

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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PUBLIC SERVICE COMMISSION

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December 19, 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 Motion to File Answer and Answer 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**

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

**MOTION TO FILE ANSWER AND ANSWER OF
THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NEW YORK**

INTRODUCTION AND SUMMARY

On October 5, 2007, the New York Independent System Operator, Inc. (NYISO) and the New York Transmission Owners (NYTOs) (collectively Petitioners) filed a proposal for implementing generator interconnection service with a deliverability component (Filing). The New York State Public Service Commission (NYPSC) submitted a Notice of Intervention and Protest (Protest) in response to the Filing on October 26, 2007. The NYISO, NYTOs, and Linden VFT, LLC (Linden) responded to the Protest in separate comments dated November 13, 2007.

This Answer responds to the NYISO, NYTOs, and Linden comments, where they argue that the proposal in the Filing to "grandfather" existing generators, by deeming them deliverable, is appropriate because it is consistent with existing circumstances under NYISO tariff provisions currently in effect. This argument lacks merit because it fails to recognize there is

no guarantee that the generators' production will actually be deliverable under existing rules. We also dispute the parties' claims that the proposal to create transferable deliverability rights will not erect a barrier to new entry. The parties have not presented any study or demonstration assessing the possibility that anticompetitive factors will hinder the transfer of deliverability rights and act as a barrier to entry.

MOTION TO FILE ANSWER

The NYPSC respectfully moves for leave to file this Answer pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission's (FERC or Commission) Rules of Practice and Procedure. Good cause exists to accept this Answer, which, as demonstrated below, contributes to the development of a complete and accurate record, provides useful information, and assists the Commission's understanding and deliberation on this matter. The Commission has granted motions to file supplemental comments on similar grounds,¹ and accordingly the Commission should grant the NYPSC's Motion to File Answer.

¹ See, Transcontinental Gas Pipe Line Corporation, 42 FERC ¶63,024 (issued March 2, 1988); AES Power, Inc., 69 FERC ¶61,345 (issued December 15, 1994); and Wyoming Interstate Company, Ltd., 91 FERC ¶63,014 (issued June 28, 2000).

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).² 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 a NRIS

² 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."³

Petitioners' Filing proposes to implement ERIS, and a second level of generator interconnection service, referred to as Capacity Resource Interconnection Service (CRIS), to meet the NRIS requirement. Generators selecting CRIS would be able to participate in the NYISO's Installed Capacity (ICAP), Energy, and Ancillary Services markets, while ERIS would limit generator participation to the last two markets.⁴ 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.⁵ However, the Filing goes beyond the Commission's directive to implement NRIS by deeming all existing generators "deliverable" (i.e., "grandfathering" them) and establishing a newly-created property right that

³ 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).

⁴ Participation in ERIS would require compliance with the NYISO's current Minimum Interconnection Standard requirements.

⁵ According to the Filing, a generator is deemed "deliverable" if the NYISO determines that a generators' capacity is capable of being delivered throughout the ICAP market or region in which the generator intends to participate. There are three separate ICAP markets/regions within the NYCA (i.e., New York City, Long Island, and Rest-of-State).

allows such generators to transfer their "capacity deliverability rights" to other generators seeking CRIS interconnection service.

The proposed "grandfathering" of existing generators, however, could act as a barrier to new entry by requiring new entrants seeking to obtain deliverability service to incur potentially significant system upgrade costs that would not be imposed on existing generators. Moreover, the proposal to create transferable "capacity deliverability rights" could result in anticompetitive behavior that would discourage new entrants. The potential for such behavior is a particular concern in New York City, where existing generators maintain control over many of the viable sites for generation, and could demand exorbitant prices for "deliverability rights" or refuse to sell them entirely.⁶

Because the allocation of deliverability rights amounts to the distribution of a limited and valuable resource, alternatives, to other than merely 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

⁶ It is unlikely that a "market" for deliverability rights can ever be established, since there will be a limited number of generators considering retirement at any one time, if at all.

all generators in that constrained area are deliverable to some extent and eligible to receive comparable ICAP payments. Such an approach would be analogous to the functioning of the ICAP spot market "Demand Curve," whereby additional ICAP beyond the amount needed to meet minimum resource adequacy standards is eligible to receive payments, although the price gradually declines as more ICAP is sold.

