

**PUBLIC VERSION - HIGHLY SENSITIVE PROTECTED MATERIALS HAVE BEEN
REDACTED PURSUANT TO PROTECTIVE ORDER IN
FERC DOCKET NO. EL12-58-000 AND CONFIDENTIAL INFORMATION PURSUANT
TO 18 C.F.R. SECTION 388.112**

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

Astoria Generating Company, L.P.)	
Complainant)	
)	
v.)	Docket No. EL12-58-000
)	
New York Independent System Operator, Inc.)	
Respondent)	

ANSWER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

Pursuant to Rule 213¹ of the Commission's Rules of Practice and Procedure, the New York Independent System Operator ("NYISO") respectfully submits this answer to the April 20, 2012 complaint filed by Astoria Generating Company, L.P. ("AGC") in this proceeding ("Complaint"). AGC questions the NYISO's decisions to not issue Going-Forward Costs² ("GFCs") for its units for the March, April, and May Installed Capacity ("ICAP") Spot Market Auctions (the "GFC Determinations"). It asks the Commission to compel the NYISO to issue GFCs "for each of [its] units"³

The Complaint should be dismissed. AGC has failed to demonstrate that the NYISO violated its Services Tariff or otherwise acted unreasonably. AGC failed to provide all of the data requested by the NYISO and failed to satisfy concerns about the data that it did submit. In particular, AGC did not provide complete responses to the NYISO's questions regarding [REDACTED]

¹ 18 C.F.R. § 385.213 (2011).

² Terms with initial capitalization that are not otherwise defined herein shall have the meaning set forth in the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff"), and if not defined therein, in the NYISO's Open Access Transmission Tariff ("OATT").

³ Complaint at 1.

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[REDACTED] It also did not provide any requested data [REDACTED] in recent months. [REDACTED]

[REDACTED] Unit 20 and Unit 40 [REDACTED] are now mothballed and are not in the market. It is within AGC's control to remedy the deficiency regarding [REDACTED] by responding to outstanding data requests. If AGC were to provide complete information in support of future GFC requests for its remaining units, the NYISO would be prepared to issue GFCs under its currently effective tariff. The Complaint is therefore moot and there is no need for the relief that AGC requested.

In addition, the GFC Determinations were fully consistent with the Services Tariff. The NYISO has authority to not issue GFCs to an ICAP Supplier that does not submit adequate information in support of a GFC request. It was reasonable for the NYISO to exercise its authority in this case. Starting in February 2012, AGC did not provide complete and responsive data for [REDACTED] and provided no data for [REDACTED]. AGC made statements that appeared to be inconsistent with its earlier submissions and then failed to reconcile the discrepancies. AGC also stated that [REDACTED]

[REDACTED] These failures and changed information prevented the NYISO from determining whether AGC's claimed costs satisfied the Services Tariff's requirements for inclusion in GFCs. They could not be ignored or overridden by the fact that the NYISO previously issued GFCs to AGC. The GFC Determinations also had no impact on ICAP Spot Market Auction prices [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

The NYISO considered the views of Potomac Economics, Ltd., its independent Market Monitoring Unit ("MMU"), on the NYISO's implementation of the GFC rules and on the information submitted by AGC. The MMU agreed that AGC's February and March submissions⁴ were unacceptable, and supported the GFC Determinations.

I. COMMUNICATIONS

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⁴ AGC did not submit any information to the NYISO in April. Its last GFC-related submission was on March 23, 2012.

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II. STATEMENT OF FACTS

A. The GFC Rule Requirements

The GFC tariff provisions are part of the supplier-side market power mitigation measures that are applicable to ICAP Suppliers in New York City.⁵ Their purpose is to provide a “just and reasonable methodology for mitigating supplier market power, while maintaining revenue adequacy for suppliers.”⁶ GFCs are defined, in relevant part, as:

the costs, including but not limited to mandatory capital expenditures necessary to comply with federal or state environmental, safety or reliability requirements that must be met in order to supply Installed Capacity, net of anticipated energy and ancillary services revenues, as determined by the ISO as specified in Section 23.4.5.3, for each of the following instances, as applicable, of supplying Installed Capacity that could be avoided if an Installed Capacity Supplier otherwise capable of supplying Installed Capacity were either (1) to cease supplying Installed Capacity and Energy for a period of one year or more while retaining the ability to reenter such markets, or (2) to retire permanently from supplying Installed Capacity and Energy....⁷

The Services Tariff establishes that “the costs that an Installed Capacity Supplier would avoid as a result of retiring should only be included in its Going-Forward Costs if the owner or operator of that Installed Capacity Supplier actually plans to mothball or retire it if the Installed Capacity revenues it receives are not sufficient to cover those costs.”⁸

The Commission has said that “to be included as a going-forward cost, such a cost must not only be necessary to comply with federal or state regulations, but also must be necessary to make the unit available in the ICAP market.” Costs should not be included if they are “not

⁵ See Services Tariff Attachment H § Section 23.

⁶ *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,211 at P 32 (2008).

⁷ Services Tariff Attachment H § 23.2.1.

⁸ *Id.* at § 23.2.3.

