

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>Astoria Generating Company, L.P. and TC Ravenswood, LLC</b>	)	
	)	
<b>Complainants,</b>	)	<b>Docket No. EL11-50-000</b>
	)	
<b>v.</b>	)	
	)	
<b>New York Independent System Operator, Inc.,</b>	)	
	)	
<b>Respondent.</b>	)	

**COMMENTS OF THE ELECTRIC POWER SUPPLY ASSOCIATION  
IN SUPPORT OF COMPLAINT AND REQUEST FOR EMERGENCY RELIEF**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission's ("FERC" or the "Commission") Rules of Practice and Procedure, 18 C.F.R. § § 385.212 and 385.214 (2011), the Electric Power Supply Association ("EPSA")<sup>1</sup> respectfully submits these comments in support of the *Complaint Requesting Fast Track Processing, Emergency, Interim Relief and Shortened Comment Period* ("July 11 Complaint") submitted pursuant to Sections 206 and 306 of the Federal Power Act ("FPA") in the above-captioned proceeding on July 11, 2011.<sup>2</sup> Specifically, the Complainants demonstrate that

---

<sup>1</sup> EPSA submitted a doc-less motion to intervene in this proceeding on July 12, 2011. EPSA is the national trade association representing competitive power suppliers, including generators and marketers. Competitive suppliers, which collectively account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers. The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the view of any particular member with respect to any specific issue.

<sup>2</sup> *Astoria Generating Company, L.P., LLC and TC Ravenswood, LLC (collectively, "Complainants") v. New York Independent System Operator, Inc. ("NYISO"), Complaint Requesting Fast Track Processing, Emergency, Interim Relief and Shortened Comment Period, Docket No. EL11-50-000 (July 11, 2011).* As the complaint states for the purpose of clarity,

the NYISO incorrectly applied its buyer-side market power mitigation rules with respect to the new 575 MW generating facility owned by Astoria Energy II LLC, (“Astoria II”) that began commercial operations on July 1, 2011, and potentially, other new facilities. As discussed in the subsequently-filed Complainants’ Motion to Lodge, the August auction has occurred and compounded the problems already in this short amount of time.<sup>3</sup> There are two auctions left in what is considered the Summer peak season. As the July 11 Complaint notes, suppliers in New York City “earn as much as 80 percent of their annual revenues for the sale of capacity in the Summer.”<sup>4</sup> Because the Commission did not grant the request for interim relief prior to the August 2011 auction, it is of the utmost importance that a permanent solution amending NYISO’s tariff and other necessary corrective actions be determined as soon as possible.

Importantly, Astoria and Ravenswood, representing over 40% of in-city supply capacity collectively, previously submitted a formal complaint with the NRG Companies (together, the “In-City Suppliers”) concerning the buyer-side mitigation problems in New York City on June 3, 2011, in Docket No. EL11-42.<sup>5</sup> Each Complaint compliments the other; the instant complaint demonstrates a

---

Astoria II (the project at the heart of the mitigation controversy) is not a respondent to the July 11 Complaint. Further, the July 11 Complaint does not allege that Astoria II or other market participants bidding into the capacity auction violated the Services Tariff or engaged in any misconduct or improper behavior.

<sup>3</sup> See generally Complainants’ Motion to Lodge, Docket No. EL11-50-000 (filed July 29, 2011).

<sup>4</sup> July 11 Complaint, p. 6.

<sup>5</sup> *Astoria Generating Company, L.P., NRG Power Marketing LLC, Arthur Kill Power, LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, Oswego Harbor Power LLC, and TC Ravenswood, LLC (collectively, “In-City Suppliers”) v. New York Independent System Operator, Inc. (“NYISO”), Complaint Requesting Fast Track Processing, Docket No. EL42-000 (June 3, 2011) (“June 3 Complaint”).*

worst case scenario as to when the non-transparent buyer-side mitigation rules described in the first complaint are applied in a real auction. The damaging effects will only compound with monthly auctions and for years hereafter unless swift action is taken. To the extent the Commission believes consolidating the two complaints would facilitate the most expeditious resolution of the issues in this instant proceeding, EPISA supports consolidation. In any event, EPISA urges the Commission to act quickly and definitively on the Complaint and to grant the relief requested on an expedited, emergency basis as discussed herein. As the Complaint points out, should the problem be allowed to languish through multiple monthly auctions, “the Commission would likely be powerless to help the Complainants.”<sup>6</sup>

