

NYISO BOARD OF DIRECTORS' DECISION

ON

APPEAL OF THE MANAGEMENT COMMITTEE'S MAY 28, 2010 DECISION ADOPTING MITIGATION MEASURES THAT WILL APPLY TO REST-OF-STATE GENERATORS THAT ARE COMMITTED FOR RELIABILITY

JULY 29, 2010

INTRODUCTION

The Independent Power Producers of New York ("IPPNY") and TC Ravenswood ("Ravenswood") appeal from a Management Committee ("MC") decision to propose for filing under Section 205 of the Federal Power Act ("FPA"), revisions to the New York Independent System Operator, Inc.'s ("NYISO's") Market Mitigation Measures ("MMM")¹ that are designed to apply a tighter mitigation threshold to rest-of-state generators² at times when: (1) the generator is committed as a Day-Ahead Reliability Unit ("DARU") or via Supplemental Resource Evaluation ("SRE") for reliability, and (2) there is only one supplier that can solve the reliability need that the generator is being committed to address. Two Motions in Support³ and four Motions in Opposition⁴ to the appeals were filed. Oral argument was heard on July 19, 2010.⁵

For the reasons set forth below, the NYISO's Board of Directors ("Board") denies the appeal and directs the NYISO Staff to file the tariff provisions proposed by the MC with the Federal Energy Regulatory Commission ("FERC") pursuant to Section 205 of the Federal Power Act ("FPA"). The Board further directs the NYISO management to work with stakeholders in the governance process to (i) examine the Generation Owners' claims that existing cost recovery mechanisms are inadequate, and (ii) review the process by which permanent solutions to specific reliability needs are evaluated and planned for, particularly in terms of timing and cost to consumers.

¹ The NYISO's Market Mitigation Measures are set forth in Attachment H to the NYISO's Market Administration and Control Area Services Tariff.

² Rest-of-state generators include all generators located outside the New York City Constrained Area.

³ Motions in Support were submitted by AES and Indeck Energy Services, Inc.

⁴ Motions in Opposition were submitted by the New York State Department of Public Service Staff, Multiple Intervenors (a collection of large commercial and industrial customers), the New York State Consumer Protection Board, and the New York Transmission Owners (including the Long Island Power Authority and the New York Power Authority).

⁵ Mr. James D'Andrea presented on behalf of Ravenswood. Mr. Christopher LaRoc presented on behalf of IPPNY. Mr. Paul Gioia and Ms. Roxanne Maywalt presented on behalf of the New York Transmission Owners. Mr. Garrett Bissell presented on behalf of Multiple Intervenors.

SUMMARY OF APPEALS

IPPNY appeals the MC's failure to combine the reduced mitigation thresholds with measures that would provide generators committed for reliability the opportunity to earn adequate revenues to recover their fixed costs. IPPNY argues that the proposed mitigation measure will strip generators committed for reliability of the opportunity to recover their fixed costs in their energy offers, so the NYISO needs to develop a new mechanism to provide generators that are committed for reliability the opportunity for fixed cost recovery. Unless the NYISO's proposal includes an opportunity for reliability-committed generators to recover their fixed costs, IPPNY argues the proposal will not be just and reasonable. IPPNY requests that the Board direct the NYISO Staff to expeditiously develop measures to provide generators that are committed for reliability the opportunity to recover their fixed costs and submit both the proposed mitigation measures and the fixed cost recovery rules to the FERC together, as a comprehensive package.

Ravenswood's appeal suggests that uneconomic entry into the New York markets may be causing a disconnect between generator revenue requirements and market clearing prices, and asks that the Board direct the NYISO Staff to delay filing the proposed mitigation rules, and instead institute a process supervised by the Market Monitoring Unit to resolve energy pricing issues caused by uneconomic entry. In addition to its uneconomic entry arguments, Ravenswood questions what the appropriate rules should be for compensating generators that possess market power, but are required for reliability, and suggests some possible methods of arriving at a compensation mechanism.⁶

In addition to its appeal of the MC's decision, Ravenswood raises a concern regarding the stakeholder voting process, and requests that the Board and NYISO Staff review stakeholder governance and voting to evaluate whether the existing process truly provides all interests a fair say.

⁶ The Board considers this argument to be essentially the same argument IPPNY advances in its appeal.