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necessarily incurred in order to make a unit available in the spot ICAP market.” The “relevant costs in the calculation of going-forward costs are those costs that can be avoided if a unit is mothballed. . . .”⁹

B. The Issuance and Function of GFCs

An In-City ICAP Supplier may request that the NYISO determine its GFCs. “Pivotal Suppliers”¹⁰ that obtain GFCs have an opportunity to offer Mitigated UCAP in the ICAP Spot Market Auctions at a price higher than the UCAP Offer Reference Level.¹¹

The NYISO determines which ICAP Suppliers are Pivotal Suppliers each month, based on Control of “Unforced Capacity some portion of which is necessary to meet the New York City Locational Minimum Installed Capacity Requirement in an ICAP Spot Market Auction.”¹² A Pivotal Supplier for a given ICAP Spot Market Auction must offer Mitigated UCAP in the auction at or below the higher of the UCAP Offer Reference Level or its GFC. In other words, a Pivotal Supplier that is issued GFCs may offer to sell capacity at a higher price than otherwise would be permitted, although there is no guarantee that such an offer will clear.

⁹ *New York Independent System Operator, Inc.*, 124 FERC ¶61,301 at P 50 (2008).

¹⁰ A “Pivotal Supplier” is defined as “a Market Party that, together with any of its Affiliated Entities, (a) Controls 500 MW or more of Unforced Capacity, and (b) Controls Unforced Capacity some portion of which is necessary to meet the New York City Locational Minimum Installed Capacity Requirement in an ICAP Spot Market Auction.” *See* Services Tariff Attachment H at § 23.2.1.

¹¹ Services Tariff Attachment H § 23.4.5.2.

¹² *See id.* at § 23.2.1 definition of “Mitigated UCAP”.

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A request for a GFC determination must include a “submission showing the Installed Capacity Supplier’s relevant costs in accordance with specifications provided by the ISO.”¹³ A party that wishes to continue to receive GFCs must request updated determinations “not less often than annually.”¹⁴ The NYISO may also make an updated determination “at any time on its own initiative.”¹⁵ The Services Tariff requires that before issuing GFCs, the NYISO must be satisfied that the Installed Capacity Supplier: (i) actually intends to retire or mothball if it cannot recover certain costs, and (ii) the costs it submitted are costs that are truly avoidable if it retires or mothballs.¹⁶

C. AGC’s Failure to Support its GFC Requests for the March, April, and May ICAP Spot Market Auctions

In July 2011, AGC requested GFC determinations for “Unit 20,” “Unit 40,” and its other fifty-one generating units.¹⁷ For the October 2011 through February 2012 ICAP Spot Market Auctions, the NYISO issued GFCs for each of AGC’s units. Each of the NYISO’s GFC determination letters clearly stated that the NYISO would exercise its tariff authority to examine the GFC for each unit to apply to future ICAP Spot Market Auctions.¹⁸ The NYISO requested

¹³ See *id.* at § 23.4.5.3.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See Services Tariff Attachment H § 23.4.5.3 (stating that “The costs that an Installed Capacity Supplier would avoid as a result of retiring should only be included in its Going-Forward Costs if the owner or operator of that Installed Capacity Supplier actually plans to mothball or retire it if the Installed Capacity revenues it receives are not sufficient to cover those costs”).

¹⁷ See Complaint at Attachments C and D.

¹⁸ See *id.* at Attachment G - NYISO September 2011 Letter (stating that the NYISO would [REDACTED]).

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additional data from AGC to ensure that each GFC determination was based on accurate data and up-to-date information in accordance with the applicable tariff requirements. The NYISO analyzed all data provided in response to its requests, and issued updated GFC determinations each month as the Services Tariff expressly authorizes.

The NYISO's data requests repeatedly expressed concerns regarding AGC's inclusion of certain costs and inconsistent statements. For example, the NYISO's letters sent from October 2011 to January 2012 state that

[REDACTED]

¹⁹

On February 2, 10, and 13, 2012, prior to determining that it could not issue GFCs for the March 2012 ICAP Spot Market Auction, the NYISO requested additional information from AGC. The February 2 letter stated that the NYISO needed additional data [REDACTED]

[REDACTED]²⁰ The February 10 letter warned that the NYISO needed a [REDACTED] to the February 2 request, [REDACTED]

[REDACTED]; *see also*, Complaint at Attachment H - NYISO October 25, 2011 Letter, Attachment I - NYISO October 26, 2011 Letter, Attachment J - NYISO November 2011 Letter, Attachment K - NYISO December 2011 Letter, and Attachment L - NYISO January 2012 Letter.

¹⁹ *See, e.g.*, Complaint at Attachment H - NYISO October 25, 2011 Letter, Attachment I - NYISO October 26, 2011 Letter, Attachment J - NYISO November 2011 Letter, Attachment K - NYISO December 2011 Letter, and Attachment L - NYISO January 2012 Letter.

²⁰ *See* Letter from Joshua A. Boles to Mark R. Sudbey and Kiran Ramineni (dated February 2, 2012) ("February 2 Letter") (provided in Attachment 2, hereto).

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[REDACTED]²¹ The February 13

letter stated that [REDACTED]

[REDACTED]²²

In addition, the NYISO's communications noted that additional information was needed

[REDACTED]²³ [REDACTED]

[REDACTED]²⁴ With respect to [REDACTED]

[REDACTED]²⁵ It stated further that if

such measures [REDACTED]

[REDACTED]²⁶

[REDACTED]

[REDACTED]

Although AGC submitted responses on February 9 and 15, 2012, they failed to fully address the

NYISO's questions. They also raised additional questions. To illustrate, as part of its

February 9, 2012 response, AGC submitted an excerpt from the [REDACTED]

[REDACTED]

²¹ See Letter from Joshua A. Boles to Mark R. Sudbey and Kiran Ramineni (dated February 10, 2012) ("February 10 Letter") (provided in Attachment 3, hereto).

