

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Promotion of a More Efficient)
Capacity Release Market)

Docket No. RM08-1-001

COMMENTS OF THE
NEW YORK PUBLIC SERVICE COMMISSION SUPPORTING
PLEADINGS SUBMITTED BY THE NATIONAL GRID GAS DELIVERY COMPANIES
AND NATIONAL FUEL GAS DISTRIBUTION CORPORATION

The National Grid Gas Delivery Companies (“National Grid”) have requested clarification of the Commission’s order on rehearing issued November 21, 2008 in the captioned proceeding.¹ National Fuel Gas Distribution Corporation (“NFG”) seeks clarification, or in the alternative, rehearing or a limited waiver, of the same order. This pleading responds to those pleadings.²

Order No. 712 modified regulations to facilitate state retail access programs, by exempting capacity releases made under state-approved programs from the Commission’s capacity release tying and bidding requirements.³ “Re-releases made by marketers participating in [a state] retail access program” were excluded from the exemption (that is. the tying and

¹ 125 FERC ¶61,216 (2008) (Order 712-A).

² To the extent the Commission determines that the pleadings are in fact petitions for rehearing of the Order on Rehearing, the New York Public Service Commission seeks leave to file this pleading.

³ *Promotion of a More Efficient Capacity Release Market*, 73 Fed. Reg. 37058 (June 30, 2008), *FERC Statutes and Regulations* ¶ 31,271 (2008) (“Order No. 712”), *Order on Reh’g.*, 125 FERC ¶ 61,216 (November 21, 2008).

bidding proscription in the regulations applied to those transactions).⁴ A marketer sought clarification that a wholesale supplier that obtains capacity directly from an LDC as part of a state unbundling program, but who is not a marketer under that program, nevertheless qualifies for the tying and bidding exemption, but the Commission declined to clarify the order and invited the marketer to file separately for waiver of the restrictions on a case-by-case basis.⁵ Both National Grid and NFG seek clarification of that determination.

National Grid notes that the Commission has already exempted LDC releases of capacity to a marketer (which in turn release capacity to an asset manager) from the tying and bidding restrictions, so allowing the LDC to release capacity directly to the asset manager simply eliminates a middle man.

NFG asks that the Commission clarify that the prohibition against tying and bidding does not apply to releases by an LDC to a marketer when that marketer acts as an agent for a retail access marketer pursuant to state mandated retail access programs.

Order 712-A should be clarified to avoid hindering state retail access programs. The releases at issue are made to effect service to the very same customers for whose benefit the pipeline capacity was purchased by the releasing LDC, and in order to assure reliability of service to these customers the capacity should follow the customer load. Without the exemption, it will be more difficult for marketers to provide service to their end-use customers. The releases are reasonable for all the reasons the Commission established the exemption in Order 712, and

⁴ Order No. 712 at p. 200.

⁵ Order 712-A at p. 121.

requiring that the issue be resolved on a case by case basis does not foster the Commission's goals, and, in fact, harms state retail choice programs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter McGowan". The signature is written in a cursive style with a large, looping initial "P".

Peter McGowan
General Counsel,
New York Public Service Commission

Certificate of Service

I hereby certify that I have this day served the foregoing document on each person designated on the official compiled by the secretary in this proceeding.

Dated this 6th day of January, 2009.

A handwritten signature in black ink, appearing to read "Peter Catalano".

Peter Catalano,
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