

AFFIDAVIT OF LIAM T. BAKER

Offered in Response to the Notice to Market Participants Regarding the Need to Revise the New York City Demand Curves to Reflect the Recent Change in the Law Regarding Property Tax Exemptions for Electric Generating Facilities

1. My name is Liam T. Baker and I am the Vice President of Regulatory Affairs for US Power Generating Company (USPG).
2. I have a Bachelor of Science Degree in Mechanical Engineering from Manhattan College, a Bachelor of Arts Degree in Liberal Arts from Fairfield University and a Juris Doctorate from Pace University School of Law.
3. I am responsible for all regulatory matters affecting USPG's New York City assets as well as a variety of commercial, asset management, compliance and legal matters affecting USPG. I am directly involved with all major development projects undertaken by USPG, including the South Pier Improvement Project (SPIP), discussed below. I have worked for USPG since 2006.
4. The New York Independent System Operator, Inc.'s (NYISO) Board of Directors has requested that Market Participants express any concerns regarding the recent elimination of "utility property" from the automatic (*i.e.*, non-discretionary) property tax exemption program applicable to industrial and commercial property owners in New York City. Specifically, the Board wishes to understand how, if at all, the inability of new generation facilities to receive property tax abatements under the program will affect new development. The purpose of this affidavit is to specifically address this question.

5. Astoria Generating Company, L.P. (Astoria Generating), an indirect wholly owned indirect subsidiary of USPG, is in advanced development of a new generating facility, the SPIP. Development of this project began in mid-2006 and was formally announced in October 2007. The SPIP would add one General Electric LMS 100 to Astoria Generating's existing Gowanus Gas Turbine Facility. Our goal is to complete the project and commence commercial operations by the summer of 2010. Information about this project, including visual simulations, emission reduction commitments, technological descriptions, presentations, project team and other data is available at our website <http://www.uspowergen.com>.
6. The current facility is capable of producing approximately 464 MW (summer). With the addition of the new LMS 100, that total output would increase by approximately 100 MW.
7. USPG has committed to the City of New York, the New York State Department of Environmental Conservation (NYSDEC) and other interested stakeholders that, notwithstanding the addition of the new LMS 100, post-installation emissions from the combined facility will be lower than current levels.
8. This commitment is a lynchpin of the overall permitting strategy and entails the use of internally generated emission offsets, displacement of higher emitting units, cutting edge environmental controls, use of ultra-low sulfur distillate in lieu of currently utilized #2 fuel oil (in both the existing and new facilities) and other possible off-site projects.

9. The project has filed an Environmental Assessment Form with the NYSDEC as Lead Agency under the State Environmental Quality Review Act. A Draft Environmental Impact Statement and an Air Permit Application also have been filed and are being reviewed for acceptance by the NYSDEC prior to the documents being noticed to the public for review and comment.
10. Additionally, USPG has submitted an interconnection request to the NYISO and is in advanced discussions with Consolidated Edison Company of New York, Inc. regarding the interconnection of the project at the adjacent Gowanus Switchyard/Substation.
11. Further, we have engaged outside consultants, contractors, and other experts in an effort to move the project development forward in a deliberate fashion. Through June 2008, we have expended over \$ 1.1 million for those individuals' services, as well as a substantial commitment of in-house resources. Our total project expenditure to develop, permit and construct this project is estimated to be between \$130 million and \$150 million.
12. The project has the commitment of our senior management team and Board of Directors, as well as several city agencies.
13. I have been asked by both NYISO personnel and others why we did not respond to NYISO's 2008 Reliability Needs Assessment "Solicitation for Market-Based Responses" issued on April 1, 2008, given the corporate commitment and the advanced stage of the project.
14. USPG chose not to respond because we first wanted to make substantial progress in our stakeholder outreach process and achieve a high level of confidence that we

would obtain the requisite permits and approvals for the project. The issue here is not corporate commitment but instead corporate credibility.

