UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc., *et al.*	Docket Nos.	ER00-1969-000
		ER00-1969-002
		ER00-1969-003
		ER00-1969-004
		ER00-1969-011
		EL00-57-000
		EL00-57-002
		EL00-60-000
		EL00-60-002
		EL00-63-000
		EL00-63-002
		EL00-64-000
		EL00-64-002
H.Q. Energy Services (U.S.), Inc.		
v.		
New York Independent System Operator, Inc.,	Docket Nos.	EL01-19-000
		EL01-19-001
PSEG Energy Resource & Trade LLC		
v.	Docket Nos.	EL02-16-000
		EL02-16-001
New York Independent System Operator, Inc.,		
KeySpan-Ravenswood, LLC,		
Complainant,		
v.	Docket No.	EL05-17-000
New York Independent System Operator, Inc.,		
Respondent.		

ANSWER OF
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
TO MOTION OF KEYSPAN-RAVENSWOOD FOR
APPOINTMENT OF SETTLEMENT JUDGE

Pursuant to Rule 213 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure,[1] the New York Independent System Operator, Inc. ("NYISO"), hereby respectfully submits this answer to the Motion of KeySpan-Ravenswood ("KeySpan") for Appointment of Settlement Judge ("KeySpan Motion") filed on December 3, 2004,[2] in the above-captioned cases: "Operating Reserves Proceeding" (Docket Nos. ER00-1969, *et al*.); "Energy Pricing Proceeding" (Docket Nos. EL01-19, *et al*.); and "Capacity Proceeding" (Docket No. EL05-17).

I. **Summary**

The request for a settlement judge in the KeySpan Motion is based on a superficial and incomplete description of three different and complex proceedings currently before the Commission. While the NYISO generally favors settlement discussions, a consolidated settlement proceeding for the above cases is highly likely to be unwieldy and impractical, and to complicate and delay resolution of the proceedings.

The three proceedings are factually and procedurally distinct. The parties, facts and legal arguments differ between the proceedings, and the time periods and applicable tariff provisions for each proceeding are different. In addition, each proceeding involves a different market with different customers and different market rules. Consequently, implementing a combined settlement proceeding under these circumstances would be

[1] 18 C.F.R. § 385.213.

[2] *New York Independent System Operator, Inc*., Motion of KeySpan-Ravenswood for Appointment of Settlement Judge, Docket Nos. ER00-1969-000, *et al.* (December 3, 2004).

costly and time consuming, and would not be likely to result in a timely, if any, resolution.

Accordingly, for the reasons stated herein, the NYISO respectfully recommends that the Commission deny KeySpan's motion.

II. **ANSWER**

A. The Factual, Legal and Procedural Differences in the Proceedings Make Resolution through Settlement Discussions Unlikely and Impractical

The three proceedings that are the subject of the KeySpan Motion involve different markets, different parties, different and complex factual situations governed by different tariff provisions, and different procedural postures. The Operating Reserves Proceeding raises a series of issues concerning the pricing of spinning and non-spinning reserves during a certain period in early 2000. The Operating Reserves Proceeding began almost five years ago, when there was a dramatic increase in Operating Reserves[3] prices in New York in the period from January 29, 2000 until March 27, 2000. In response to those events, on March 27, 2000, the NYISO proposed certain price mitigation measures, and requested that the Commission implement a settlement process for the purpose of bringing together "all buyers and sellers of 10-minute reserves in order to reach a resolution by agreement on whether the pricing for 10-minute reserves has been at proper levels and, if not, whether any overpayments for reserves should be refunded to (or not paid by) the loads."[4] The Commission rejected the NYISO's settlement request in its

[3] Unless otherwise specified, capitalized terms have the meanings specified in the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff").

