

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

Consolidated Edison Company of New York,
Inc.

Docket No. ER08-45-000

**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 Consolidated Edison Company of New York, Inc. (“Con Edison”) request for a limited waiver of the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”).¹ The requested waiver would authorize the NYISO to return the deficiency charge assessed against Con Edison for its failure to offer its East River units 6 and 7 into the ICAP Spot Market Auction for October, 2006 because that failure did not harm the market or other Market Participants. Con Edison’s filing does not request any changes to the NYISO’s tariffs and does not propose any retroactive changes to market clearing prices.

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

I. Copies of Correspondence

Communications regarding this proceeding should be addressed to:

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*Designated for receipt of service.

II. Comments

Services Tariff Section 5.13.1 requires Con Edison to offer capacity from the East River units 6 and 7 in the ICAP Spot Market Auction if it has not already sold that capacity in an earlier auction:

Unforced Capacity associated with In-City generation that is subject to FERC-approved capacity market mitigation measures is required to be offered for sale in the ICAP Spot Market Auction to the extent that such Unforced Capacity has not sold in prior auctions for the Obligation Procurement Period.

Attachment H Section 4.5(b) identifies the East River units as generation subject to capacity market mitigation measures.² That provision also states that a “specified generator” that fails to

² Attachment H § 4.5(b) states that the “specified generators” subject to a bidding requirement are “Arthur Kill Units 2 and 3, the Arthur Kill Gas Turbine, the Astoria Gas Turbines, Ravenswood Units 1, 2 and 3, the Ravenswood Gas Turbines, Astoria Units 3, 4 and 5, the Gowanus Gas Turbines, the Narrows Gas Turbines, the East River Generating Station, and the Waterside Generating Station.”

offer is subject to a deficiency charge.³ The deficiency charge for failure to meet this requirement is equal to one and one-half times the applicable ICAP Spot Market Auction price, as specified in Section 5.14.2 of the Services Tariff. This tariff language does not afford the NYISO any discretion to consider any extenuating circumstances surrounding Con Edison's failure to offer East River units 6 and 7.

Con Edison indicated in its waiver filing that it did not submit an offer for capacity from its East River 6 and 7 facilities prior to 5:00 PM on September 25, 2006, the deadline for participating in the October 2006 ICAP Spot Market Auction. Without Con Edison's East River Capacity, the auction cleared at \$12.71. Con Edison asserts that if it had offered its East River units as price takers, both the resulting market clearing price of \$12.71 and the total number of MWs purchased would have stayed the same. The effect of Con Edison's failure to offer these units appears to be limited to another capacity supplier selling more than it otherwise would have. The auction-clearing price and the total MW cleared would not have changed. Thus, Con Edison asserts that its conduct in this instance had no effect on other buyers and only harmed Con Edison. The NYISO concurs in Con Edison's description of the effects of the failure to offer the East River capacity, and does not oppose Con Edison's request for a waiver under these circumstances.

Con Edison also requested expedited treatment for its waiver filing. It cited the need for a decision prior to the time the NYISO would distribute the deficiency charge funds. The

³ Attachment H § 4.5(c) states that: "In the event an In-City mitigated Generator, as specified above, fails to comply with the Unforced Capacity auction offer requirements in section 5.13.1 of the Services Tariff, the mitigated Generator will be required to pay to the ISO an amount equal to the ISO Capacity Deficiency Charge for such period times its rated capacity at the time of the divestiture."

NYISO believes that, given these facts, it would be appropriate for the Commission to order the NYISO to not distribute such funds until Con Edison's request is either granted or denied.

III. Intervention

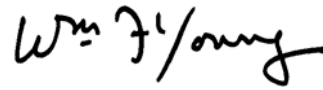
The NYISO is the independent body responsible for providing open access transmission service, maintaining reliability, and administering competitive wholesale markets for electricity, capacity, and ancillary services in New York State. Pursuant to its Commission-approved tariffs, the NYISO is also responsible 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 Con Edison 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, the NYISO does not oppose Con Edison's request for a limited tariff waiver.

Respectfully submitted,

A handwritten signature in black ink that reads "Wm F Young". The signature is written in a cursive style and is positioned above a horizontal line.

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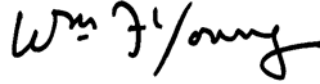
Counsel to the New York Independent System
Operator, Inc.

November 2, 2007

CERTIFICATE OF SERVICE

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

Dated at Washington, D.C. this 2nd day of November, 2007.



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