²² See Letter from Joshua A. Boles to Mark R. Sudbey and Kiran Ramineni (dated February 13, 2012) ("February 13 Letter") (provided in Attachment 4, hereto).

²³ February 2 Letter.

²⁴ February 10 Letter.

²⁵ February 13 Letter.

²⁶ *Id.*

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²⁷ The excerpt included, for the first time, statements about [REDACTED]

²⁸ The NYISO reasonably requested further information regarding [REDACTED]

²⁹ AGC's response in its February 15 submission was that [REDACTED]

³⁰ This answer left the NYISO uncertain as to whether [REDACTED]

AGC never clarified this point.

Because AGC failed to address the NYISO's concerns, the NYISO could not conclude that AGC's costs should still be eligible as GFCs under the Services Tariff. It therefore did not issue GFCs for the March, April, or May ICAP Spot Market Auctions. As the NYISO stated in

²⁷ See Excerpt from [REDACTED] included as an enclosure to the Letter from Mr. Liam T. Baker to Joshua A. Boles (dated February 9, 2012) (provided as Attachment 5, hereto).

²⁸ See Letter from Mr. Liam T. Baker to Joshua A. Boles (dated February 9, 2012) ("AGC February 9 Letter") (provided as Attachment 6, hereto) (stating that [REDACTED])

²⁹ See February 10 Letter at 3-4 (stating that [REDACTED])

³⁰ See Letter from Mr. Liam T. Baker to Joshua A. Boles (dated February 15, 2012) ("AGC February 15 Letter") (provided as Attachment 7, hereto).

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its February 17, 2012 Letter,³¹ [REDACTED]

[REDACTED]

[REDACTED] The February 17 Letter also informed AGC that the NYISO's had taken this action [REDACTED] and that the NYISO would not issue additional GFCs until complete responses were received.

Similarly, the NYISO's March 5, 2012 Letter³² explained that GFC determinations could not be issued until AGC responded to the NYISO's questions. Further, the March 5 Letter stated, [REDACTED]

[REDACTED]

[REDACTED] In its correspondence to AGC communicating the GFC Determinations, the NYISO was clear that it was still seeking additional information regarding [REDACTED]³³

On April 11 and 18, 2012, AGC notified the NYISO and the New York State Public Service Commission that it was immediately mothballing Unit 20 and Unit 40, respectively.³⁴ Pursuant to ICAP Manual § 4.4.12 those units can no longer participate in the ICAP market. As of the date of this answer, AGC has failed to reply to the February 2, February 13, and March 5 requests for additional information regarding its [REDACTED]

³¹ See Complaint at Attachment M - NYISO February 17, 2012 Letter.

³² See *id.* at Attachment N - NYISO March 5, 2012 Letter.

³³ See *id.* at Attachment M - NYISO February 17, 2012 Letter, Attachment P - NYISO March 20, 2012 Letter.

³⁴ Attachments 8 and 9 - April 11, 2012 Notice of Mothball Status of Astoria Generating Company and April 18, 2012 Notice of Mothball Status of Astoria Generating Company.

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III. ANSWER

**A. The Complaint Is Moot and Should Be Dismissed Because Units 20 and 40
Have Been Mothballed; the NYISO is Prepared to Determine GFCs for
AGC's [REDACTED] Under its Currently Effective Tariff if Future Requests
Are Supported by Complete Information**

As demonstrated above, a significant problem with AGC's data submissions was their inconsistent statements and failure to offer complete responses to questions regarding [REDACTED]

[REDACTED] The other major problem was AGC's refusal to provide any requested information on [REDACTED] in response to the NYISO's several data requests beginning in February 2012. It is wholly within AGC's control to remedy this deficiency. If AGC were to provide clear and complete responses to the NYISO's questions, the NYISO would be prepared to issue GFCs for [REDACTED] under its currently effective tariff.

Accordingly, the Complaint should be dismissed as moot. There is no need for the Commission to direct the NYISO to issue GFCs for units that have mothballed. Nor is there any reason for the Commission to direct the NYISO to issue GFCs that the NYISO is willing to issue if AGC provides the information necessary to determine updated values.

**B. The Services Tariff Authorizes the NYISO to Not Issue A GFC
Determination If Adequate Information Is Not Provided**

**1. The Commission Must Reject AGC's Assertion that the Tariff Requires
the NYISO to Issue GFCs Whenever an ICAP Supplier Provides Any
Supporting Information**

AGC claims that the Services Tariff requires the NYISO to issue GFCs whenever a party makes a request, no matter how deficient the supporting information. According to AGC, the

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tariff “commands” that GFCs be issued if a request is submitted at least fifty days in advance of the relevant ICAP Spot Market Auction and accompanied by any form of cost support.

This reading of the Services Tariff is not correct and it is not reasonable.³⁵ The Services Tariff is clear that the NYISO is to issue a GFC determination “provided” that the ICAP Supplier’s request is adequately supported. Specifically, Attachment H § 23.4.5.3 states that:

The Going-Forward Costs shall be determined by the ISO after consultation with the Responsible Market Party, provided such consultation is requested by the Responsible Market Party not later than 50 business days prior to the deadline for offers to sell Unforced Capacity in such auction, and *provided such request is supported by a submission showing the Installed Capacity Supplier’s relevant costs in accordance with specifications provided by the ISO.*³⁶

AGC claims that the tariff’s use of the word “shall” essentially deprives the NYISO of any ability to decline to issue GFC determinations.³⁷ This strained interpretation ignores the “provided such” clause which requires GFC requests to be supported in a manner that is satisfactory to the NYISO. Deficient replies do not satisfy the tariff requirement that triggers the NYISO’s obligation to issue GFCs. That same condition applies to information required by the NYISO in order to make “updated determinations.”