[4] *New York Independent System Operator, Inc.*, Request of the New York Independent System Operator, Inc. for Suspension of Market-Based Pricing for 10-Minute Reserves and to Shorten Notice Period, Docket No. ER00-1969-000, at p. 2 (March 27, 2000).

initial order on May 31, 2000,[5] and substantial further proceedings ensued. Rehearing orders were issued on November 8, 2001,[6] and April 29, 2002.[7] Both the NYISO and several Load-Serving Entities ("LSEs") sought judicial review of the three Commission orders in the D.C. Circuit. On November 7, 2003, in *Consolidated Edison Co. of N.Y., Inc. v. FERC*, 347 F.3d 964 (2003) ("*Con Edison*"), the D.C. Circuit remanded the orders to the Commission. Extensive filings have been made on remand, and a full record has thus been established. Instituting settlement proceedings now would result an indefinite and unwarranted delay in a matter that is ripe for decision by the Commission on the issues remanded to it by the D.C. Circuit.[8]

The Energy Pricing Proceeding involves prices in the energy market, and matters occurring on two days in 2000 subsequent to the period at issue in the Operating Reserves proceeding. The Energy Pricing Proceeding has also been the subject of Commission orders and judicial review. On May 8 and 9, 2000, energy prices spiked as a result of bids submitted by the New York Power Authority ("NYPA") for its Blenhiem-Gilboa pumped storage facility.[9] Under the Services Tariff, this facility qualifies as an

---

[5] *New York Independent System Operator, Inc.*, 91 FERC ¶ 61,218 at 61,804 (2000).

[6] *New York Independent System Operator, Inc.*, 97 FERC ¶ 61,155 (2001).

[7] *New York Independent System Operator, Inc.*, 99 FERC ¶ 61,125 (2002).

[8] *ISO New England, Inc.*, 91 FERC ¶ 61,311 at 62,061 (2000) (The Commission declined the appointment of a settlement judge when settlement was not likely to be effective because several participants rejected alternative dispute resolution ("ADR") and where "an extensive record [had] been compiled . . . enabling [the Commission] to make a reasoned decision on the merits . . . without resort to hearing procedures or ADR."); *Idaho Power Co.*, 109 FERC ¶ 61,077 (2004) (finding that "it is not good policy to defer indefinitely action on matters that have been presented to [the Commission] for resolution").

[9] *H.Q. Energy Services (U.S.), Inc. v. New York Independent System Operator, Inc*., 97 FERC ¶ 61,218 at 61,964-65 (2001).

Energy Limited Resource ("ELR"). The NYISO issued an ELR Extraordinary Corrective Action ("ELR-ECA"), pursuant to its Temporary Extraordinary Procedures ("TEP") authority as in effect on May 8 and 9, 2000, to correct the energy prices. The NYISO's TEP authority was subsequently challenged by two electricity suppliers, but the Commission found that the NYISO appropriately used the TEP authority after discovering a Market Design Flaw.[10] FERC affirmed its initial decision on July 3, 2002.[11] One of the suppliers, PSEG, then sought judicial review. On March 16, 2004, the D.C. Circuit, in *PSEG Energy Resources & Trade, LLC v. FERC*, 360 F.3d 200 (D.C. Cir. 2004), remanded the orders to the Commission. Filings by the interested parties have been made in the remand proceedings, and this matter is likewise ripe for decision by the Commission on the matters remanded by the D.C. Circuit.

By contrast, KeySpan initiated the Capacity Proceeding only a few weeks ago. It involves yet a third market—capacity—and third time period. On October 27, 2004, KeySpan filed a complaint ("KeySpan Complaint") contesting the translation methodology established through a stakeholder process in 2001 for converting LSE Installed Capacity ("ICAP") requirements into Unforced Capacity ("UCAP") for the 2002 Summer Capability Period. The NYISO and others responded to KeySpan's Complaint on November 22, 2004. The facts and legal issues in the Capacity Proceeding bear no relation to those in the other two proceedings. In addition, the responses to the KeySpan Complaint raise substantial threshold issues as to whether the KeySpan

[10] *Id*. at 61,960 and 61,964.

[11] *H.Q. Energy Services (U.S.), Inc. v. New York Independent System Operator, Inc*., 100 FERC ¶ 61,028 (2002).

