

# STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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## PUBLIC SERVICE COMMISSION

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*Secretary*

December 2, 2008

SENT VIA ELECTRONIC FILING  
Honorable Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Room 1-A209  
Washington, D.C. 20426

Re: Docket Nos. EL07-39-005; ER08-695-003 - New York  
Independent System Operator, Inc.

Dear Secretary Bose:

For filing, please find the Protest 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, reading 'David G. Drexler'.

David G. Drexler  
Assistant Counsel

Attachments

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

New York Independent System                    )     Docket Nos. EL07-39-005  
Operator, Inc.                                    )                             ER08-695-003

**PROTEST OF THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NEW YORK**

Pursuant to Rule 211 of the Federal Energy Regulatory Commission's (FERC or Commission) Rules of Practice and Procedure, and the Commission's Notice of Extension of Time, issued November 13, 2008, the New York State Public Service Commission (NYPSC) hereby submits its Protest to the compliance filing submitted by the New York Independent System Operator, Inc. (NYISO) on October 30, 2008 (NYISO Compliance Filing).

**BACKGROUND**

On September 30, 2008, the Commission issued an Order directing the NYISO to modify certain market power mitigation measures applicable to suppliers of Installed Capacity (ICAP) in New York City (NYC).<sup>1</sup> Among other matters, the Commission directed the NYISO to file mitigation rules applicable to

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<sup>1</sup> New York Independent System Operator, Inc., Order on Rehearing and Further Order on Compliance Tariff Sheets, 124 FERC ¶61,301 (2008) (September 30, 2008 Order).

Special Case Resources (SCRs).<sup>2</sup> The NYISO's Compliance Filing responds to the Commission's directive by proposing tariff language for mitigating SCRs, including mandatory minimum bid requirements for new entrants in the NYC ICAP market. In particular, the NYISO proposes that the bid floor would include "any subsidies or other benefits...meant to encourage SCRs to provide capacity."<sup>3</sup> In addition, SCRs would be considered a "new entrant" if the SCR has not participated in the ICAP market for more than one year.

#### DISCUSSION

I. The Commission Should Not Impose A Bid Floor For Special Case Resources Based On The Incentives Such Resources May Receive

The NYISO's Compliance Filing proposes broad language for imposing mandatory bid floors on SCRs, which could be interpreted to include various State initiatives, as discussed below, that are designed to achieve the important policy

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<sup>2</sup> Special Case Resources refer to demand response providers that agree to curtail power usage when directed to do so by the NYISO. SCRs may curtail their usage by either reducing operations or by utilizing on-site generation to provide a portion of their power needs.

<sup>3</sup> NYISO Compliance Filing at p.6. The proposed tariff provision specifies that the bid floor would include "the monthly value of any payments or other benefits the [SCR] receives from a third party for providing [ICAP], or that is received by the Responsible Interface Party for the provision of [ICAP] by the [SCR]. See, proposed Attachment H, §4.5(g)(v).

objectives of bolstering reliability and reducing peak demand by increasing the availability of demand response resources. Given the broad nature of NYISO's proposed tariff revisions, we are concerned that the NYPSC's efforts to encourage and promote the use of demand response resources will be undermined.

Specifically, by imposing a bid floor that includes any incentives SCRs may receive, the NYISO's Compliance Filing will make it less likely that SCRs will either be selected by the NYISO as an ICAP provider or be willing to participate in the NYC ICAP market. As a result, the availability of these demand response providers, and their associated benefits, will be seriously jeopardized.

The Commission shares the NYPSC's goal of promoting demand response resources. As the Commission has correctly observed, "[e]ffective demand response can help reduce electric price volatility, mitigate generation market power, and enhance reliability."<sup>4</sup> SCR providers of ICAP in NYC may provide all of these benefits. Therefore, we ask the Commission to support our efforts to encourage demand response, by directing the NYISO to eliminate the proposed tariff language that would include, as part of the SCR bid floor, any payments or other benefits

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<sup>4</sup> See, <http://www.ferc.gov/industries/electric/indus-act/demand-response.asp>.

received from a third party in connection with providing ICAP.<sup>5</sup> This treatment for SCRs would further New York's policy objectives of promoting demand response resources, and is consistent with the type of exemption the Commission has expressed a willingness to consider.<sup>6</sup>

The NYPSC has been actively involved in the promotion of demand response resources, including resources that participate as SCRs. For example, the NYPSC has instituted a System Benefits Charge, collected from retail ratepayers, in order to fund public policy initiatives not expected to be adequately addressed by New York's competitive electricity markets, such as energy programs designed to achieve peak load reductions.<sup>7</sup> These programs have been primarily administered by the New York State Energy Research and Development Authority (NYSERDA), which offers, in part, rebates to cover the costs of meters and equipment upgrades for SCRs. To ensure that retail customers receive the benefits of the programs they have funded,

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<sup>5</sup> By eliminating this provision, the SCR bid floor would equal "the minimum monthly payment for providing [ICAP] payable by its Responsible Interface Party." See, proposed Attachment H, §4.5(g)(v).