15. Several parties have commented that a flaw in the NYISO Comprehensive Reliability Planning Process is the reliance on market based solutions that may not be “real.” Some parties are concerned that merchant developers will simply “throw in” projects without any meaningful commitment to progress to construction, simply to forestall the triggering of regulated backstop solutions. USPG believes such behavior is not only disingenuous but also ultimately self-destructive as a decline in the credibility of merchant developers would threaten the overall integrity of competitive markets.
16. To avoid similar characterizations of the SPIP, and to demonstrate USPG’s strong commitment to the project, we chose to meet with community leaders, city agencies, and politicians well in advance of disclosing the project to the general public. It is this commitment that has allowed the project to proceed with minimal negative community issues.
17. As with any merchant generation development, financial modeling is a key component of the project. As the Board is aware, the costs of constructing and operating a generating facility, particularly in New York City, are substantial.
18. The former Industrial and Commercial Incentive Program (ICIP) provided a welcome respite from one of the more onerous of those operating costs – the real property tax burden. At the present effective rate of 4.53%, the addition of property taxes to our model would increase annual operating costs by approximately \$6-\$7 million.

19. This would be a dollar-for-dollar offset against project revenues and would reduce the anticipated project returns to a level substantially below both our financial requirements *and* those assumed in the demand curve reset process.
20. Our financial modeling, based upon the existing New York City Demand Curves (NYC Curves), would not justify continued aggressive development of the SPIP, but would instead likely cause USPG to slow down or suspend development until the NYC Curves are reset to provide us the opportunity to recoup the true costs of the project.
21. The necessity for proper market signals, accuracy of the NYC Curves, and the opportunity for revenue adequacy are fundamental tenets of our capacity market. A thorough description of these important elements has been provided in the concurrently submitted Comments of the Independent Power Producers of New York, Inc. and ConsumerPowerline, Inc. and the Affidavit of Mark Younger, both of which USPG wholeheartedly adopts. Thus, in the interests of brevity and administrative efficiency, I will not repeat them here.
22. Nonetheless, the failure of the NYISO to correct the NYC Curves to account for the loss of the ICIP exemption will directly affect the SPIP.
23. Under its current schedule, the SPIP would be in service for only one year under the present NYC Curves. Some may argue that any negative financial impacts the SPIP would experience, due to the mismatch between actual property tax expenditures (during the 2010-2011 year) and capacity revenues provided under Curves which incorporate the now defunct ICIP benefit, are *de minimis*. Those arguments are without merit.

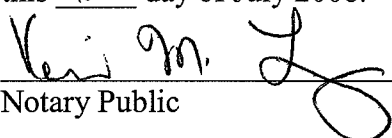
24. Financing commitments to proceed with the SPIP must be made in the present day, equipment deposits need to be made, and contractors retained. Expenditures prior to the NYC Curves being corrected would be so made on the *hope* that the next set of NYC Curves (covering the Capability Years 2011-2012 through 2013-2014) would be correct.
25. While merchant development is always fraught with risk, that risk is generally quantifiable. We cannot quantify *hope*. The current NYC Curves are, by my and others' accounts, erroneous. They do not accurately reflect the true cost of merchant development in New York City.
26. The NYISO Board's reluctance to expeditiously correct the NYC Curves throws into doubt any level of confidence we have that the future Curves will adequately support the SPIP. Inaction by the Board will substantially increase the project risk, and in turn, increase the equity returns required to justify it on a solely merchant basis.
27. Thus, if the NYC Curves are not corrected now, the SPIP will likely be slowed or suspended until confidence is restored in the adequacy of the NYC Curves to support new merchant development in New York City.
28. For these reasons, USPG urges the Board to determine that there are exigent circumstances in this matter, revise the NYC Curves to eliminate the ICIP exemption and reflect actual market conditions, and ensure that confidence in the NYISO's markets is maintained.
29. This concludes my affidavit.

ATTESTATION

I am the witness identified in the foregoing affidavit. I have read the affidavit and am familiar with its contents. The facts set forth therein are true to the best of my knowledge, information and belief.


Liam Baker

Subscribed and sworn to before me
this 31st day of July 2008.


Notary Public

My commission expires: _____

KEVIN M. LANG
Notary Public, State of New York
No. 02LA6173188
Qualified in Albany County
Commission Expires Aug. 20, 2011