

May 16, 2008

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.,
Washington, DC 20426

Re: *New York Independent System Operator, Inc. v. Astoria Energy LLC*, Docket No. EL07-18-000

Dear Secretary Bose:

Pursuant to Rule 602 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2007), the New York Independent System Operator, Inc., Astoria Energy, LLC, and KeySpan-Ravenswood, LLC, (collectively, "Parties") hereby submit and support this Stipulation and Agreement of Settlement ("Settlement") in the captioned proceeding.

The Settlement is being submitted by the complainant, respondent, and one intervenor in this proceeding and resolves all the issues raised or that could have been raised in Docket No. EL07-18-000. The Parties state that this filing contains copies of or references to all documents relevant to this Settlement. Enclosed with this letter are: (a) an Explanatory Statement, (b) the Settlement, (c) a Certificate of Service; and (d) a Draft Order.

A copy of this filing is being served on all participants in the referenced proceedings. Pursuant to Rule 602(d)(2), comments on the Settlement are to be filed on or before June 5, 2008 and reply comments are to be filed on or before June 16, 2008, unless other dates are provided by the Commission. Pursuant to Rule 602(f)(3), any failure of a party in the above dockets or any failure of any other entity or person to file comments on this Settlement constitutes a waiver of all objections to the Settlement.

The Parties request that the Commission approve the Settlement, without modification or condition, as fair, reasonable and in the public interest.

The Honorable Kimberly D. Bose
Docket No. EL07-18-000
May 16, 2008
Page 2

Respectfully submitted,

/s/ James M. D'Andrea

James M. D'Andrea
Senior Counsel
KeySpan-Ravenswood, LLC
175 East Old Country Road
Hicksville, NY 11801
Telephone: (516) 545-4529
Email: jdandrea@keyspanenergy.com

*On behalf of
KeySpan-Ravenswood, LLC*

/s/ Leonard H. Singer

Leonard H. Singer, Esq.
Couch White, LLP
540 Broadway
P.O. Box 22222
Albany, NY 12201-2222
Telephone: (518) 320-3406
lsinger@couchwhite.com

On behalf of Astoria Energy, LLC

/s/ William F. Young

William F. Young
Hunton & Williams, LLP
1900 K Street, N.W.
Washington, DC 20006
Telephone: (202) 955-1500
Email: wyoung@hunton.com

*On behalf of the New York Independent
System Operator, Inc.*

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

New York Independent System Operator, Inc.)
)
 v.)
)
Astoria Energy LLC)

Docket No. EL07-18-000

EXPLANATORY STATEMENT

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.602, the New York Independent System Operator, Inc. (“NYISO”), Astoria Energy, LLC (“Astoria”), and KeySpan-Ravenswood, LLC, (“KeySpan”) (collectively, the “Parties”), hereby submit this Explanatory Statement in support of the Stipulation and Agreement of Settlement (“Settlement”) concurrently filed in the captioned docket. This Explanatory Statement is not intended to, and does not, alter any of the provisions in the Settlement.

The Settlement fully resolves all issues that were raised or could have been raised by all Parties with respect to the December 1, 2006 complaint filed by the NYISO against Astoria regarding alleged violations of the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”) provisions controlling the qualification of a unit’s ability to supply Installed Capacity (“ICAP”) and the Commission’s March 15, 2007 Order Denying Complaint,

in Docket No. EL07-18-000.¹ The Parties request that the Commission approve the Settlement, without modification or condition, as fair, reasonable and in the public interest.

BACKGROUND

On December 1, 2006, the NYISO filed a complaint against Astoria alleging that Astoria violated the Services Tariff provisions governing qualification as an ICAP Supplier. The NYISO argued that Astoria failed to adhere to the tariff standards for ICAP supplier qualification, while acknowledging that the NYISO staff provided erroneous information to Astoria relating to the applicable Services Tariff standards. The NYISO argued that neither the Services Tariff nor the ICAP Manual permitted Astoria to submit nameplate capacity to qualify as an ICAP Supplier, that Astoria had therefore committed more capacity than it was qualified to supply, and that as a result Astoria was deficient in the amount it claimed to be able to supply. The NYISO requested that the Commission require Astoria to conform to the NYISO's Services Tariff requirements to qualify as an ICAP Supplier and place affected Market Participants in the position they would have been in if Astoria had adhered to the tariff standards for ICAP certification. The NYISO requested that the Commission exercise its remedial discretion and authorize a waiver of the Services Tariff to limit the deficiency charge that should be assessed against Astoria to the market clearing price.