Complaint should be dismissed that are fully briefed and need to be decided by the Commission before any further proceedings on the complaint are appropriate.

KeySpan contends that the Capacity Proceeding "has been pending in other forums for about the same amount of time as the Reserves Proceeding and the Energy Pricing Proceeding."[12] This is only true if KeySpan is referring to the July 2001 stakeholder process that reached a consensus on the translation methodologies underlying KeySpan's Complaint.[13] KeySpan participated in the stakeholder process, and did not appeal the Business Issues Committee ("BIC") vote approving the ICAP to UCAP translation to the NYISO's Management Committee, as provided under the NYISO's governance procedures.[14] Thus, KeySpan's Motion conveniently ignores the fact that the Capacity Proceeding has already undergone a successful *de facto* settlement process, but one KeySpan has now decided, after pursuing other issues in the interim, that it does not like. KeySpan's request for settlement proceedings on its Complaint is little more than an attempt to overturn the consensus already reached by the stakeholders in the prior proceedings.

KeySpan's request for settlement proceedings now is doubly unwarranted in light of its decision to reject an offer by the NYISO to meet with KeySpan to discuss the matters raised in the KeySpan Complaint with a view toward seeking a resolution. The NYISO offered to hold such discussions prior to the filing of KeySpan's Complaint. Instead of discussing its capacity concerns, KeySpan launched its Complaint. This

---

[12] KeySpan Motion at 8.

[13] *KeySpan-Ravenswood, LLC v. New York Independent System Operator, Inc*., Answer of New York Independent System Operator, Inc. to Complaint of KeySpan-Ravenswood, LLC, Docket No. EL05-17-000, at pp. 12-13 (November 22, 2004) ("NYISO Answer").

[14] *Id*. at p. 13 (citing § 7.13 of the ISO Agreement).

history and the underlying history of the ICAP/UCAP translation stakeholder process leave KeySpan's strategy in filing its Complaint and Motion open to question.

B. The NYISO Supports Settlement Proceedings When Those Proceedings Are Likely to be Productive and Efficient; that Does Not Appear to be the Case Here

KeySpan suggests that the NYISO has adopted a "partisan" position because it has not acceded to KeySpan's proposal of a consolidated settlement in the Operating Reserves, Energy Pricing, and Capacity Proceedings.[15] KeySpan supports this contention by contrasting its version of the NYISO's actions toward settlement in those cases with an unrelated settlement proceeding involving Transmission Congestion Contracts ("TCCs").[16] KeySpan's claim, however, is without merit. First, as noted above, the NYISO requested settlement proceedings at the outset of the Operating Reserves Proceeding when it would have been appropriate, conducted an extensive stakeholder process on the ICAP/UCAP translation methodology, and offered to discuss the matters raised in the KeySpan Complaint prior to its filing. Second, the NYISO does not have a financial or other interest in any of the three proceedings that would substantiate KeySpan's claim of partisanship. Third, while the NYISO recognizes that settlement proceedings are valuable alternatives to litigation, it agrees with the Commission that they are not the practical and appropriate answer in every case.[17]

This third point is illustrated by the comparison to the TCC case offered by KeySpan. The TCC case involved a discrete set of essentially uncontested facts that were

[15] KeySpan Motion at 15.

[16] KeySpan Motion at 7 and 7 n.8.

[17] *See, e.g., Middle South Services, Inc.*, 26 FERC ¶ 63,113 (1984) (denying motion for appointment of a settlement judge); *ISO New England, Inc.*, 91 FERC at 62,061.

