STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: http://www.dps.state.ny.us

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August 24, 2001

Honorable David Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 1-A209
Washington, D.C. 20426

Re: Docket No.ER01-2076-000 - New York Independent System Operator, Inc.

Dear Secretary Boergers:

Enclosed for filing please find one original and fourteen copies of the Motion to File An Answer and Answer of the New York State Public Service Commission in the above-entitled proceedings. Please date stamp and return the enclosed extra copy of the Motion to File An Answer and Answer in the self-addressed, postage paid envelope provided. Should you have any questions, please feel free to contact me at (518) 473-8178.

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Very truly yours,

David G. Drexler
Assistant Counsel

Enclosures

UNITED STATE OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.) Docket No. ER01-2076-000

MOTION TO FILE ANSWER AND ANSWER OF THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK TO REQUESTS FOR REHEARING

On June 28, 2001, the Federal Energy Regulatory Commission (Commission or FERC) issued an Order accepting the New York Independent System Operator, Inc.'s (NYISO) revisions to its Market Administration and Control Areas Services Tariff, which incorporate an Automated Mitigation Procedure (AMP) into the NYISO's Market Mitigation Measures. Requests for rehearing were filed on July 27, 2001, by Keyspan-Ravenswood, Inc. (Keyspan) and on July 30, 2001, by Dynegy Power Marketing, Inc. (Dynegy) (collectively "petitioners"). Petitioners argued in their requests for rehearing that the Commission erred by not addressing the concerns raised in their original protests.

Although Rule 713 does not permit answers to requests for rehearing, the Commission has accepted pleadings for good cause, such as where the information will ensure a complete and accurate record. See Tennessee Gas Pipeline Company, 95 FERC ¶61,096 (2001) (allowing an answer to a request for rehearing in order to ensure a complete and accurate record). Pursuant to Rules 212 and 213, the Public Service Commission of the State of New York (NYPSC) hereby submits its motion to file an answer and answer to the requests for rehearing of the Commission's Order. Although the petitioners provide nothing new to the record or their arguments,[1] the NYPSC's answer will assist the Commission in ensuring a complete and accurate record.

We address petitioners' arguments that the AMP is indiscriminate, lacks adequate consultation with generators, and will discourage investment in new generation. As discussed below, the AMP is capable of discriminating between high prices caused by market power and those associated with scarcity. In addition, the AMP provides for extensive consultation between

[1] See Request for Rehearing of Dynegy Power Marketing, Inc., at pp. 3-4, (July 30, 2001) (hereinafter "Dynegy Request"). Dynegy cites several opinions from newspaper articles for the proposition that the AMP will discourage investment in new generation. However, these articles do not contain any facts and are not a basis for granting a request for rehearing. See id.

the NYISO and generators. Furthermore, the AMP has not deterred the construction of new generation. Accordingly, the Commission should deny the requests for rehearing.

1. The AMP is Capable of Discriminating Between High Prices Associated With Market Power and High Prices Associated With Scarcity

Petitioners argued that the AMP's potential deficiencies should have been addressed by the Commission in its AMP Order. In particular, Keyspan pointed to the Commission's statement that "the proposed AMP may mitigate bids in situations where market power is not the cause for high or volatile bids."[2] Likewise, Dynegy argued that the Commission should have addressed alleged flaws in the AMP.[3] The arguments raised by petitioners are not new.

The AMP is intended to mitigate high prices resulting from the exercise of market power, while allowing high prices that result from true scarcity. Recent occurrences, which are not part of the existing record, have validated that the AMP is functioning as intended. The extended heat wave that New York experienced from August 6, 2001 to August 10, 2001 (week of August 6-10), provides evidence that the AMP will allow high prices resulting from true scarcity, while mitigating when the AMP detects an attempted exercise of market power. On August 9, 2001, the hottest day of the week, with the AMP fully implemented and prepared to mitigate, true scarcity pushed Day-ahead prices to the $1,000 price cap for New York City and the Hudson Valley. However, the AMP did not mitigate, despite the enticement of the highest prices of the week, because the AMP properly recognized that the high prices were driven by scarcity and not by the exercise of market power.

The only day in which the AMP mitigated prices was on August 10, when Day-ahead prices reached approximately $300 after mitigation, despite a significantly lower load forecast than August 9, 2001. In fact, the forecast peak load for August 10 (30,004 MW) was lower than the forecast peak load for August 7 (30,995 MW) or August 8 (31,236 MW). Yet, the mitigated Day-ahead prices on August 10 were higher than the unmitigated Day-ahead prices for August 7, and comparable to the unmitigated Day-ahead prices of August 8. Thus, the AMP is

[2] New York Independent System Operator, Inc., 95 FERC ¶61,471 at p. 7 (2001) (hereinafter "AMP Order"); see also, Request of Keyspan-Ravenswood, Inc. for Rehearing or in the Alternative Limited Request for Modification, at p. 3, (July 30, 2001) (hereinafter "Keyspan Request").
[3] Dynegy Request at p. 2.

detecting and correcting for attempted market power as intended and mitigating prices to a reasonable level, but not mitigating when true scarcity is present.

