NEW YORK STATE OF OPPORTUNITY.
Department of Public Service

Public Service Commission
Audrey Zibelman
Chair

Patricia L. Acampora
Garry A. Brown
Gregg C. Sayre
Diane X. Burman
Commissioners

Kimberly A. Harriman
General Counsel
Kathleen H. Burgess
Secretary

Three Empire State Plaza, Albany, NY 12223-1350
www.dps.ny.gov

January 15, 2015

SENT VIA ELECTRONIC FILING
Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 1-A209
Washington, D.C. 20426

Re: Docket No. EL15-33 – TDI USA Holdings Corp. v. New York Independent System Operator, Inc.

Dear Secretary Bose,

For filing, please find the Notice of Intervention and Comments of the New York State Public Service Commission in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 473-4953.

Very truly yours,

Theodore F. Kelly
Assistant Counsel

Attachment

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

TDI USA Holdings Corp.	)	
	)	
v.	)	Docket No. EL15-33
	)	
New York Independent System Operator, Inc.	)	

NOTICE OF INTERVENTION AND COMMENTS
OF THE NEW YORK STATE PUBLIC SERVICE COMMISSION

NOTICE OF INTERVENTION

On December 16, 2014, TDI USA Holdings Corp. (TDI) filed a Complaint and Request for Fast Track Processing and Shortened Comment Period (the Complaint). The New York State Public Service Commission (NYPSC) hereby submits its Notice of Intervention and Comments in the above-captioned proceeding pursuant to the Federal Energy Regulatory Commission's (FERC or the Commission) Notice of Complaint issued December 19, 2014, and Rule 214 of the Commission's Rules of Practice and Procedure.[1]

Copies of all correspondence and pleadings should be addressed to:

Theodore F. Kelly
Assistant Counsel
New York State Department
of Public Service
Three Empire State Plaza
Albany, New York 12223-1350
theodore.kelly@dps.ny.gov

William Heinrich
Manager, Policy Coordination
New York State Department
of Public Service
Three Empire State Plaza
Albany, New York 12223-1350
william.heinrich@dps.ny.gov

[1] 18 C.F.R. §385.214(a)(2).

BACKGROUND

TDI intends to construct the Champlain Hudson Power Express (CHPE) project, a high voltage, direct current (HVDC) transmission line extending approximately 330 miles from the New York border with Canada to a converter station located in the Borough of Queens, City of New York. CHPE's HVDC transmission line will be sited primarily under water in Lake Champlain and the Hudson River, with some underground upland segments. NYPSC has approved CHPE's siting.[2] It is anticipated that the electricity CHPE will transmit will consist primarily of hydroelectric power generated in Quebec, Canada. Customers taking transmission service from CHPE will sell their electric generation into the New York City energy and capacity markets operated by the New York Independent System Operator, Inc. (NYISO).

CHPE is a merchant project funded solely through private investment. It receives no financial support from buyer-side entities or governmental incentives or subsidies, and it will not depend upon captive ratepayers. Instead, it will sell transmission rights at negotiated rates under FERC's

---

[2] Case 10-T-0139, Application of Champlain Hudson Power Express, Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the PSL, Order Granting Certificate of Environmental Compatibility and Public Need (April 18, 2013) reh'g denied, Order Denying Petition for Rehearing (September 24, 2013), aff'd, Entergy Nuclear Power Marketing LLC v. PSC, Slip Opinion No. 07711 (3rd Dept. 2014).

merchant transmission policies, and has obtained FERC approval to operate under those policies.[3]

Notwithstanding that CHPE is a purely merchant project developed in full conformance with FERC's policies for encouraging merchant transmission, NYISO, on November 13, 2014, informed TDI that CHPE would be subject to buyer side mitigation (BSM). This determination was premised upon CHPE's failure to satisfy either of NYISO's two tests for exemption from BSM market mitigation, denominated as "Part A" and "Part B." Both tests depend upon comparisons of forecasts to the net costs of new entry (CONE) of the reference unit that is used to establish the installed capacity (ICAP) demand curve. Once subject to BSM, CHPE's customers can price their capacity at no lower than an offer floor that is, again, based on CONE. Imposing that mitigation on CHPE will prevent users of its transmission service from fully and freely participating in the relevant NYISO capacity markets.

COMMENTS OF THE NYPSC

The NYISO's BSM process is intended to prevent the entry into relevant NYISO capacity markets of those uneconomic resources that would intentionally and unfairly suppress capacity prices. That price suppression could theoretically occur when a project's true costs are disguised because the project obtains revenues through governmental subsidies or

[3] Champlain Hudson Power Express, Inc., 132 FERC ¶61,006 (2010).

contracts with buyer-side market participants that provide for price support beyond what the NYISO market would furnish. Plainly, CHPE's HVDC transmission line, as a purely merchant operation, does not represent the exercise of buyer side market power. Therefore, subjecting it to BSM mitigation is an irrational result as well as an unjust and unreasonable outcome.