brought to the attention of the stakeholders by the NYISO, and the affected parties consented to the settlement proceeding.[18] The identity of issues, facts, and parties provided the prerequisites for successful settlement negotiations. Here, KeySpan presents only a superficial recitation of the facts and issues in three distinct proceedings, making sweeping statements such as: "[t]he principal parties in interest are the same in all three proceedings."[19] An examination of the matrix of parties attached to the KeySpan Motion shows a wide variety of participation in the different proceedings, and sheds no light on the positions taken by the parties in the various proceedings. Similarly, KeySpan asserts that: "All three proceedings involve disputes over the interpretation of the NYISO's tariff, the propriety (or impropriety) of the NYISO's actions in setting prices paid in wholesale markets, and the potential to retroactively recalculate such prices."[20] But this broad assertion ignores the facts that different tariff provisions are involved in each proceeding, the underlying circumstances and the actions taken by the NYISO are different, the time periods are different, the markets are different, the parties are different, and the reasons for recalculating prices (or not) are different. About the only similarity between the proceedings is that they involve issues of refunds—but that would be true of any number of proceedings, and begs the question of whether the asserted grounds for refunds bear any similarity. KeySpan cannot provide any more detail about the cases

[18] *Cf. New York Independent System Operator, Inc.*, 91 FERC ¶ 61,218 at 61,804 (2000) (denying the NYISO's request to initiate ADR, in part, because the Commission's "ADR procedures are voluntary, and Central Hudson and Orion have already expressed that they do not believe ADR will resolve the issue").

[19] KeySpan Motion at 12.

[20] KeySpan Motion at 3-4.

without revealing that they are too distinct to lend themselves to an administratively efficient combined settlement proceeding.[21]

KeySpan's contention that "none of these cases needs to be litigated in order to establish future precedents for NYISO operations" is also superficial.[22] Under the policy of Rule 604(a)(2)(i), "the decisional authority will not consent to use of an alternative dispute resolution proceeding if: (i) A definitive or authoritative resolution of the matter is required for precedential value. . . ."[23] Here, the three proceedings involve potentially important Commission decisions on the applicability of refunds to the NYISO markets (Operating Reserves Proceeding), the scope of the TEP authority (Energy Pricing Proceeding), and the ability of a market participant to make an after-the-fact attack on the consensus outcome of extensive stakeholder proceedings (Capacity Proceeding). Thus each of the proceedings presents matters for decision by the Commission.

KeySpan is correct in pointing out that any refunds in the three proceedings would not come from the NYISO, but from the relevant Market Participants in each of the three proceedings.[24] This factor indicates, however, that unless the KeySpan Motion is widely supported by the entities whose financial interests are at stake, the requested global settlement proceedings are unlikely to be fruitful. If the NYISO does have an

---

[21] *Cf. Northern Natural Gas Co.*, 65 FERC ¶ 63,012 (1993) (denying a motion requesting consolidation when "the proceedings are too distinct . . . and will not result in administrative efficiency"); *see also Sinclair Oil Corporation v. Rocky Mountain Pipeline System LLC*, 102 FERC ¶ 61,117 at 61,316 (2003) (denying a motion to consolidate where "[t]he parties are not the same, nor is it evident that the same issues are involved").

[22] KeySpan Motion at 12.

[23] 18 C.F.R. § 385.604(a)(2)(i).

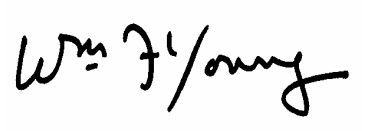
[24] KeySpan Motion at 13.

interest here, it is in ensuring that its resources and the resources of the Market Participants are not devoted to such efforts.

III. CONCLUSION

WHEREFORE, for the reasons stated above, the NYISO requests that KeySpan's Motion be denied.

Respectfully submitted,



_____

William F. Young
Susan E. Dove
Hunton & Williams LLP
1900 K Street, NW
Washington, DC 20006
(202) 955-1500

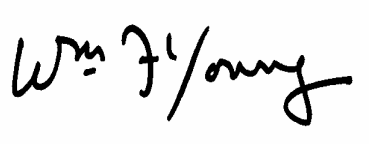
Counsel for
New York Independent System
Operator, Inc.

Dated: December 17, 2004

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 the above-captioned proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2003).

Dated at Washington, D.C. this 17 day of December, 2004.



William F. Young
Susan E. Dove
Hunton & Williams LLP
1900 K Street, NW
Washington, DC 20006
(202) 955-1500