On March 15, 2007, the Commission denied the complaint with respect to both capacity certification and the NYISO's request for waiver of the Services Tariff provision regarding deficiency charges ("March 15 Order").² The Commission found that the relevant provisions

¹ Unless otherwise stated, capitalized terms used herein have the meanings specified in the Services Tariff.

² *New York Indep. Sys. Operator, Inc. v. Astoria Energy LLC*, 118 FERC ¶ 61,216 (2007).

of the Services Tariff were ambiguous and that Astoria's interpretation of the ICAP Supplier requirements was reasonable and not inconsistent with the Services Tariff. The Commission also found that Astoria was required to pay to the NYISO the full deficiency charge if it failed to provide the amount of capacity it claimed to be able to sell for the month of May 2006. The Commission concluded that to the extent that the NYISO uses the deficiency charge funds to pay for capacity procured because of the shortfall, the generator providing the capacity due to the shortfall would be fully reimbursed from the deficiency charge and the remaining amount may be rebated, with interest, among all LSEs in proportion to their share of minimum ICAP requirements.

Requests for rehearing or clarification of the Commission's March 15 Order were filed by Astoria on April 13, 2007 and the NYISO and KeySpan on April 16, 2007. The New York Municipal Power Agency ("NYMPA") filed a Motion for Leave to File Answer and Answer on May 10, 2007, making certain assertions about the distribution of any remaining amount from a deficiency charge beyond that used to reimburse another supplier. On May 14, 2007 the Commission issued an Order Granting Rehearing for Further Consideration, but to date the Commission has not taken any further action in this proceeding.

By its terms, the Settlement resolves all issues that were raised or that could have been raised by all Parties in Docket No. EL07-18-000.

THE STIPULATION AND AGREEMENT OF SETTLEMENT

In Section One, Astoria agrees to pay the amount of \$1,534,257.07 to KeySpan within 30 calendar days of the Settlement becoming effective. The Parties also agree that Astoria's payment of this amount does not constitute an admission as to the value of capacity supplied by any party or any shortfall or obligation to supply that capacity. The Parties also agree that the

foregoing amount will operate in settlement of any penalty, deficiency charge, or financial sanction related to the performance of Astoria's units during the month of May 2006 that might otherwise be assessed against Astoria Energy by the NYISO. Since no amount will be collected by the NYISO above the amount paid to the alternate supplier that assertedly would have sold capacity, the settlement renders moot the issue raised by NYMPA.

In Section Two, the Parties agree that the NYISO will seek and the other Parties will support modifications to the NYISO's Services Tariff or ICAP Manual, as appropriate, to provide that new units must perform a DMNC test and comply with all other requirements in the ISO Procedures to qualify as an ICAP Supplier.

In Section Three, the Parties provide for the resolution of miscellaneous issues, including the effective date of the Settlement, which will occur on the date of issuance of a Commission order approving the Settlement without modification or condition or the date upon which all Parties have filed a notice with the Commission agreeing to any modifications or conditions. The Parties also agree that the Settlement will not limit or restrict the arguments that the Parties may put forth or the positions the Parties may take in any other proceeding before the Commission, except as to the matters that were or could have been raised in Docket No. EL07-18-000, and that the Parties retain their rights under Sections 205 and 206 of the Federal Power Act, 16 U.S.C. §§ 824d, 824e. The Parties also agree that the Settlement resolves all issues raised, or that could have been raised, by any person, whether or not they are signatories to the Settlement, in Docket No. EL07-18-000.

INFORMATION REQUIRED BY THE COMMISSION

A. Issues Underlying The Settlement And The Major Implications

The procedural history of this proceeding and the issues in dispute in this case are described above. The Settlement resolves all issues that were raised or could have been raised in Docket Nos. EL07-18-000 by any party or any other entity or person in the above docket.