BOARD DECISION

A. Denial of IPPNY's Appeal and Related Arguments by Ravenswood

The Board denies IPPNY's appeal. We conclude that it is not appropriate to delay the filing of MC-approved mitigation measures that address a recognized⁷ opportunity to exercise market power in the NYISO markets. Significantly, no party appears to object to the proposed mitigation measures intended to address the possible exercise of market power by generators that are committed for reliability. Instead, opponents argue that without some new mechanism to permit fixed cost recovery, generators may not be able to recoup sufficient revenues to support their continued operation. The asserted cost recovery concern could materialize if (i) a generator that is needed for reliability elects to retire, and (ii) the existing Open Access Transmission Tariff ("OATT") Attachment Y "Gap Solution" process and New York Public Service Commission ("PSC") procedures prove inadequate, or are not capable of being timely implemented.

IPPNY's assertion that no mechanism exists in New York to permit a generator that is needed for reliability to recover its fixed costs is inaccurate. Assuming a generator needed for reliability is not able to recover its fixed costs through the usual market mechanisms (*i.e.*, inframarginal energy and ancillary service revenues, and installed capacity payments) additional compensation for providing reliability service may be negotiated among the affected supplier, Transmission Owner and the PSC, consistent with Attachment Y to the NYISO's OATT.

Attachment Y authorizes the Board, in consultation with the New York Department of Public Service, to identify "an imminent threat to the reliability of the New York power system,"⁸ and to require the appropriate Transmission Owner or Owners to propose an appropriate "Gap Solution"⁹ outside the normal reliability planning cycle. Other entities, including the generator that has notified the NYISO of its intent to retire, can also submit proposed Gap Solutions. If a generator is needed to prevent an imminent threat to reliability, and would cease operations because its market revenues are insufficient, then the predicate for an Attachment Y Gap Solution would be met.

⁷ See *New York Independent System Operator, Inc.*, 131 FERC ¶ 61,169 at P. 101 (2010) ("We are concerned with the absence of a generally-applicable mitigation measure to address the exercise of market power in those instances where a generator is the only solution to a reliability need.... [W]e believe it may be appropriate for the NYISO to be authorized to immediately mitigate such conduct rather than having to not only investigate whether the conduct and impact thresholds of section 3.2.3 have been met ... but then delay mitigation by having to file a mitigation proposal under section 205.").

⁸ The NYISO's planning responsibilities under Attachment Y to its OATT extend to the "New York State Bulk Power Transmission Facilities."

⁹ A "Gap Solution" is defined in Attachment Y as: "A solution to a Reliability Need that is designed to be temporary and to strive to be compatible with permanent market-based proposals. A permanent regulated solution, if appropriate, may proceed in parallel with a Gap Solution." Gap Solutions may include generation, transmission or demand side resources.

The Attachment Y process anticipates that a Transmission Owner will contract to provide supplemental payments to a generator that is needed for reliability and that the PSC will authorize the necessary cost recovery by the Transmission Owner.¹⁰ The Board expects that, when and if needed, such payments will be made outside the NYISO's markets¹¹ and will permit a generator that is selected as a Gap Solution to recover sufficient revenues to remain in operation. The Board's expectation is consistent with Attachment Y, which contemplates that non-transmission Gap Solutions will receive "full and prompt recovery of all reasonably-incurred costs..."¹²

The compensation concerns that IPPNY raises have not been substantiated. Although it is theoretically possible that a generator that is needed for reliability may not be able to recover its fixed costs in the NYISO's markets, this situation is likely to be an anomaly, not the rule. The NYISO has never determined that a retiring generator's continued operation is needed for reliability, and no generator that the NYISO has temporarily operated for reliability has demonstrated that it is unable to recover its fixed costs. The NYISO's markets are designed to provide reasonable opportunities for generators to recover their fixed costs through inframarginal energy and ancillary service revenues and locational installed capacity payments. Nevertheless, the Board takes the Generation Owners' cost recovery concerns seriously.

The Board considers the on-going stakeholder review of the existing Attachment Y Gap Solution process to be an important effort. During these discussions, we expect that stakeholders will examine both the need to assure adequate and timely cost recovery for suppliers, and to assess whether transmission, demand-side or other permanent solutions may be more cost effective for consumers. We cannot overemphasize the need to adequately plan to address reliability concerns, for which "reliability must run" agreements may only represent a solution of last resort. Market signals which drive appropriate investments in generation, transmission or demand response are the preferred outcome.