AGC’s claim that the NYISO has discretion to issue a “low” GFC, but not discretion to refuse to issue any GFCs, has no foundation in the tariff and must be rejected.³⁸ If the Commission were to adopt that interpretation, it would force the NYISO to issue GFCs, even if the requesting party failed to provide information that the NYISO needed to calculate, or update,

³⁵ See Complaint at 16-18.

³⁶ Services Tariff § 23.4.5.3 (emphasis added).

³⁷ See Complaint at 16.

³⁸ See *id.* at 17.

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GFCs. Moreover, it would require the NYISO to ignore the fact that various individual costs that might constitute an avoided cost in the event of a mothball or retirement are interdependent. Thus, AGC's suggested interpretation of the tariff is not reasonable.

2. The Services Tariff Clearly Authorizes the NYISO to Require ICAP Suppliers to Submit Information so that it May Make Updated GFC Determinations

AGC's contention that section 23.4.5.3, which provides that a party must request an updated GFC determination "not less than annually"³⁹ somehow precludes the NYISO from reconsidering GFC inputs each month must also be rejected. It is implausible for AGC to recognize the NYISO's authority to make updated determinations, but claim that the tariff requires the issuance of GFCs even where necessary information is not provided.

Further, adoption of AGC's interpretation would turn the meaning of the GFC provisions on their head. Attachment H section 23.4.5.3 states:

*A Responsible Market Party shall request an updated determination of an Installed Capacity Supplier's Going-Forward Costs not less often than annually, in the absence of which request the Installed Capacity Supplier's offer cap shall revert to the UCAP Offer Reference Level. An updated determination of Going-Forward Costs may be undertaken by the ISO at any time on its own initiative after consulting with the Responsible Market Party.*⁴⁰

Tariff interpretation requires that effect be given to every word, clause and sentence of the relevant tariff provisions.⁴¹ In this case, the Services Tariff clearly requires that a party must request an updated determination on "at least" (*i.e.*, no less frequently than) an annual basis.

³⁹ *Id.* at 11.

⁴⁰ Attachment H § 23.4.5.3 (emphasis added).

⁴¹ *Columbia Gas Transmission Corp., et al.*, 25 FERC ¶61,460 at p. 62,005 (1983) (footnotes omitted).

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This is not a limitation on the NYISO's authority to undertake an updated determination "at any time on its own initiative." Therefore, the Commission must reject AGC's claim that there is no tariff basis for the NYISO to issue revised GFCs more frequently than seasonally.

C. The GFC Determinations Were Reasonable

AGC essentially argues that because its submissions included a large amount of data, the submissions must have been sufficient to justify a GFC determination.⁴² The mere volume of these submissions did not mean, however, that they were responsive to the NYISO's requests for information needed to compute updated GFCs. As shown by the NYISO's questions in its August 26, 2011, October 7, 2011, October 14, 2011, November 8, 2011, December 9, 2011, February 2 and 10, 2012, and March 5, 2012 letters, AGC's submissions were not complete. Contrary to AGC's claims, deficiencies in its submissions raised material questions, many of which remain unresolved.

As evidenced by the letters attached to the Complaint, and the Attachments to this Answer, AGC repeatedly failed to submit, and was repeatedly informed that it had failed to submit, complete or satisfactory information. Its responses were often unclear, inconsistent, and in some cases, completely unresponsive. For example, AGC's February 9 response [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴² Complaint at 17-18.

⁴³ *Id.* at 17-18; *see also* AGC February 9 Letter.

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[REDACTED]⁴⁴ For [REDACTED]
[REDACTED]
[REDACTED]⁴⁵ [REDACTED]
[REDACTED]
[REDACTED]

As for [REDACTED] AGC provided no response to the NYISO's February 2012 or March 2012 requests. AGC's failure left pertinent questions unanswered. The information gap justified the NYISO declining to issue GFCs until its questions were addressed.

The NYISO was left in a position where it could not determine that the costs AGC was requesting to include satisfied the tariff requirement: "[t]he costs that an Installed Capacity Supplier would avoid as a result of retiring should only be included in its Going-Forward Costs if the owner or operator of that Installed Capacity Supplier actually plans to mothball or retire it if the Installed Capacity revenues it receives are not sufficient to cover those costs."⁴⁶ Accordingly, consistent with section 23.4.5.3 of the Services Tariff, the NYISO did not, and could not, issue GFCs to AGC for March, April, or May.⁴⁷ The NYISO is not authorized, and it would not be appropriate, to provide an opportunity for a Pivotal Supplier to offer capacity above the default offer cap (*i.e.*, the UCAP Offer Reference Level) if there is not a reasonable demonstration that the Services Tariff's requirements for issuing GFCs have been met.

⁴⁴ See AGC February 15 Letter.

⁴⁵ See Letter from Mr. Liam T. Baker to Joshua A. Boles (dated January 13, 2012) ("AGC January 13 Letter") (provided as Attachment 10, hereto).