B. Policy Implications

The Settlement does not raise policy implications.

C. Whether Other Pending Cases May Be Affected

The Settlement does not affect any other cases pending before the Commission. As described above, the Settlement resolves all issues raised only in Docket No. EL07-18-000.

D. Whether The Settlement Involves Issues Of First Impression

The Settlement does not involve any issues of first impression.

E. Whether There Are Any Previous Reversals On The Issues Involved

There are no previous reversals on the issues addressed in the Settlement.

F. The Standard of Review

The standard of review for changes to any section of the Settlement proposed by a party, a non-party or the Commission acting *sua sponte* shall be the just and reasonable standard of review.

CONCLUSION

The Parties believe that the Settlement represents a fair and reasonable resolution of the issues in this proceeding and urge the Commission to approve it expeditiously.

Dated: May 16, 2008

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

New York Independent System Operator, Inc.)
)
 v.)
)
 Astoria Energy LLC)

Docket No. EL07-18-000

STIPULATION AND AGREEMENT OF SETTLEMENT

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.602 (2007), the New York Independent System Operator, Inc. (“NYISO”), Astoria Energy, LLC (“Astoria”), and KeySpan-Ravenswood, LLC, (“KeySpan”) (collectively, “Parties”), hereby submit this Stipulation and Agreement of Settlement (“Settlement”), fully resolving all disputed issues in Docket Nos. EL07-18-000. This Settlement resolves all issues with respect to the December 1, 2006 complaint filed by the NYISO in Docket No. EL07-18-000. As this Settlement is fair and reasonable and in the public interest, the Parties urge prompt approval without condition or modification.

BACKGROUND

On December 1, 2006, the NYISO filed a complaint against Astoria alleging that Astoria violated the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”).³ The NYISO requested that the Commission require Astoria to conform to the Services Tariff requirements to qualify as an ICAP supplier and place affected Market

³ Unless otherwise stated, capitalized terms used herein have the meanings specified in the Services Tariff.

Participants in the position they would have been in if Astoria had adhered to the tariff standards for ICAP certification. The NYISO requested that the Commission exercise its remedial discretion and authorize a waiver of the Services Tariff to limit the deficiency charge to the market clearing price.

On March 15, 2007, the Commission denied the complaint (“March 15 Order”),⁴ but found that Astoria was required to pay to the NYISO a full deficiency charge if it failed to provide the necessary amount of capacity for the month of May 2006.

Requests for rehearing or clarification of the Commission’s March 15 Order were filed by Astoria on April 13, 2007 and the NYISO and KeySpan on April 16, 2007. On May 14, 2007 the Commission granted the rehearing requests for purposes of further consideration, but to date the Commission has not taken any further action in this proceeding.

SECTION ONE OFFER OF SETTLEMENT

- 1.1 Astoria agrees to pay the amount of \$1,534,257.07 (the “Settlement Amount”) to KeySpan within thirty (30) calendar days of the date this Settlement becomes effective pursuant to sections 3.1 and 3.2 of this Agreement.
- 1.2 The Parties agree that payment of the Settlement Amount does not constitute an admission by any party that any default, shortfall, or deficiency occurred.
- 1.3 The Parties agree that the Settlement Amount does not constitute an admission as to the value of capacity supplied by any party or any shortfall or obligation to supply such capacity.

⁴ *New York Indep. Sys. Operator, Inc. v. Astoria Energy LLC*, 118 FERC ¶ 61,216 (2007).

- 1.5 The Parties agree that the Settlement Amount will operate in settlement of any penalty, deficiency charge, or financial sanction related to the performance of Astoria's units, PTID Nos. 323581 and 323582, during the month of May 2006 that might otherwise be assessed Astoria Energy by the NYISO.
- 1.6 Astoria and KeySpan each agree to release, acquit and forever discharge any and all claims, causes of action or liabilities of any nature whatsoever that it has, ever had, could assert, could have asserted, or hereafter may have against the NYISO, its directors, officers, employees or agents, for any action or omission of the foregoing arising out of or relating to the complaint in Docket No. EL07-18-000 or any act or omission described therein. All "claims and liabilities" as used herein means (a) any right to damages or other payment, whether reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, (b) any right to injunctive or any other form of relief that could be granted by statute, regulation or order by any state or federal agency or court, (c) any and all costs, expenses, actions, causes of action, suits, judgments, controversies, damages, claims, liabilities or demands of any nature, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, liquidated or unliquidated, matured or unmatured, contingent or direct, whether arising at common law, in equity, or under any statute, regulation or order, based in whole or in part upon any act or omission of the NYISO or its directors, officers, employees or agents arising out of, relating to or described in the complaint in Docket No. EL07-18-000.

