certify that I will serve the foregoing Notice of Intervention and Protest 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: November 3, 2008
Albany, New York


Ruth Tarrance