⁴⁶ See Services Tariff Attachment H § 23.4.5.3.

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The NYISO consulted closely with the MMU throughout the review process, which culminated in the GFC Determinations. [REDACTED]

[REDACTED] The MMU agreed that AGC's February and March submissions were unacceptable, and supported the NYISO's refusal to issue GFCs for the March, April, and May ICAP Spot Market Auctions.⁴⁸

In short, AGC has not demonstrated that the GFC Determinations were somehow unreasonable, let alone that they represented an "abuse of discretion." The GFC Determinations were reasonable and consistent with the Services Tariff. Therefore, the Commission must reject the Complaint.

D. The GFC Determinations Were Not Inconsistent with the Issuance of GFCs to AGC in Earlier Months

The Commission must reject AGC's claim that the NYISO's issuance of GFCs for months prior to March somehow made the GFC Determinations unreasonable.⁴⁹ It is true that "the NYISO issued Going-Forward Costs for all [of AGC's] units for five consecutive ICAP Spot Market Auctions" and that those issuances were "almost all the same."⁵⁰ However, the circumstances and the information that was provided to the NYISO regarding [REDACTED] changed significantly between the time of the first determination of GFCs and February 2012.

As explained above, AGC indicated beginning in January, and its data submissions beginning February 9 included, significant changes and inconsistencies that necessarily prompted the NYISO to seek clarification and additional information. [REDACTED]

⁴⁸ AGC's last reply to the NYISO was submitted on March 23, 2012.

⁴⁹ Complaint at 19-20.

⁵⁰ *Id.* at 19.

[REDACTED]

[REDACTED]

[REDACTED] Contrary to AGC's claims, its failure to respond clearly represented "material changes in fact relevant to [AGC's GFC] costs . . ."⁵¹ that raised material questions that have yet to be answered.

AGC's contention that a supposed "course of performance" required the NYISO to continue to issue GFCs must also be rejected. As explained above, in January 2012 the NYISO learned of significant changed circumstances. Upon learning of those changes, the NYISO attempted to obtain additional information essential to its GFC analysis. However, AGC failed to provide the information to support its GFC request as required by the tariff.⁵² Thus, the Commission must reject AGC's claim that the NYISO's decision not to issue GFCs was unreasonable or inconsistent with any supposed "course of performance."

E. The NYISO's Refusal to Issue GFCs for AGC's Units Had No Impact on ICAP Spot Market Clearing Prices in the March, April, or May ICAP Spot Market Auctions

AGC states that:

[e]liminating the ability of suppliers to offer capacity into ICAP Spot Market Auctions at their Going-Forward Costs will artificially suppress clearing prices if and to the extent that they would offer capacity at those Going-Forward Costs and those Going-Forward Costs exceed the clearing price.⁵³

⁵¹ *Id.*

⁵² Additionally, AGC is wrong to suggest (*see* Complaint at n. 48) that the NYISO's refusal to issue GFCs beginning in March 2012 was the result of a change in its methodology. As explained above, AGC's failure to submit all requested information from February onward and changed circumstances were the reasons for the GFC Determinations.

⁵³ Complaint at 22.

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Although that statement may be correct in principle, it is not applicable to the context of this proceeding. The GFC Determinations did not “artificially suppress” prices in the ICAP Spot Market Auctions for March, April, or May. [REDACTED]

AGC has stated that it is a “Pivotal Supplier” during most months.⁵⁴ [REDACTED]

[REDACTED]⁵⁵

If AGC’s assertion was intended to create the impression that the NYISO has somehow “eliminated” the GFC provisions, it is inaccurate and misleading. The GFC Determinations were

⁵⁴ *Id.* at 2.

⁵⁵ See Services Tariff Attachment H at § 23.2.1.

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the result of deficiencies in AGC's data submissions. They in no way represent the "elimination" of the GFC mechanism. As stated above, the NYISO is prepared to issue GFCs under its currently effective tariff if requests for GFCs are supported by complete information.

IV. COMPLIANCE WITH COMMISSION RULE 213(c)(2)(i)

Attachment 1 to this Answer addresses the formal requirements of Commission Rule 213(c)(2) in order to ensure the NYISO's compliance with them.

V. SUPPORTING ATTACHMENTS⁵⁶

The NYISO attaches the following documents in support of the facts of this answer:

- Attachment 1 - Compliance with Commission Rule 213(c)(2)
- Attachment 2 - Letter from Joshua A. Boles to Mark R. Sudbey and Kiran Ramineni (dated February 2, 2012)
- Attachment 3 - Letter from Joshua A. Boles to Mark R. Sudbey and Kiran Ramineni (dated February 10, 2012)
- Attachment 4 - Letter from Joshua A. Boles to Mark R. Sudbey and Kiran Ramineni (dated February 13, 2012)
- Attachment 5 - Excerpt from [REDACTED] included as an enclosure to the Letter from Mr. Liam T. Baker to Joshua A. Boles (dated February 9, 2012)
- Attachment 6 - Letter from Mr. Liam T. Baker to Joshua A. Boles (dated February 9, 2012)
- Attachment 7 - Letter from Mr. Liam T. Baker to Joshua A. Boles (dated February 15, 2012)

⁵⁶ In the interest of limiting disclosure of Highly Sensitive Protected Materials, the NYISO has only attached additional materials that are necessary to respond to the Complaint. To the extent the Commission determines that it requires additional information, the NYISO has no objection to supplementing the record to include all attachments to the correspondence that are attached to this Answer.