2. The AMP Provides Adequate Consultation With Generators to Ensure Legitimate Conduct Does Not Trigger the AMP

Keyspan argued that the AMP Order should have addressed the Commission's concern "that the [AMP] may not provide for sufficient consultation with generators to reasonably establish that particular bids were attempts to exercise market power."[4] Similarly, Dynegy noted that there might be a variety of legitimate pro-competitive explanations for conduct, which would trigger the AMP.[5] It follows that adequate consultation would ensure that such legitimate conduct does not trigger the AMP.

As previously indicated by the NYISO, the Market Mitigation Measures provide that "if a Market Party anticipates submitting unusually high bids, it can consult with the NYISO in advance about the reasons for such bids…. [E]ach bidder is uniquely situated to inform the NYISO in advance if conditions have arisen that will legitimately cause its bids to exceed the conduct thresholds."[6] There is also "an opportunity for consultation after an initial determination has been made [by the NYISO] that mitigation appears to be appropriate."[7] In addition, the AMP provides that generators, which anticipate submitting unusually high bids, may consult with the NYISO regarding those bids in advance of being mitigated.[8]

Additional opportunities exist for generators to adjust their reference levels,[9] which are considered in triggering the AMP. For instance, there are "opportunities for each Market Party to consult with the NYISO…in determining the Market Party's reference levels."[10] The NYISO has indicated that "[p]rocedures will be established for a Market Party to consult with the NYISO on an on-going basis about changes in the factors used to determine that Market Party's reference levels."[11] These measures ensure adequate consultation between the NYISO and generators.

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[4] AMP Order at p. 7; see also, Keyspan Request at p. 3.
[5] Dynegy Request at pp. 11-14.
[6] Exigent Circumstances Filing of the NYISO at the Direction of its Board of Directors to Implement AMP, at pp. 5-6 (May 17, 2001) (hereinafter "NYISO Filing").
[7] Id. at p. 5
[8] Id. at pp. 5-7 (noting various opportunities for generators to consult with the NYISO).
[9] "Reference levels [are] determined primarily on the basis of the bidding behavior of the Market Parties under competitive market conditions." Id. at p. 6-7.
[10] Id. at p. 6. "Reference levels [are] determined primarily on the basis of the bidding behavior of the Market Parties under competitive market conditions." Id.
[11] Id.

3. The AMP Will Not Deter the Construction of New Generation

Keyspan argued that the AMP will have a "chilling effect…on the need for new generation."[12] Likewise, Dynegy claimed that the AMP will discourage investment in new electric generation.[13] While various market mitigation measures have been in place for more than a year, the New York State Board on Electric Generation Siting and the Environment (Siting Board) continues to receive numerous applications and pre-applications to construct new electric generation.[14] Since August 2000, two applications to construct a total of 1,080 MW, and four pre-applications to construct a total of 2,060 MW were filed with the Siting Board.[15] While it is unlikely that all pending proposals will be constructed, it is obvious that generators are not fleeing from New York, despite the imposition of mitigation measures.

CONCLUSION

The Commission should grant NYPSC's motion to file an answer based upon the facts stated above, which will contribute to a complete and accurate record. Furthermore, the Commission should deny petitioners' requests for rehearing given that the AMP is functioning as intended, provides sufficient opportunities for consultation with generators, and is not deterring construction of new generation.

Respectfully submitted,

Lawrence G. Malone
General Counsel

David G. Drexler
Assistant Counsel
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350
(518) 474-2510

Dated: August 24, 2001
Albany, New York

[12] Keyspan Request at p. 2.
[13] Dynegy Request at pp. 2-4.
[14] Article X of the New York Public Service Law requires that a pre-application report or preliminary scoping statement be filed with the Siting Board before an application may be submitted to construct and operate a electric generation facility that is capable of producing 80 MW or more.
[15] Prior to August 2000, the Siting Board received ten applications totaling 7,037 MW and five pre-applications totaling 3,205 MW.

CERTIFICATE OF SERVICE

I, Naomi Tague, do hereby certify that I will serve on August 24, 2001, the foregoing Motion and Answer of the Public Service Commission of the State of New York by depositing a copy thereof, first class postage prepaid, in the United States mail, properly addressed to each of the parties of record, indicated on the official service list compiled by the Secretary in this proceeding.

Date: August 24, 2001
Albany, New York

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Naomi Tague