The NYISO's application of the BSM process to CHPE is a particularly disturbing example of an approach that is flawed generally. Instead of restricting the BSM process to entrants that might potentially pose buyer market power risks, the NYISO imposes its BSM process on all entrants into the relevant capacity markets, based on NYISO forecasts of the market prices expected at the future time of entry. These forecasts are suspect as applied to CHPE, because of the difficulty inherent in predicting fluctuations in future market conditions and changes in the generation resource mix that will be present in NYISO markets at the time when the CHPE project actually enters service and operates. Further, the NYISO's own market monitor admits that the NYISO's forecasts incorporate illogical assumptions.[4]

More importantly, the BSM process conflicts with the fundamental premise of a competitive market -- that competitors

---

[4] Potomac Economics, Ltd., Assessment of the Buyer-Side Mitigation Exemption Test for the Taylor Biomass Energy Project (March 7, 2014), available at http://www.nyiso.com/public/webdocs/markets_operations/services/market_monitoring/ICAP_Market_Mitigation/Buyer_Side_Mitigation/Class_Year_2011/MMU%20Report%20re%20MET%20for%20TBE_Final_3-7-14.pdf.

will make investment decisions based on their own expectations of revenues rather than forecasts imposed by regulatory fiat. In a truly competitive market, a new entrant would not be subject to rules dictating how it can price its product. Yet, CHPE would be subjected to BSM mitigation premised upon its failure of Parts A and B of the artificial BSM test. As a result, the NYISO's application of that test to CHPE has the effect of disrupting the market and fettering its operation.

Nor does the application of the BSM test to CHPE actually prevent, as is intended, an instance of buyer side market power abuse. There can be no exercise of buyer side market power when a competitive entrant like TDI, which bears the full risk of its investment assumptions, decides to enter the market. If its investors are wrong in their assumptions, they will lose money. That a new or incumbent competitor might be forced out of the market is merely a consequence expected of competitive markets. In other words, the risk that CHPE might displace another plant's participation in the relevant capacity markets does not arise from an exercise of market power -- it is the proper result of competitive market forces, which NYISO's BSM process in this instance would obstruct.

Therefore, NYISO's application of mitigation to CHPE is a solution in search of a problem, in that there is no exercise of buyer side market power here to prevent. But the BSM process will obstruct the free and fair functioning of relevant NYISO markets; instead of a free market open to new entry as it should be, a barrier to entry is erected, impeding the proper functioning of the markets. Consequently, the NYISO's BSM process in this instance reaches an unjust and unreasonable result.

The application of mitigation to the CHPE project is improper for other reasons as well. When NYISO buyer side mitigation was first imposed, FERC stated that it would not create circumstances where incumbent generation resources would be able to retain an "uneconomic surplus" for their benefit.[5] The outcome of the NYISO's action here, however, is to shield incumbents from the effect of competition, contrary to FERC's intent. Therefore, FERC should now fulfill its intent by releasing CHPE from BSM mitigation.

Moreover, FERC has recognized that the procurement of new capacity, even at times when the market clearing price indicates entry of new capacity is not needed, could further legitimate policy goals.[6] It is expected that the generation CHPE will transmit to New York City will consist primarily of clean hydroelectric power which could displace fossil-fueled generation resources. As a result, exempting CHPE from market mitigation for the public policy reason that it is a cleaner resource is warranted.

---

[5] New York Independent System Operator, Inc., 124 FERC ¶61,301 (2008) at p. 8.

[6] 124 FERC ¶61,301 at p. 12.

Finally, NYPSC supports TDI's request for expedited action. As TDI points out, failure to exempt it from BSM mitigation would preclude its entry into the NYISO Class Year 2015 study process, a prerequisite to obtaining interconnection approvals. The CHPE project should not be delayed in obtaining those approvals because of an unjust and unreasonable BSM process. Doing so would prevent New York's retail customers from obtaining energy from a resource that could be both cleaner and cheaper than current alternatives. Unwarranted mitigation should not be allowed to interfere with that prospect.[7]

CONCLUSION

In accordance with the foregoing Comments, the Commission should issue an order granting the relief requested in TDI's Complaint.

Respectfully submitted,

Kimberly A. Harriman

Kimberly A. Harriman
General Counsel
Public Service Commission
of the State of New York
By: Theodore F. Kelly
Assistant Counsel
3 Empire State Plaza
Albany, NY 12223-1305
(518) 473-4953

Dated: January 15, 2015
Albany, New York

---

[7] See also, New York Independent System Operator, Inc., 133 FERC ¶61,178 (2010), fn. 45.

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 this proceeding.

Dated: January 15, 2015
Albany, New York

Theodore F. Kelly
Assistant Counsel
3 Empire State Plaza
Albany, NY 12223-1305
(518) 473-4953