

104 FERC ¶ 61,221
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

KeySpan Energy Development Corporation,
KeySpan-Ravenswood, LLC, New York Power Authority, Electric Power Supply Association, and
Independent Power Producers of New York, Inc. Docket No. EL02-125-000

v.

New York Independent System Operator, Inc.

ORDER APPOINTING SETTLEMENT JUDGE

(Issued August 22, 2003)

1. In response to requests filed by the parties with the Commission, this order directs the Chief Judge to appoint Judge Carmen A. Cintron to work with the parties in an attempt to settle this matter.¹ Our decision benefits the public by ensuring the orderly administration of Commission proceedings.

Background

2. On May 23, 2002, the New York Independent System Operator (NYISO) Operating Committee approved its “Cost Allocation of New Interconnection Facilities to the New York State Transmission System for the Class Year 2001” (Cost Allocation Report). On June 19, 2002, the NYISO Management Committee denied KeySpan Energy Development Corporation and KeySpan Ravenswood LLC’s (collectively, KeySpan) appeal of the Operating Committee’s acceptance of the Cost Allocation Report. On July 16, 2002, the NYISO Board of Directors denied KeySpan’s appeal of the Management Committee’s decision.

¹ See Joint Motion for Appointment of Settlement Judge, August 13, 2003.

3. On August 28, 2002, KeySpan, the New York Power Authority (NYPA), the Electric Power Supply Association (EPSA), and the Independent Power Producers of New York (IPPNY) filed a complaint against NYISO with the Commission pursuant to Section 206 of the Federal Power Act² alleging that elements of NYISO's Cost Allocation Report were prepared improperly, inconsistent with Good Utility Practice, and inconsistent with Attachment S to the NYISO's Open Access Transmission Tariff.

4. On October 30, 2002, the Commission set the Complaint for hearing seeking to develop a factual record on: (1) whether the NYISO's selection of generic generating units was consistent with the feasibility criterion in the cost allocation rules; (2) whether the NYISO's exclusion of certain generating units from the Baseline Assessment was consistent with the cost allocation rules; and (3) whether the most recent PJM model available at the time the studies commenced was used to conduct the Baseline Assessment, and what effects an updated model might produce.³

5. Administrative Law Judge Jeffie J. Massey issued an Initial Decision on May 5, 2003⁴ finding that NYISO's decision-making process demonstrated a clear bias for transmission owners, that NYISO failed to abide by the requirements of Attachment S, that Attachment S should be modified to prevent further abuse, and that NYISO failed to make its decisions in conformance with "Good Utility Practice." Parties then filed numerous briefs on exceptions. The Initial Decision is currently pending before the Commission.

6. On August 13, 2003, KeySpan, NYISO, Consolidated Edison (ConEd), PSEG Power In-City I, LLC, and Independent Power Producers of New York filed a joint motion requesting appointment of Carmen A. Cintron as a settlement judge. Niagara Mohawk Power did not join in the motion, but stated that it did not oppose the motion. Trial Staff also supports the request. On August 14, 2003, New York Power Authority (NYPA) filed an answer to the August 13 motion stating that it did not oppose the appointment of a settlement judge, requesting that the Chief Judge confine the scope of the settlement proceedings to the issues raised at hearing. ConEd then filed a reply to NYPA's answer arguing against limiting the scope of the settlement proceedings.

² 16 U.S.C. § 824e (2002).

³ KeySpan Energy Development, et al. v. NYISO, 101 FERC ¶ 61,099 at 61,368 (2002).

⁴ 103 FERC ¶ 63,016 (2003).

Discussion

7. The Commission will grant the August 13, 2003 motion. The parties have indicated a desire to have the settlement talks conducted by Judge Cintron and the Commission therefore directs the Chief Judge to appoint Judge Cintron to do so.

The Commission orders:

Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2003), the Chief Administrative Law Judge is hereby directed to appoint Judge Carmen A. Cintron as settlement judge in this proceeding within fifteen days of the date of this order. The settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge makes the settlement judge designation.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.