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- Attachment 8 - April 11, 2012 Notice of Mothball Status of Astoria Generating Company for Unit 20
- Attachment 9 - April 18, 2012 Notice of Mothball Status of Astoria Generating Company for Unit 40
- Attachment 10 - Letter from Mr. Liam T. Baker to Joshua A. Boles (dated January 13, 2012)

VI. CONCLUSION

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc. ("NYISO"), respectfully requests that the Commission dismiss the Complaint and deny the relief sought by AGC.

Respectfully submitted,

/s/ Ted J. Murphy

Ted J. Murphy

Counsel to

the New York Independent System Operator, Inc.

May 21, 2012

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2011).

Dated at Washington, DC this 21st day of May, 2012.

By: /s/ Ted J. Murphy
Ted J. Murphy
Hunton & Williams LLP
2200 Pennsylvania Avenue, NW
Washington, D.C. 20037

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Attachment 1

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Compliance with Commission Rule 213(c)(2)

A. Specific Admissions and Denials of Material Allegations

In accordance with Commission Rule 213(c)(2)(i), to the extent practicable and to the best of the New York Independent System Operator, Inc.'s ("NYISO") knowledge and belief at this time, the NYISO admits or denies the factual allegations in the Complaint, as specified below. To the extent that any fact or allegation in the Complaint is not specifically admitted below, it is denied. Except as specifically stated herein, the NYISO does not admit any facts in the form or manner stated in the Complaint. Denials of allegations made in the text of the Complaint should be understood as encompassing all related allegations and assertions regarding the attachments accompanying the Complaint.

1. Denials

- The NYISO denies all allegations and characterizations that the decision to cease determining Going-Forward Cost ("GFCs") for Astoria Generating Company, L.P.'s ("AGC") generating units for the March, April and May 2012 ICAP Spot Market Auctions violated the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff"). (Complaint at 1, 15).
- The NYISO denies all allegations and characterizations that the Services Tariff does not include a requirement that a supplier must provide, in support of a GFC request, information that the NYISO determines satisfactorily supports the request. (Complaint at 16).
- The NYISO denies all allegations and characterizations that the decision to cease determining GFCs for AGC's generating units was an "abuse of discretion" under the Services Tariff. (Complaint at 19).
- The NYISO denies all allegations and characterizations that AGC's requests "unquestionably satisfied" the Services Tariff criteria. (Complaint at 17).
- The NYISO denies all allegations and characterizations that there were no material changes in fact relevant to AGC's GFC determinations between the February 2012 ICAP Spot Market Auction and the March 2012 ICAP Spot Market Auction. (Complaint at 3, 13, 19).
- The NYISO denies all allegations and characterizations that its decision to cease determining GFCs was unexplained or unjustified. (Complaint at 3, 13, 14).
- The NYISO denies all allegations and characterizations that it did not identify the additional information and clarifications that AGC was required to submit to support its requests for GFCs. (Complaint at 13, 14).

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- The NYISO denies all allegations that its requests for additional information regarding AGC's generating units were unclear. (Complaint at 13, 14).
- The NYISO denies all allegations and characterizations that its determination of GFCs for October 2011, November 2011, December 2011, January 2012 and February 2012 established a "course of performance" that required the NYISO to continue issuing GFCs or that demonstrated that the AGC GFC requests were satisfactory and met all tariff criteria. (Complaint at 18).
- The NYISO denies all allegations and characterizations that the NYISO could not have reasonably determined that AGC failed to provide satisfactory information for its GFC requests. (Complaint at 20, 21).
- The NYISO denies all allegations and characterizations that its decisions to not determine GFCs for AGC's generating units for March, April and May 2012 were "patently unreasonable." (Complaint at 20, 21).
- The NYISO denies all allegations and characterizations that GFC determinations must be issued unless the NYISO determined that each cost element included in the GFC determinations of each AGC generation unit was invalid. (Complaint at 20).
- The NYISO denies all allegations and characterizations that its reduction of GFCs for some of AGC's units in its GFC determinations was inappropriate. (Complaint at 20).
- The NYISO denies all allegations and characterizations regarding the causes of the July 2011 reduction in New York City capacity prices. (Complaint at 10 and fn. 31).
- The NYISO denies all allegations and characterizations that it is "[e]liminating the ability of suppliers to offer capacity into ICAP Spot Market Auctions at their [GFCs]." (Complaint at 22).

2. Admissions

- The NYISO admits that it provides open access transmission service, facilitates reliability services, and administers organized wholesale markets for electricity, capacity, and ancillary services in New York State pursuant to its OATT and Services Tariff. (Complaint at 5).
- The NYISO admits that its responsibilities under the Services Tariff include determining GFCs and administering monthly ICAP Spot Market Auctions. (Complaint at 5).
- The NYISO admits that the rules set forth in Attachment H of Services Tariff provide for the determination of GFCs by the NYISO. (Complaint at 2).

