

STATE OF NEW YORK

# Public Service Commission

Garry A. Brown, Chairman

Three Empire State Plaza, Albany, NY 12223

Further Details: James Denn

James.Denn@dps.ny.gov | 518.474.7080

<http://www.dps.ny.gov>

<http://twitter.com/NYSDPS>

12073

## **REHEARING SOUGHT ON CONTROVERSIAL FEDERAL DECISION**

**— If Unchallenged, Decision by Fed Regulators Will Cost NY Ratepayers Up to \$500M —**

Albany, NY — 10/11/12 — The New York State Public Service Commission (Commission) today announced that it filed with the Federal Energy Regulatory Commission (FERC) a request for a rehearing to overturn a FERC decision that will, if allowed to stand, have a significant financial impact on New York City and upstate ratepayers. FERC's decision also creates regulatory uncertainty for new market entrants into the New York City electricity market.

In response to a July 2011 complaint from the operators of two private power plants in NYC, FERC reversed a decision by the New York Independent System Operator (NYISO) and would change the electricity market pricing rules that had been applied to the newly constructed Astoria Energy II (AE II) power plant in Queens since it became operational more than a year ago.

At issue is the standard that the NYISO applied to the 550-megawatt (MW) AE II plant, which was brought into service in July 2011 through a contract with the New York Power Authority (NYPA) for an additional source of power for the electricity requirements of NYPA's governmental customers in New York City, including schools, hospitals, municipal buildings, subways and commuter trains.

Because of this 'late-in-the-game' rule change, NYC and upstate consumers could see an estimated increase of up to \$500 million in 2013 in their electricity bills. Additionally, FERC's decision will create major regulatory uncertainty that will undermine environmental improvement and economic development opportunities related to repowering. The FERC change

also applies to a second power plant, Bayonne Energy Center (BEC), but the rule change is not expected to have an adverse impact on Bayonne.

In 2010, the NYISO, the entity overseeing the state's wholesale electricity market, performed a crucial market-pricing test – the “buyer market power” test – for AE II, a test designed to determine if a proposed new generator is likely to receive electric market revenues that equal or exceed the generator's expected costs. The NYISO determined that AE II passed the test because the NYISO's forecast of market revenues did exceed the forecast of AE II's costs; passing this test cleared AE II to move forward with its project and participate in the NYC markets.

Now, two years later, in response to a complaint by generator competitors US Power Generating affiliate Astoria Generating Co. and TransCanada's TC Ravenswood, FERC has decided it will revisit the 2010 NYISO decision. FERC is now directing the NYISO to rerun the buyer market power test for AE II with several modifications that will likely result in AE II failing the test.

In essence, FERC is modifying the rule in a way that will artificially force AE II to increase its offer price for capacity to a point where it will not be accepted (i.e., the offer price will not clear the market). That would restrict AE II's participation in the NYC electric capacity market, leading to major price increases in the market and harming consumers.

The PSC is requesting a rehearing of FERC's September 10, 2012 order. The PSC is concerned that the September 10 order represents a fundamental and unexplained departure from prior FERC precedent, and will ultimately deter market entry and hinder the State's ability to pursue public policy objectives in a cost-effective manner.

The PSC seeks rehearing of these determinations, which, if left unaddressed, would have significant implications on the ability to attract new entry into the highly constrained New York City market, and the ability of the State to pursue legitimate public policy objectives cost-effectively.

The policy changes established in the September 10 order would effectively second-guess the NYISO's exemption determinations provided to AE II and BEC. These determinations were rational and reasonable based on the circumstances and FERC precedent, and should therefore not be undone. Withdrawing an already established exemption for new entrants that complied with the tariff would be unduly punitive, and inconsistent with prior FERC decisions.

The petition can be viewed on the PSC website at <http://tinyurl.com/9s7d85f>.