

124 FERC ¶ 61,086
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 24, 2008

In Reply Refer To:
New York Independent System Operator, Inc.
v. Astoria Energy LLC
Docket Nos. EL07-18-000, EL07-18-001 and
EL07-18-002

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Reference: Settlement Agreement Among Astoria, the NYISO and KeySpan

Dear Messrs. D'Andrea, Singer and Young:

1. On December 1, 2006, the New York Independent System Operator, Inc. (NYISO) filed a complaint against Astoria Energy LLC (Astoria) alleging that Astoria violated the NYISO's Market Administration and Control Area Services Tariff (Services Tariff) regarding installed capacity (ICAP) supplier qualifications. On March 15, 2007, the Commission issued an order denying the complaint.¹ The NYISO, Astoria and KeySpan-

¹ *New York Independent System Operator, Inc. v. Astoria Energy LLC*, 118 FERC ¶ 61,216 (2007).

Ravenswood LLC (KeySpan) filed separate requests for clarification, correction, or alternatively, requests for rehearing, of the March 15, 2007 order. Among issues raised on rehearing was the appropriate distribution of the deficiency charges. The New York Municipal Power Agency (NYMPA) sought leave to file an answer on this issue.

2. On May 16, 2008, the NYISO, Astoria and KeySpan filed a Stipulation and Agreement of Settlement (Settlement Agreement) with the Commission which resolves all of the issues raised, or that could have been raised, in these proceedings. Pursuant to Section One of the Settlement Agreement, Astoria will pay \$1,534,257.07 to KeySpan within thirty calendar days of the Settlement Agreement's effective date. This amount will settle any penalty, deficiency charge or other financial sanction related to the performance of Astoria's units in May 2006, that might otherwise be assessed by the NYISO, and is not an admission that any default, shortfall, or deficiency occurred, or an admission as to the value of any capacity provided by any party, or any shortfall or obligation to supply such capacity to the Settlement Agreement.

3. Section Two of the Settlement Agreement provides that the NYISO shall seek, and the other parties shall support such efforts, to modify its Services Tariff and ICAP Manual to provide that new units seeking certification as an ICAP supplier shall perform a Dependable Net Maximum Capability (DMNC) test and shall comply with all other procedures before being certified. Finally, Section Three of the Settlement Agreement sets forth general provisions regarding the effective date of the Settlement Agreement, procedures if the Settlement Agreement is modified, and other procedures and stipulations. The effective date of the Settlement Agreement will be the date of this letter order.

4. The Explanatory Statement accompanying the Settlement Agreement states: "The standard for 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."²

5. Pursuant to Rule 602(f)(2) of the Commission's Rules of Practice and Procedure,³ initial comments on the Settlement Agreement were due by June 5, 2008 and reply comments were due by June 16, 2008. No comments were filed. This uncontested Settlement Agreement resolves all issues in these proceedings. It is fair, reasonable, in the public interest and is hereby approved pursuant to Rule 602(g).⁴ The Commission

² Settlement Agreement, Explanatory Statement at 5.

³ 18 C.F.R. § 385.602(f)(2) (2008).

⁴ 18 C.F.R. § 385.602(g) (2008).

retains the right to investigate the rates, terms, and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the Federal Power Act.⁵ The Commission's approval of this Settlement Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

6. As the Settlement Agreement resolves all of the issues pending in these proceedings, we find that the requests for rehearing of the March 15, 2007 order filed by the NYISO, Astoria and KeySpan, and NYMPA's motion for leave to file an answer to the NYISO's request for rehearing, are moot and, therefore, are dismissed.

7. This letter order terminates Docket Nos. EL07-18-000, EL07-18-001 and EL07-18-002.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁵ 16 U.S.C. § 824e (2008).