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- The NYISO admits that the Services Tariff provides it with discretion regarding GFC determinations and does not require the NYISO to “rubber-stamp” a supplier’s GFC claims. (Complaint at 17).
- The NYISO admits that AGC requested GFC determinations for its generating units beginning on July 8, 2011 and that such request was submitted more than 50 business days in advance of the deadlines for offers into the October 2011 Auction. (Complaint at 10, 17, 18).
- The NYISO admits that it determined GFCs for ICAP Spot Market Auctions beginning with October 2011 and through February 2012. (Complaint at 2, 11).
- The NYISO admits that it requested additional information and clarification from AGC regarding its requests for GFCs. (Complaint at 3, 10, 11).
- The NYISO admits that it reduced GFCs for two of AGC’s units because it believed that certain costs were overstated, beginning with the January 2012 Auction. (Complaint at 20).
- The NYISO admits that it made numerous additional requests for information to AGC, including one on March 5, 2012. (Complaint at 14).
- The NYISO admits that it made adjustments to GFC determinations applicable to prior beginning with the November 2011 Auction and that those adjustments concerned the GFCs for two of AGC’s generating units. (Complaint at 12, 13).
- The NYISO admits that prior to the ICAP Spot Market Auctions for March 2012, April 2012, and May 2012, it informed AGC that it would not be determining GFCs for AGC’s generating units for the respective auction. (Complaint at 13, 14).

B. Defenses

In accordance with Commission Rule 213(c)(2)(ii), the NYISO sets forth the following defenses.

- Complainants have failed to meet their burden of proof under section 206 and 306 of the FPA, and Commission Rule 206.
- The Complaint is moot and should be dismissed because Units 20 and 40 have been mothballed, and the NYISO is prepared to determine GFCs for AGC’s generating units if future requests are supported by complete information.
- Complainants have failed to show that the NYISO’s decisions not to determine GFCs for AGC’s generating units for March, April and May 2012 were inconsistent with the Services Tariff.

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- Complainants have failed to show the NYISO's decisions not to determine GFCs for AGC's generating units for March, April and May 2012 were unreasonable or represented an "abuse of discretion."
- Complainants have failed to show that the NYISO's decisions not to determine GFCs for AGC's generating units for March, April and May 2012 were inconsistent with the issuance of GFC determinations in prior months.

C. Proposed Resolution Process

Commission Rule 213(c)(4) states that an answer "is also required to describe the formal or consensual process it proposes for resolving the complaint." In compliance with that requirement, the NYISO requests that the Complaint be dismissed based solely on the pleadings in this proceeding.

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Attachment 2
Letter from Joshua A. Boles to
Mark R. Sudbey and Kiran Ramineni
Dated February 2, 2012

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Attachment 3
Letter from Joshua A. Boles to
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Attachment 4
Letter from Joshua A. Boles to
Mark R. Sudbey and Kiran Ramineni
Dated February 13, 2012

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Attachment 5

Excerpt included as enclosure to the Letter from Mr. Liam T.
Baker to Joshua A. Boles (dated February 9, 2012)

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Attachment 6
Letter from Mr. Liam T. Baker to Joshua A. Boles
Dated February 9, 2012

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Attachment 7
Letter from Mr. Liam T. Baker to Joshua A. Boles
Dated February 15, 2012

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Attachment 8
April 11, 2012 Notice of Mothball Status
of Astoria Generating Company for Unit 20

April 11, 2012

VIA ELECTRONIC MAIL

Mr. Ricardo Gonzales, Chief Operating Officer
New York Independent System Operator, Inc.
10 Krey Blvd.
Rensselaer, NY 12144

RE: Notice of Mothball Status of Astoria Generating Company, L.P.
Astoria Unit 20 PTID 24149
Nameplate Rating 180MW

Dear Mr. Gonzales:

This letter is to inform you that Astoria Generating Company, L.P. (the "Company") is placing its 180 MW Astoria Unit 20 (the "Unit" or "Unit 20") in NERC Mothball State status effective immediately.

By way of background, in August 2011, the Company requested that the New York Independent System Operator, Inc. (the "NYISO") conduct a reliability study for several generating units being considered by the Company for "mothballing". After receiving the results in early December 2011 that showed a de minimis impact of mothballing Unit 20, on December 14, 2011 the Company filed a notice of its intention to mothball the Unit with the New York Public Service Commission ("PSC").

Unit 20, of 1952 vintage, is one of the oldest steam generating units in New York having been retired in 1993 and subsequently restored and returned to the market in 2000. More recently based on a condition assessment performed by the company, it was decided that the Unit was unsafe to operate without completion of significant maintenance work. On January 31, 2012, the Company's internal assessment was confirmed by an independent engineering firm which recommended that, due to safety concerns and the possibility for significant equipment damage, the Unit turbine not be operated until: (i) a full condition assessment is completed; and (ii) any critical recommendations identified by the condition assessment are rectified.

As part of the mothball process, Con Edison conducted a more extensive reliability review and notified the Company on January 27, 2012 that through its analysis of its second phase of the reliability study with respect to the mothballing of Unit 20, it had identified substantial second contingency reliability problems associated with the mothballing of Unit 20 given the continued outage of Unit 40. On February 1, 2012 the Company met with New York State Department of Public Service ("DPS") staff to inform them of the Company's inability to bring the Unit back into service in the near term and offered them full cooperation in finding and implementing reliability solutions for the upcoming summer 2012 period. On February 10, 2012 the Unit's status was changed to a forced outage given the Company's conclusion of its internal assessment as described above.

The Company was notified by Con Edison and subsequently DPS staff that a temporary solution for the reliability problem had been identified. That temporary solution, while in place, occupies the Unit's point of interconnection. To facilitate this solution for summer 2012, the Company provided its point of interconnection at no cost to Con Edison. The Company has been notified by Con Edison that the solution will be in place in early May at which point the Unit will no longer be deliverable until such time as a permanent solution can be identified. As the NYISO is aware, the Company has worked closely with Con Edison to ensure that this temporary reliability solution was developed and in place by May.