Reasonable efforts to anticipate possible generator retirements should be part of the planning process, so the NYISO and the Transmission Owners will not be caught off-guard when a notice of retirement is submitted to the PSC. When a retirement notice is submitted, we expect that the cost of all viable alternative solutions will carefully be considered and compared to the cost of executing a reliability must run agreement with a generator. Based on its consideration of the proposed mitigation measure and the appeals, the Board identifies a series of objectives that it would like to see achieved by NYISO management, or through the stakeholder process, as set forth below.

¹⁰ Section 13.6 of Attachment Y provides for the recovery of the costs of Gap Solutions that are not transmission projects, including the funding of a reliability must-run arrangement with a generator. It explains that "[c]osts related to regulated non-transmission reliability projects will be recovered ... in accordance with the provisions of New York Public Service Law, New York Public Authorities Law, or other applicable state law." Section 13.6 also states that it does not affect FERC's jurisdiction over "the sale of electric energy and transmission service subject to [FERC's] jurisdiction."

¹¹ The payments will be subject to FERC's jurisdiction to the extent they involve a FERC-jurisdictional power sale. See *New York Independent System Operator, Inc.*, 132 FERC ¶ 61,028 at P. 21 (2010).

¹² See OATT Attachment Y, Section 31.4.4.3.

In summary, the Board finds no basis to grant IPPNY's request to delay the implementation of mitigation measures to address the potential exercise of market power by suppliers that must run for reliability in order to develop a mechanism to permit reliability-committed generators to recover their fixed costs. The concerns Ravenswood raises regarding compensation to generators that possess market power that are needed for reliability are addressed in our decision on IPPNY's appeal. The Board concludes that the NYISO should move forward with the Section 205 filing, consistent with the MC's May 28, 2010 recommendation.

B. Rejection of Ravenswood's Uneconomic Entry Concern

The Board rejects Ravenswood's uneconomic entry argument. Ravenswood's uneconomic entry concerns are, at best, tangentially related to the proposed Section 205 filing before the Board. To the extent Ravenswood is concerned with uneconomic entry in the NYISO's capacity markets, stakeholder discussions regarding capacity mitigation are underway. Ravenswood should first raise its concerns in that, more appropriate, forum.

C. Ravenswood Should Discuss its Concerns Regarding the Stakeholder Governance Process with Stakeholders

The Board also denies Ravenswood's request that it undertake a review of the NYISO's stakeholder governance process. As Ravenswood is undoubtedly aware, the Board reviews and approves each and every tariff amendment that the NYISO files under Section 205 of the FPA. The Board is aware of the nature and impact on particular market segments of the proposed tariff amendments it authorizes for filing, and finds no basis for concluding that there is a systematic bias against suppliers. The Board similarly finds no basis for concluding that the criteria for participation in the Other Suppliers sector must be revised at this time. We note that the Other Suppliers sector is open to an array of suppliers, including generation owners. Ravenswood's concern should properly be raised, in the first instance, for discussion in the NYISO's stakeholder governance process.

D. Board Objectives

Based on its consideration of the proposed mitigation measure, the appeals, Motions in Support and Motions in Opposition, and the helpful responses provided by the participants in the oral argument, the Board identifies a series of objectives that it would like to see achieved by NYISO management, or through the stakeholder process.

First, we direct NYISO management to explore methods of improving the transparency of costs that the NYISO incurs for the regular/repeated commitment of a generator for reliability. The Board believes that greater transparency in this area may lead to better solutions, which may ultimately inure to the benefit of New York ratepayers.

Second, we request that, in their continued discussions, NYISO management and stakeholders explore methods of developing a market-based signal that will more accurately reflect alternative costs of addressing regularly recurring reliability needs than permitting a generator to exercise market power, or using a mitigated offer.

Finally, we will require NYISO management to provide us with a report on *all parties'* positions put forth in the stakeholder process.

E. Denial of Appeals and Direction to Submit Section 205 Filing

For all of the foregoing reasons, and in full recognition of the concerns expressed above, the Board denies the IPPNY and Ravenswood appeals and directs the NYISO Staff to file the tariff provisions proposed by the MC with the Commission pursuant to Section 205 of the FPA. A dissenting opinion by one member of the NYISO Board, addressing one aspect of this decision is appended hereto.