## **I. INTRODUCTION**

The June 3 Complaint was filed due to concerns that the NYISO is implementing its buyer-side market power mitigation provisions (“Buyer-Side Market Power Rules”) in violation of the NYISO Market Administration and Control Area Services Tariff (“Services Tariff”) and in a manner inconsistent with Commission orders, policy and precedent. The July 11 Complaint demonstrates that the aforementioned concerns have been fully realized. The July 2011 auction was in a peak summer month. It is unclear what exactly happened during that auction, because the application of buyer-side mitigation tests is not transparent. However, it is clear that the new 575 MW Astoria II project that was participating in the capacity auction process for the first time was actually or effectively exempted from buyer-side mitigation. Complainants suggest either it

---

<sup>6</sup> July 11 Complaint, p. 7.

was a full exemption or the Offer Floor was set “ridiculously low” so as to effectively nullify mitigation.<sup>7</sup> No matter the method, the result was that prices fell fifty percent from the previous auction. Prices were suppressed during one of the most pivotal auctions of the year. The August 2011 Auction was another pivotal auction, and prices again remained low, reflecting a significantly suppressed capacity price of \$5.83/kW-month for the NYC capacity zone, similar to the July 2011 Auction price of \$5.76/kW-month.<sup>8</sup> Annual revenues for in-city suppliers have been irreparably damaged and the Commission must work towards a fix for this problem on an expedited basis to prevent the damage from compounding further.

Resolution of these issues impacts more than just the in-city suppliers who have filed the Complaint. Rather, the overall integrity of the NYISO’s competitive capacity market is at stake as reflected in the ICAP prices generally since the unmitigated Astoria II project entered the ICAP market. Specifically, New York Control Area (NYCA) ICAP prices have plunged from \$0.55/kW-month in the June 2011 Auction to \$0.15/kW-month in the July 2011 Auction and dropped again to \$0.05/kW-month in the August 2011 Auction.<sup>9</sup>

## **II. COMMENTS IN SUPPORT OF COMPLAINT**

### *A. The July And August 2011 Auction Revenue Drops are a Direct Result of the Lack of Transparency in Buyer-side Mitigation Application*

---

<sup>7</sup> July 11 Complaint, p. 3.

<sup>8</sup> See Complainants’ Motion to Lodge at 2-4 and also, Attachment A, Summer 2011 Capability Period, 08/2011 Spot Market Auction Results – UCAP (July 28, 2011) (the “August 2011 Auction Results”), Docket No. EL11-50-000 (filed July 29, 2011).

<sup>9</sup> Id.

The July and August 2011 capacity auctions in New York City resulted in unjust, unreasonable and unduly discriminatory rates because NYISO failed adequately to mitigate clearly uneconomic entry. If this is allowed to continue, such uneconomic entry will undermine the long-term sustainability of the NYC capacity market. Emergency relief remains necessary even after the August auction. Further, as the uneconomic entry tanked the prices in the July and August 2011 capacity auctions largely due to a lack of transparency, the application of buyer-side mitigation must be clearer going forward as explained in the July 11 Complaint, as well as the earlier June 3 Complaint.

The July 11 Complaint points out two main facts: (1) the New York Power Authority (“NYPA”) has publicly acknowledged its desire to suppress prices; and, (2) Astoria II, which is subject to a 20-year tolling agreement with NYPA, somehow evaded mitigation. No market participant expected Astoria II to be exempted from mitigation and such exemption was not apparent until after the auction results were public, when it was clear that the July 2011 capacity prices would be half of the June 2011 auction prices. Because the NYISO has provided no explanation as to how Astoria II escaped mitigation, and the exemption could not have been anticipated because the rules are not transparently and universally applied, critical revenues for suppliers in New York were lost.

As EPSA and others pointed out in response to the underlying June 3 Complaint in Docket EL11-42, transparency, consistency and fairness, and the vigorous control of the exercise of market power – comparably applied to all market participants – are vital components of a well-functioning competitive market, and are key elements the Commission must require from the NYISO in

implementing its Buyer-Side Market Power Rules. As the Commission has previously recognized, buyer-side market power is as relevant a concern as seller-side market power, and the Commission has a duty to protect the integrity of the wholesale power markets against both. The June 3 and July 11 Complaints therefore address matters of the utmost importance and the Commission's actions here are critical to protect both the viability of the NYC capacity market and the NYISO competitive electricity market more generally.