**SECTION TWO
NYISO PROCEDURES**

- 2.1 Parties agree that the NYISO shall seek and all other Parties shall support modification of the Market Administration and Control Area Services Tariff or the ICAP Manual, as appropriate, to provide that new units must perform a DMNC test and comply with all other requirements in NYISO procedures prior to qualifying as an ICAP Supplier.

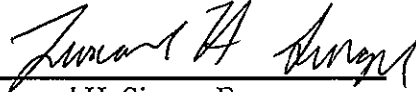
**SECTION THREE
GENERAL SETTLEMENT PROVISIONS**

- 3.1 This Settlement shall become effective upon issuance by the Commission of an order approving this Settlement without modification or condition or, if modified or conditioned, on the date that all Parties have filed a notice to agree to such modifications or conditions with the Commission as provided in section 3.2. Any failure of a party in the above dockets or any failure of any other entity or person to file comments on this Settlement constitutes a waiver of all objections to the Settlement.
- 3.2 This Settlement is an integrated whole and is expressly conditioned on the Commission's acceptance of all provisions herein without modification or condition. Notwithstanding the foregoing, if the Commission's approval of this Settlement requires any modification or condition, this Settlement shall become null and void unless all Parties to the Settlement agree in writing to such modification or condition by filing a notice with the Commission within thirty (30) days of the Commission's order requiring the modification or condition. In the event that all Parties to the Settlement fail to agree to accept such modification or condition of the Settlement, the Settlement shall be deemed to be withdrawn and the Settlement shall not constitute any part of the record in this docket and shall not be used for any other purpose.

- 3.3 For the sole purpose of settling the matters described herein, this Settlement represents a fair and reasonable negotiated settlement that is in the public interest. The terms of this Settlement shall not limit or restrict the arguments that the Parties to the Settlement may put forth or the positions that the Parties to the Settlement may take in any other proceeding before FERC, except as to the matters explicitly described herein. Nor shall the Parties to the Settlement be deemed to have approved, accepted, agreed, or consented to any concept, theory or principle underlying or supposed to underlie any of the matters provided for herein or to be prejudiced thereby in any future proceeding except as to the extent relied upon to settle the matters explicitly described herein.
- 3.4 This Settlement is made upon the express understanding that it constitutes a negotiated settlement and, except as otherwise expressly provided for herein, no settling Party shall be deemed to have approved, accepted, agreed to, or consented to any principle or policy relating to payments, charges, rates, rate design, rate calculation, or any other matter affecting or relating to any of the payments, rates, charges, classifications, terms, conditions, principles, issues or tariff sheets associated with this Settlement. This Settlement shall not be deemed to be a “settled practice” as that term was interpreted and applied in *Public Service Commission of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980), and shall not be the basis for any decision with regard to the burden of proof in any future litigation. This Settlement shall not be cited as precedent, nor shall it be deemed to bind any settling Party (except as otherwise expressly provided for herein) in any future proceeding, including, but not limited to, any FERC proceeding, except in any proceeding to enforce this Settlement or in Docket No. EL07-18-000.

