

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

Green Mountain Energy Company)

Docket No. ER12-307-000

**MOTION TO INTERVENE AND COMMENTS OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

The New York Independent System Operator, Inc. (“NYISO”) moves to intervene in this proceeding and comment on the request of Green Mountain Energy Company (“Green Mountain”) for a limited, one-time waiver of the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”).¹ The requested waiver would authorize the NYISO to retract a penalty assessed against Green Mountain pursuant to Section 23.4.5.4 of Attachment H of the Services Tariff for its failure to offer 11.6 MWs in the ICAP Spot Market Auction for May 2011 and 9.7 MWs in the ICAP Spot Market Auction for June 2011. Green Mountain’s filing does not request any changes to the NYISO’s tariffs and does not propose any retroactive changes to market clearing prices.

I. Copies of Correspondence

Communications regarding this proceeding should be addressed to:

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¹ Unless otherwise specified, capitalized terms used in this filing have the meanings specified in the Services Tariff.

II. Comments

Section 23.4.5.4 of Attachment H requires that all Mitigated Unforced Capacity (“UCAP”) be offered in each ICAP Spot Market Auction. Section 23.4.5.4.2 specifies the penalty calculation for failure to offer Mitigated UCAP as follows:

If Mitigated UCAP is not offered or sold as specified above, the Responsible Market Party for such Installed Capacity Supplier shall pay the ISO an amount equal to the product of (A) 1.5 times the difference between the Market-Clearing Price for the New York City Locality in the ICAP Spot Market Auction with and without the inclusion of the Mitigated UCAP and (B) the total of (1) the amount of Mitigated UCAP not offered or sold as specified above, and (2) all other megawatts of Unforced Capacity in the New York City Locality under common Control with such Mitigated UCAP.²

Green Mountain’s failure to offer 11.6 MWs of Capacity in the May 2011 ICAP Spot Market Auction and 9.7 MWs of Capacity in the June 2011 ICAP Spot Market Auction resulted in the May auction clearing \$0.12/kW-M higher and the June auction clearing \$0.10/kW-M higher than they would have cleared had Green Mountain’s capacity been offered in the respective months. While the effect of Green Mountain’s failure to offer its Capacity had a *de minimis* market impact, the above-referenced tariff language in Section 23.4.5.4.2 does not afford the NYISO any discretion to consider any extenuating circumstances surrounding Green Mountain’s failure to offer 11.6 MWs of Capacity in the May 2011 ICAP Spot Market Auction or its failure to offer 9.7 MWs in the June 2011 ICAP Spot Market Auction. Rather, Section 23.4.5.4.2 requires the NYISO to assess a penalty in the amount of \$203,796 for the May 2011 ICAP Spot Market Auction and \$183,660 for the June 2011 ICAP Spot Market Auction. The NYISO therefore assessed a total penalty in the amount of \$387,456 against Green Mountain on September 2, 2011.

² See Services Tariff Attachment H Section 23.4.5.4.2.

Green Mountain asserts that its conduct in this instance was an inadvertent mistake and did not involve any intent on the part of Green Mountain or its affiliates to manipulate the NYISO market to the financial benefit of the NRG family of companies as evidenced by the fact that both Green Mountain and PML (and thus NRG as a whole) lost money. Green Mountain further asserts that NRG and Green Mountain have instituted controls to ensure that this situation will not arise again. After consulting with its independent Market Monitoring Unit, the NYISO accepts that the error was inadvertent and not an intentional attempt to withhold Capacity. The NYISO also accepts that Green Mountain has taken immediate steps to put in place appropriate controls. In light of such controls, as well as the inadvertent nature of the error and *de minimis* market impact, the NYISO does not oppose the relief requested in Green Mountain's request for a waiver.

Green Mountain also requested expedited treatment for its waiver filing. It cited the need for a decision prior to December 31, 2011 in order that any payment, if necessary, can be included in Green Mountain's year-end financial records. The NYISO does not oppose Green Mountain's request for expedited treatment.

III. Intervention

The NYISO is the independent body responsible for providing open access transmission service, maintaining reliability, and administering competitive wholesale markets for electricity, capacity, and ancillary services in New York State. Pursuant to its Commission-approved tariffs, the NYISO is also responsible for administering ICAP auctions, including auctions for New York City capacity. As described above, Attachment H of the NYISO's Services Tariff establishes market mitigation measures for certain New York City ICAP suppliers. Because Green Mountain is requesting a limited waiver of a NYISO tariff provision that would cause the

NYISO to return deficiency charge funds, the NYISO has a direct and substantial interest that cannot be adequately represented by any other party. Therefore, it should be permitted to intervene and have all the rights of a party.

IV. Conclusion

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully requests that the Commission grant the NYISO's motion to intervene in this proceeding. In addition, based on the specific facts, the NYISO does not oppose Green Mountain's request for a limited one-time waiver of Section 23.4.5.4.2 of the Services Tariff.

Respectfully submitted,

/s/ Sara B. Keegan

Sara B. Keegan
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New York Independent System Operator, Inc.

November 18, 2011