

UNITED STATES OF AMERICA 100 FERC ¶ 61,343
FEDERAL ENERGY REGULATORY COMMISSION

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

Mirant Americas Energy Marketing, L.P.,
Mirant Bowline, LLC, Mirant Lovett, LLC,
and MirantNY Gen, LLC

v.

Docket No. EL02-8-000

New York Independent System Operator, Inc.

ORDER ON COMPLAINT

(Issued September 26, 2002)

1. On October 18, 2001, Mirant Americas Energy Marketing, L.P. and its affiliates (Mirant)¹ filed a complaint, pursuant to section 206 of the Federal Power Act (FPA),² charging that the New York Independent System Operator, Inc.'s (New York ISO) reliance on its currently-effective locational based marginal pricing (LBMP) has prevented Mirant from obtaining the long-term firm transmission rights it needs to make bulk power sales across the New York ISO interface. Mirant further charges that these market rules are inconsistent with the requirements of the pro forma tariff. For the reasons discussed below, we will dismiss Mirant's complaint.

Background

¹Mirant Bowline, LLC, Mirant Lovett, LLC, and Mirant NY-Gen, LLC.

²16 U.S.C. § 824e (2000).

2. Mirant argues that the New York ISO's reliance on its LBMP rules to deny Mirant long-term physically firm transmission service, which Mirant requested on March 28, 2001, violates the New York ISO's open access transmission tariff (OATT) and the Commission's open access mandate, as set forth in Order No. 888.³ Mirant also argues that the New York ISO's interpretation of its OATT has imposed significant artificial limitations on bulk power sales in the Northeast by inhibiting transactions across the New York ISO interface. Specifically, Mirant asserts that generation resources that must rely on transmission service from the New York ISO to reach PJM are unable to participate in the PJM installed capability (ICAP) market.

3. Mirant seeks an order from the Commission directing the New York ISO to implement the changes necessary to evaluate and allow reservations of transmission capacity for long-term transmission services in advance of the commencement of service, including any software changes necessary to evaluate available transmission capacity on a long-term basis. Mirant also seeks an order from the Commission requiring the New York ISO OATT to conform to the requirements of the pro forma tariff.

Notice of Filing and Responsive Pleadings

³Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,746 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. New York v. FERC, 122 S. Ct. 1012 (2002).

4. Notice of Mirant's complaint was published in the Federal Register,⁴ with interventions and protests due on or before November 7, 2001. The NYISO filed an answer. In addition, a notice of intervention was filed by the New York State Public Service Commission (New York Commission) and motions to intervene were timely-filed by PJM, KeySpan, Dynegy, Member Systems, PG&E National Energy Group and its affiliates (PG&E),⁵ PSEG Energy Resources & Trade LLC and its affiliates (PSEG),⁶ NRG Power Marketing, Inc. (NRG, et al.),⁷ and H.Q. Energy Services (U.S.), Inc. (H.Q. Energy). On November 8, 2001, a motion to intervene out-of-time was filed by El Paso Merchant Energy, L.P. (EPME). On November 20, 2001, Mirant filed an answer to the New York ISO's answer. On December 31, 2001, the New York ISO filed an answer to Mirant's answer, and on January 15, 2002, Mirant filed an additional answer to the New York ISO's answer.

Discussion

Procedural Matters

⁴66 Fed. Reg. 54,000 (2001).

⁵PG&E Generating and PG&E Energy Trading-Power, L.P.

⁶PSEG Power LLC and PSEG Power New York Inc.

⁷Joined by Arthur Kill Power Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Oswego Harbor Power LLC.

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁸ the notice of intervention filed by the New York Commission and the timely, unopposed motions to intervene submitted by PJM, KeySpan, Dynegy, PG&E, Member Systems, PSEG, NRG, et al., and H.Q. Energy serve to make these entities parties to this proceeding. In addition, we will grant EPME's motion to intervene out-of-time, given its stated interests, the early stage of this proceeding, and the absence of any undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,⁹ prohibits an answer to an answer, unless otherwise permitted by the decisional authority. We are not persuaded to allow Mirant's answers or the New York's ISO's answers and therefore will reject them.

Analysis

⁸18 C.F.R. § 385.214 (2002).

⁹Id. at § 385.213(a)(2).

6. On July 26, 2002, in Docket No. ER02-1900-000, we issued an order accepting for filing the New York ISO's proposed tariff revisions, allowing market participants, within the New York ISO control area, to provide ICAP to external control areas, including PJM.¹⁰ Thus, the immediate, substantive remedy sought by Mirant in its complaint has been satisfied, rendering this portion of Mirant's complaint moot. In addition, on August 23, 2002, the New York ISO and ISO New England filed a request for a declaratory order, in Docket No. RT02-3-000, signaling their intent to form a regional transmission organization that would supplant the current operation and functions overseen by the New York ISO. We intend to address this initiative, and any necessary follow-on filings, in subsequent orders.¹¹ As such, we need not consider here Mirant's remaining allegations concerning the New York ISO's compliance with the pro forma tariff.

The Commission orders:

Mirant's complaint is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.

¹⁰See New York Independent System Operator, Inc., 100 FERC ¶ 61,122 (2002).

¹¹Interventions and protests in Docket No. RT02-3-000 are required to be filed no later than September 27, 2002.