<sup>6</sup> The Commission has indicated that "[t]he NYPSC may make a filing under section 206 of the FPA to justify a mitigation exemption for entry of new capacity that is required by a state-mandated requirement that furthers a specific legitimate state objective." September 30, 2008 Order at ¶38.

<sup>7</sup> See, <http://www.dps.state.ny.us/sbc.htm>.

these rebates are contingent on participation as an SCR.

However, requiring SCRs to include the value of any rebates they may receive from NYSEDA as part of a mandatory minimum bid, as the NYISO proposes, will threaten the availability of SCRs.

Moreover, the NYISO proposes to enforce the SCR bid floor requirement through an audit and penalty procedure, which would only be conducted after the monthly ICAP auction is held. As a result, SCRs would not even know what types of rebates or compensation the NYISO will determine constitutes "payments or other benefits" for ICAP until after the SCRs have opted to participate in the ICAP market.<sup>8</sup> Because SCRs would face significant penalties at that point, the risk of being fined would chill participation by the very types of demand response resources that the Commission and the NYPSC are trying to encourage.

Similarly, the NYPSC has undertaken efforts to reduce electricity demands on heavily loaded distribution networks in NYC during periods when relief is required, by compensating participants for load reductions made during local load relief periods designated by Consolidated Edison Company of New York,

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<sup>8</sup> See, proposed Attachment H, §4.5(g)(v).

Inc (Con Edison).<sup>9</sup> Unlike the rebates offered by NYSERDA, this compensation is not tied to participation as an SCR ICAP provider, as it is designed to provide load relief on the local distribution system, to avoid, or at least defer, the need for costly distribution system upgrades.<sup>10</sup> Nonetheless, some parties may inappropriately suggest that the NYISO's Compliance Filing should be interpreted to include this compensation as part of the bid floor. Such arguments should be rejected, because the payments are not made in connection with providing ICAP, but rather, are made to avoid the costs associated with upgrading the distribution system.<sup>11</sup>

In the event the Commission rejects our request to eliminate the proposed tariff language that would include any payments received from a third party as part of the SCR bid floor, we ask that the Commission clarify that Con Edison's DLRP

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<sup>9</sup> This program is commonly referred to as the Rider U - distribution load relief program (DLRP). See, NYPSC Case 07-E-0392 et al., Untitled Order (issued April 24, 2008).

<sup>10</sup> In recent years, several heavily loaded distribution lines in NYC have failed during heat waves, leading to lengthy blackouts. In response, Con Edison is investing in major distribution system upgrades, as well as demand response measures to reduce the risk of blackouts until the upgrades can be completed.

<sup>11</sup> ICAP suppliers connected at the bulk system level cannot provide load relief on the distribution system, and thus, would not qualify for payments under Con Edison's Rider U DLRP.

is not the type of compensation that is subject to the bid floor. Similarly, the Commission should clarify that any rebates provided by NYSERDA to cover the costs of meters and equipment upgrades for SCRs should not be included in the mandatory bid floor.

**II. The Commission Should Eliminate The Proposed Tariff Provision That Would Impose Mitigation Measures Upon Special Case Resources That Have Not Participated In The New York City Installed Capacity Market For More Than One Year**

The NYISO's Compliance Filing recognizes that SCRs "may leave and later reenter the capacity market," and suggests that after one year, "such reentry would in effect be a form of new entry."<sup>12</sup> Because the NYISO would consider these SCRs as new entrants, they would be subject to applicable mitigation measures. However, the NYISO provides no rationale for why an SCR would be a new entrant "in effect." In fact, these SCRs would have already entered the market, and the rationale for mitigating them in the first instance (i.e., to deter uneconomic entry) would no longer apply. Accordingly, there is no basis to treat these SCRs as new entrants, and the Commission should reject the NYISO's proposal to treat them as such.

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<sup>12</sup> NYISO Compliance Filing at p.5.

**CONCLUSION**

In accordance with the above discussion, the Commission should direct the NYISO to eliminate the proposed tariff provision that would include third-party payments made to SCRs in connection with ICAP, for purposes of setting a bid floor for SCRs. In addition, the Commission should direct the NYISO to eliminate the proposed tariff provision that would impose mitigation upon SCRs that have not participated in the ICAP market for more than one year.

Respectfully submitted,



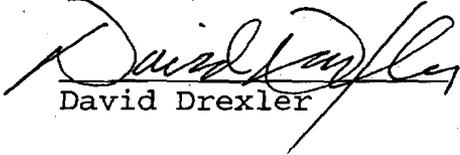
Peter McGowan  
General Counsel  
Public Service Commission  
of the State of New York

By: David G. Drexler  
Assistant Counsel  
3 Empire State Plaza  
Albany, NY 12223-1305  
(518) 473-8178

Dated: December 2, 2008  
Albany, New York

CERTIFICATE OF SERVICE

I, David Drexler, do hereby certify that I will serve on December 2, 2008, the foregoing 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.

  
David Drexler

Dated: December 2, 2008  
Albany, New York