While the 180-day PSC notification period does not conclude until June 11, 2012, under NERC reporting requirements (attached), 60 days after a unit is forced out if an affirmative decision to not repair the unit has been made, the unit status should be changed to mothball status and under the NYISO rules the unit may no longer provide capacity. The attached letter dated September 13, 2012 from Karen Gach regarding availability, albeit with respect to Unit 40 and for which we presume the NYISO's opinion would be the same for Unit 20, further states that "if at any point AGC (the Company) determines that it does not plan to perform repairs in order to return Unit 40 to service, and AGC continues to offer UCAP from Unit 40, AGC may be subject to a deficiency charge." Given this information, the cost of Unit repairs and the Company's forecast view of market prices, there is no legitimate economic justification for Unit 20 operation. Thus, the Company does not intend to repair the Unit at this time. Consistent with the NYISO's Installed Capacity Manual, a unit placed in a NERC Inactive State is not qualified to participate in the NYISO Installed Capacity Market. Accordingly, please remove the unit from the NYISO capacity market as well as the energy and ancillary service markets since the Unit will no longer qualify to be offered in the day ahead or real time markets or otherwise available to provide service.

In conclusion, the Company is therefore providing this notice of the Unit's unavailability (NERC Mothball State) and removal from the NYISO markets. We are also contemporaneously notifying the New York Public Service Commission of the Unit's NERC status by copy of this letter.

Sincerely,

Mark Sudbey
Chairman and CEO
US Power Generating Company

cc: Jaclyn Brilling (PSC)
Kevin Burke (Con-Ed)

Astoria Generating Company, L.P.

300 Atlantic Street, 5th Floor,
Stamford, CT 06901

T: 212.792.0800 / 203.614.0500

F: 212.792.0899 / 203.614.0599

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Attachment 9

**April 18, 2012 Notice of Mothball Status of
Astoria Generating Company for Unit 40**

April 18, 2012

VIA ELECTRONIC MAIL

Mr. Ricardo Gonzales, Chief Operating Officer
New York Independent System Operator, Inc.
10 Krey Blvd.
Rensselaer, NY 12144

RE: Notice of Mothball Status of Astoria Generating Company, L.P.
Astoria Unit 40 -- NYISO PTID 23517
Nameplate Rating 387 MW

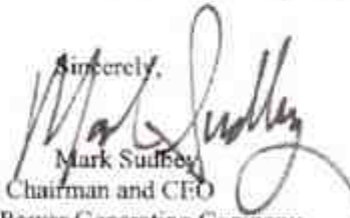
Dear Mr. Gonzales:

This letter is to inform you that Astoria Generating Company, L.P. (the "Company") is placing its 387 MW Astoria Unit 40 (the "Unit" or "Unit 40") in NERC Mothball State status effective immediately.

By way of background, on July 27, 2011, Unit 40 was placed on a forced outage following an explosion in the reheat section of the boiler. In August 2011, the Company requested that the New York Independent System Operator, Inc. (the "NYISO") conduct a reliability study for several generating units being considered by the Company for "mothballing," including Unit 40. After reviewing (i) the reliability study results in early December 2011 that showed that mothballing Unit 40 would have a de minimus impact, (ii) reports from independent contractors retained to identify the extent of the damage incurred and the estimated costs of repair and (iii) current projections of capacity market clearing prices, the Company filed a notice of its intention to mothball Unit 40 with the New York Public Service Commission ("PSC") on February 14, 2012.

The 180-day PSC notification period does not conclude until August 12, 2012. However, under NERC reporting requirements (attached), 60 days after a unit is forced out, the unit status should be changed to a Mothball State if an affirmative decision to not repair the unit is made. As reflected in the attached letter dated September 16, 2011 to the Company from Karen Gach, NYISO counsel, regarding Unit 40 availability, "if at any point AGC (the Company) determines that it does not plan to perform repairs in order to return Unit 40 to service, and AGC continues to offer UCAP from Unit 40, AGC may be subject to a deficiency charge." Based on the entirety of information that is currently available, including the cost of Unit repairs and the Company's forecast view of market clearing prices, there is no legitimate economic justification for Unit 40 operation at this time. Thus, the Company does not intend to repair the Unit at this time. Consistent with the NYISO's Installed Capacity Manual, a unit placed in a NERC Inactive State, which includes a Mothball State, is not qualified to participate in the NYISO capacity market. Accordingly, please remove Astoria Unit 40 from being designated as able to participate in the NYISO capacity market effective immediately. In addition, please remove Astoria Unit 40 from being designated as able to participate in the energy and ancillary service markets as well effective immediately since the Unit also will no longer qualify to be offered in the day ahead or real time markets or otherwise be available to provide service.

In conclusion, based upon the foregoing, the Company is therefore providing this notice of Astoria Unit 40's unavailability (NERC Mothball State) and removal from the NYISO markets. We are also contemporaneously notifying the New York Public Service Commission of the Astoria Unit 40's NERC Mothball State status by copy of this letter.

Sincerely,

Mark Sudbey
Chairman and CEO
US Power Generating Company

cc: Jaclyn Brilling (PSC)
Kevin Burke (Con-Ed)

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Attachment 10
Letter from Mr. Liam T. Baker to Joshua A. Boles
Dated January 13, 2012

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