*B. The July 2011 Auction Demonstrates that Current Buyer-Side Market Rules Can be Manipulated to Meet Perverse State Objectives*

The problems with the NYISO's misapplication of the current buyer-side market power rules in New York have been enumerated by Complainants in both the June 3 and July 11 Complaints. The July 2011 Auction represents a worst case buyer-side mitigation scenario brought to fruition. There is no clear process for applying the rules, as attested by the first complaint. The auction allowed NYPA's publicly stated goal of suppressing prices to be realized without warning during one of the peak auction months. Whether NYISO's current tariff is flawed or the rules were incorrectly applied by the ISO, the auction prices were artificially suppressed.

As was the case in the PJM MOPR proceeding, here too there was a political goal by the State of New York to suppress prices.<sup>10</sup> Unlike New Jersey,

---

<sup>10</sup> With respect to the State of New Jersey's Long-Term Capacity Agreement Pilot Program ("LCAPP") Law a financial analyst's report concludes: "We believe passage of the bill is fundamentally a negative to the long term competitive generation New Jersey investment outlook...Investors in new generation would demand greater returns to offset perceived political interference risk (if the political class can interfere once with market rules, they can do it again). In addition, preexisting generators would have little assurance that market capacity or energy prices would ever reach sustainable levels to incent new generation investment, resulting in

however, the New York price suppression scheme was implemented more subtly, and, more troublingly, the NYISO has not only shown unwillingness to address the market consequences of that scheme but actually furthered the scheme by either wrongly exempting Astoria II or establishing an offer floor so low as to be the equivalent of an exemption. Due to the lack of the NYISO's transparency in implementing the rules under the current tariff, it is unclear why Astoria II was granted an exemption — either the rules are so flawed as to improperly allow the uneconomic entry of an extremely expensive unit supported by a 20-year PPA, or the mitigation tests were improperly applied. Nonetheless, it is clear that NYPA wanted prices suppressed and prices were suppressed. Whether this end was achieved by the NYISO's failure to abide by the requirements of its tariff or NYPA exploited a loophole in the buyer-side mitigation rules is ultimately irrelevant. Buyer-side market power has been exerted and prices have been artificially suppressed.

### *C. Commission Precedent Supports the Requested Relief*

It is not a new concept that the Commission must protect against the exercise of market power, buyer-side market power being no exception. EPSA will not reiterate here the long-term harm of artificial price suppression, as the July 11 Complaint, as well as the June 3 Complaint, discuss the issue at length. However, EPSA will underscore why the requested relief in the instant Complaint is appropriate and indeed necessary to protect the market from the exercise of market power.

---

potential for capacity shutdowns.” *Citi Capacity Markets Update: The Jersey Devil in the Details*, by Brian Chin (December 10, 2010), p. 2.

Complainants have demonstrated ample reason for the Commission to move quickly given the level of harm to market and the monthly nature of the ICAP auctions. The August auction has now occurred without the Commission requiring corrective action despite the critical nature of the month insofar as its contribution to the annual revenue of suppliers. Complainants noted that the August auction may indeed bankrupt Astoria Generating if prices continue to be suppressed.<sup>11</sup> While it is obviously not the Commission's job to protect an individual market participant from the vagaries of competitive markets, the Commission does have a duty to protect the markets and market participants from artificial manipulation of such markets and to stop the manipulative behavior as soon as possible in order to minimize the harm to market participants. As the July and August auction prices have already been drastically and artificially suppressed, the health of generators in New York City (and the impacts will ultimately extend to generators throughout New York) rests on how quickly the Commission can act going forward. Thus, the Commission has a compelling reason to take necessary corrective action on the complaint issues (and to the extent it will facilitate overall resolution, to consolidate this proceeding with the June 3 Complaint) on an emergency and expedited basis.

Next, the July 11 Complaint requests emergency interim relief in asking the Commission to require,

that all offers for the Astoria II Project (and other new generators) starting with the August 2011 Spot Market

---

<sup>11</sup> July 11 Complaint at 21-22. Also, see Complainants' Motion to Lodge, Attachment B, Standard & Poor's "Research Update: Astoria Generating Acquisitions' Ratings Lowered, Now On Watch Developing Re: Electricity Price Concerns In New York" (July 20, 2011).