ANSWER

I. **The Commission Should Reject The Arguments That It Is Appropriate To Grandfather Existing Generators**

The NYTOs argue that "grandfathering" is appropriate because existing generators have relied upon provisions that allow them to participate in the relevant capacity markets," and "[r]evoking their *right to sell capacity* would create regulatory uncertainty, increase the cost of resources in the NYCA, and discourage needed investment."⁷ Linden makes similar arguments, maintaining "the necessity of grandfathering projects with settled investment expectations," and declaring that the interconnection rules under Attachment S of the NYISO's Open Access Transmission Tariff (OATT) compel the grandfathering of generation units interconnected under those rules.

⁷ NYTOs at p.6 (emphasis added).

Contrary to Linden and NYTOs' beliefs, neither the tariff provisions governing the capacity market nor interconnections under Attachment S guarantee the deliverability of existing generators or the right to sell ICAP. According to the capacity market rules, generators seeking to sell ICAP must bid their capacity into the ICAP market, and are only afforded the "right" to sell ICAP if selected because their bids clear the market. Petitioners have failed to present any evidence why new entrants should not be allowed to similarly compete for the right to sell ICAP, without having to incur transmission deliverability upgrade costs. Likewise, Petitioners have not demonstrated why it is necessary to "grandfather" existing generators and award them deliverability as a property right in order to achieve the Commission's objectives.⁸

Furthermore, Attachment S of the NYISO's OATT establishes the allocation of the costs of System Upgrade Facilities that are required for the reliable interconnection of facilities to the transmission system, in a manner that meets the "NYISO Minimum Interconnection Standard."⁹ However, the

⁸ To the extent deliverability problems arise, we suggested a possible approach whereby deliverability rights could be pro-rated among generators located in a constrained area. This would ensure that all generators are deliverable to some extent and eligible to receive comparable ICAP payments.

⁹ Attachment S, Sheet 659.

Minimum Interconnection Standard specifically excludes "any deliverability test or deliverability requirement on the proposed project," and therefore does not guarantee deliverability or even address the issue of deliverability.¹⁰ In light of this explicit language, Linden's arguments are untenable. There could not have been any expectation under Attachment S that an interconnecting generator would be deemed deliverable or would be entitled to "grandfathered" capacity deliverability rights.

II. The Commission Should Determine That There Is An Insufficient Basis To Conclude That "Grandfathering" Existing Generators Will Not Act As A Barrier To New Entry

The NYISO argues that the Filing will not create an undesirable barrier to entry, and points to a presentation prepared by the NYISO's Independent Market Advisor, Dr. David B. Patton, which concluded that "grandfathering the existing generators' deliverability rights satisfies the principle that the market should be designed to create efficient entry and retirement incentives."¹¹ Although the NYISO characterizes Dr. Patton's presentation as an "analysis," it merely presents a "simplified example" comparing suppliers' incentives under grandfathering to the incentives prorating would create. Absent

¹⁰ Attachment S, Sheet 657.

¹¹ NYISO at p.4.

from Dr. Patton's presentation is a study demonstrating that "grandfathering" existing generators and establishing transferable capacity deliverability rights would avoid creating new barriers to entry, including the potential for anticompetitive behavior.

The NYTOs similarly contend that allocating deliverability rights to existing generators "will not erect a barrier to entry" because the "pre-existing capacity deliverability rights are well defined and transferable."¹² The NYTOs claim that an existing generator "would simply sell" its deliverability rights to a new, more efficient generator, at a price "between the value that the existing generator assigns to those rights and the value that the new generator assigns to them, which would benefit them both."¹³ However, the NYTOs' claim fails to recognize that existing generators may consider factors, such as seeking to preclude competition with new entrants, in valuing their deliverability rights. Given these factors, the highest value of the deliverability rights to an existing generator could be to retain them, and force new entrants to incur system upgrade costs that could make a project uneconomical and prevent it from going forward. The existing

¹² NYTOs at p. 7.

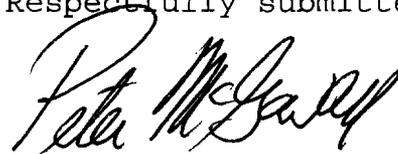
¹³ NYTOs at p. 7.

generator could thereby avoid competition. Accordingly, the Commission should find that Petitioners have failed to substantiate their argument that the Filing will not act as a barrier to new entry.

CONCLUSION

In accordance with the above discussion, the Commission should grant the NYPSC's Motion to File Answer and incorporate this Answer in its decision-making process.

Respectfully submitted,



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

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Dated: December 19, 2007
Albany, New York

CERTIFICATE OF SERVICE

I, Ruth Tarrance, do hereby certify that I will serve on December 19, 2007, the foregoing Motion to File Answer and Answer 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.


Ruth Tarrance

Dated: December 19, 2007
Albany, New York