- 3.5 The discussions among the Parties that have produced this Settlement have been conducted on the explicit understanding, pursuant to Rule 602(e) of the Commission's Rules of Practice and Procedures, that all offers of settlement and any comments on these offers are privileged and not admissible as evidence against any participant who objects to their admission and that any discussion of the Parties with respect to offers of settlement is not subject to discovery or admissible in evidence.
- 3.6 Commission acceptance of this Settlement shall constitute the requisite waiver of any and all otherwise applicable Commission regulations, to the extent necessary, to permit implementation of the provisions of this Settlement. This Settlement constitutes the full and complete agreement of the Parties with respect to the subject matter addressed herein and supersedes all prior negotiations, understandings, and agreements, whether written or oral, between the Parties with respect to the subject matter described herein.
- 3.7 Headings in this Settlement are included for convenience only and are not intended to have any significance in interpretation of this Settlement.
- 3.8 Signatures may occur by counterparts. Such signatures shall have the same effect as if all signatures were on the same document.
- 3.9 The Parties agree that this Settlement resolves all issues that were raised or that could have been raised and that directly relate to the factual allegations contained in the December 1, 2006 complaint, by any party in the above dockets or any other entity or person, in Docket Nos. EL07-18-000, whether or not they are signatories to this Settlement, with respect to the complaint filed on December 1, 2006 in this proceeding and the Commission's March 15 Order.

Respectfully submitted,



Leonard H. Singer, Esq.
Couch White, LLP
540 Broadway
P.O. Box 22222
Albany, NY 12201-2222
Telephone: (518) 320-3406
lsinger@couchwhite.com

Counsel to Astoria Energy, LLC

Dated: 5-15-08

Respectfully submitted,

James M. D'Andrea
Senior Counsel
KeySpan-Ravenswood, LLC
175 East Old Country Road
Hicksville, NY 11801
Telephone: (516) 545-4529
Email: jdandrea@keyspanenergy.com

Counsel to KeySpan-Ravenswood, LLC

Dated: _____

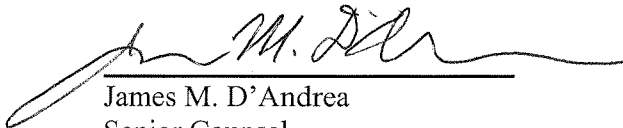
Respectfully submitted,

Leonard H. Singer, Esq.
Couch White, LLP
540 Broadway
P.O. Box 22222
Albany, NY 12201-2222
Telephone: (518) 320-3406
lsinger@couchwhite.com

Counsel to Astoria Energy, LLC

Dated: _____

Respectfully submitted,

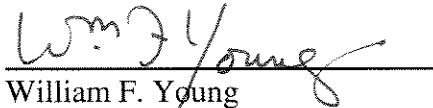


James M. D'Andrea
Senior Counsel
KeySpan-Ravenswood, LLC
175 East Old Country Road
Hicksville, NY 11801
Telephone: (516) 545-4529
Email: jdandrea@keyspanenergy.com

Counsel to KeySpan-Ravenswood, LLC

Dated: 5/15/08

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Wm F Young", is written over a horizontal line.

William F. Young
Hunton & Williams, LLP
1900 K Street, N.W.
Washington, DC 20006
Telephone: (202) 955-1500
Email: wyoung@hunton.com

*Counsel to the New York Independent
System Operator, Inc.*

Dated: 5/16/08

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

_____, 2008

In Reply Refer to:
Docket Nos. EL07-18-000

Dear Messrs Singer, D'Andrea and Young:

On May 16, 2008, you filed a Stipulation and Agreement of Settlement (“Settlement”) in the above-captioned proceeding among the New York Independent System Operator, Inc., Astoria Energy, LLC, and KeySpan-Ravenswood, LLC (collectively, the “Parties”). The Settlement resolves all issues in the proceeding.

Comments on the Settlement were due on June 5, 2008, and reply comments were due on June 16, 2008. On _____, 2008, _____ submitted comments in support of the Settlement. No other comments were received. Any parties in the above dockets that did not submit comments on the Settlement and any other entities or persons that did not submit comments on the Settlement are deemed to have waived all objections to the Settlement.

The Parties state that the Settlement is intended to resolve all issues that were raised or could have been raised by any party or any other entity or person with respect to the complaint filed on December 1, 2006 and the Commission’s order issued on March 15, 2007, in Docket No. EL07-18-000.

The subject Settlement resolves all issues discussed in the Commission’s Order Denying Complaint in the above dockets, 118 FERC ¶ 61,216 (2007), is in the public interest and is hereby approved. The Commission’s approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

This letter terminates Docket Nos. EL07-18-000.

By direction of the Commission.

Secretary

cc: All Parties