Auction be mitigated to 75 percent of Mitigation Net Cone, subject to refund.<sup>12</sup>

The key phrase in this ask is “subject to refund.” If the Commission finds it cannot act on the complaint definitively in the intervening summer months, EPSA supports the interim relief requested. On the one hand, the Commission could require the mitigation and if it is deemed not necessary later order refunds. Conversely, if the Commission does not put in place the emergency interim relief, the irreparable damage that has already occurred in the July and August auctions will be compounded. Not only might some participants have to file for bankruptcy, but the overall market would suffer in order to artificially suppress prices in the short-term. For the remainder of the Summer auctions at least, a firm transparent price floor (subject to refund) is necessary for market confidence and the overall financial health of the market. In this case, a quick fix is necessary in order to ensure the economic viability of the market going forward, perhaps for years. Complainants propose 75% of the mitigation of net cone, and EPSA agrees that this is reasonable.

EPSA, however, is wary of multiple auctions occurring subject to refund. Were such interim relief granted and then allowed to languish over a long time period, the regulatory uncertainty of those auctions would almost amount to the same anguish Complainants now face due to NYISO's lack of transparency. If the Commission grants the emergency interim relief for the remainder of the summer months, it should also set a timeline by which a permanent solution must be in place.

---

<sup>12</sup> July 11 Complaint, p. 7.

Finally, beyond the instant relief requested, including determining whether refunds or changes to the rules are necessary in New York, the Commission must consider the confluence of policy objectives it has recently championed. Among other things, the NYISO should be required to file tariff revisions clarifying how mitigation exemption test determinations and offer floor calculations will be made to ensure that implementation of the mitigation rules is based on transparent and objective criteria. However, there are other policy issues that have not been vetted so thoroughly here. For example, the Commission has recently pledged to try to move away from Reliability Must Run (“RMR”) contracts and promote market solutions.<sup>13</sup> As the Complainants point out, bankruptcy or severe financial consequences are likely to occur if the Commission does not take corrective action as soon as possible that may result in premature retirement of units providing critical reliability services to New York City. As these suppliers represent a significant portion of the in-city supply, it is likely that they would need to instead enter into RMR contracts for the sake of reliability. Allowing the unmitigated participation of Astoria II (and possibly other new facilities) to continue will be deleterious and affect the entire NYISO ICAP market. Not only should the requested emergency relief be granted in order to guarantee a fair economic outcome, but all issues that affect the Commission’s

---

<sup>13</sup> As noted recently by Commissioner Moeller regarding a proposed RMR Rate Schedule for two generating units located in southeastern Pennsylvania (in PJM): “Well on the face of it this is an Order about compensation for RMR units. But I called it really to bring up three points. The first is that the three of us have been on the Commission now for about four years. And in the early years, we spent a lot of time dealing with RMR units. And we don’t like them because they’re not efficient for the marketplace, but they’re necessary in certain cases. But we’ve basically seen the elimination of them in New England, and we’re trending in the right direction...” Transcript of the September 16, 2010 Open Commission Meeting at Page 43, Lines 14-25 (Docket No. ER10-1418-000, Discussion Agenda, Item E-11).

core policy goals of promoting competitive markets should be addressed in a subsequent proceeding and other necessary corrective actions required.

### III. CONCLUSION

**WHEREFORE**, EPSA respectfully requests that the Commission (1) consider the supporting comments herein in rendering its decision; and, (2) grant such other relief as may be necessary to ensure competitive outcomes in the NYISO capacity market. EPSA urges the Commission to act decisively and expeditiously to issue an order granting the relief requested by the Complainants as this will facilitate certainty and transparency, which are critical elements to the overall integrity of the NYISO capacity market going forward.

Respectfully Submitted,



---

Nancy Bagot, Vice President of Regulatory Affairs  
Sharon Theodore, Director of Regulatory Affairs  
Tara Ormond, Director of Regulatory Affairs  
Electric Power Supply Association  
1401 New York Avenue, NW, 11<sup>th</sup> Floor  
Washington, DC 20005  
(202) 628-8200  
NancyB@epsa.org

Filed: August 3, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the comments via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., August 3, 2011.



---

Nancy Bagot, VP of Regulatory Affairs