

150 FERC ¶ 61,115
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

Cayuga Operating Company, LLC

Docket No. ER13-405-000

ORDER GRANTING MOTION TO WITHDRAW

(Issued February 19, 2015)

1. In this order, the Commission grants Cayuga Operating Company, LLC's (Cayuga) motion to withdraw a contested, unexecuted cost-of-service agreement for reliability must-run (RMR) service, designated as Cayuga's Electric Rate Schedule FERC No. 2 (RMR Agreement). Several parties filed responses opposing the motion or requesting further Commission action. As discussed below, we will grant Cayuga's motion to withdraw its filing and deny the requests for further action.

I. Background

2. Under the unexecuted RMR Agreement Cayuga filed on November 16, 2012, Cayuga would provide New York State Electric & Gas Corporation (NYSEG) with RMR service from the Cayuga Generating Station (Station), effective January 16, 2013. In the November 16, 2012 filing, Cayuga stated that it and NYSEG were also negotiating a Term Sheet for a Reliability Support Services Agreement (RSSA) for the same RMR service to be filed with the New York Public Service Commission (New York Commission). Cayuga stated that, if the New York Commission accepted the Term Sheet, and the RSSA was executed and filed, Cayuga would file to withdraw its November 16, 2012 filing with the Commission. Cayuga requested that the Commission hold this proceeding in abeyance pending further actions at the New York Commission.

3. Cayuga stated in its November 16, 2012 filing that market prices in the region will not support the ongoing operations of the Station. As a result, Cayuga stated that, on July 20, 2012, it notified the New York Commission that it intended to mothball the Station by January 16, 2013. Cayuga further stated that, on July 25, 2012, the New York Commission requested that NYSEG and New York Independent System Operator (NYISO) perform a study of the potential reliability impacts of mothballing the Station. Cayuga stated that NYSEG's studies concluded that both units at the Station needed to be available and capable of being committed to maintain system reliability and address thermal overload conditions.

II. Notice and Responsive Pleadings

4. Notice of Cayuga's November 16, 2012 filing was published in the *Federal Register*, 77 Fed. Reg. 71,411 (2012), with protests or interventions due on or before December 7, 2012. Subsequently, at the request of Cayuga, the December 7, 2012 date was extended twice, to January 7, 2013,¹ and to March 4, 2013.² A notice of intervention was filed by the New York Commission. Timely motions to intervene were filed by the Electric Power Supply Association, Brookfield Energy Marketing LP, the Indicated New York Transmission Owners (NY Transmission Owners),³ Entergy Nuclear Power Marketing, LLC (Entergy Nuclear), Empire Generating Co., LLC, Sheldon Energy LLC, Hess Corporation, and the New York Association of Public Power. The Independent Power Producers of New York, Inc. (IPPNY), NYSEG, Exelon Corporation (Exelon), and TC Ravenswood, LLC (TC Ravenswood) filed timely motions to intervene and filed comments or protests on Cayuga's November 16, 2012 filing.

5. IPPNY stated that it has no concerns with respect to the RMR agreement filed with the Commission under FPA section 205 because that agreement provides that the capacity from the Cayuga Station will be offered into the New York Control Area (NYCA) capacity spot market auctions at the level of Cayuga's going forward costs. However, with regard to the RSSA between Cayuga and NYSEG filed with the New York Commission, IPPNY opposes the RSSA's requirement that Cayuga must offer its capacity into the NYCA spot market auctions at a *de minimus* price, which is substantially below Cayuga's going forward costs. According to IPPNY, this provision violates Commission-approved NYISO market power mitigation measures designed to prohibit bidding practices that will artificially increase or suppress prices in the NYISO capacity markets. TC Ravenswood and Exelon raised similar concerns and generally supported IPPNY's comments. Entergy Nuclear also stated that it supports IPPNY's comments.

6. NYSEG, the purchaser under the unexecuted RMR Agreement Cayuga filed with the Commission, stated that it supports the RSSA and believes that the RSSA renders the RMR Agreement unnecessary. However, in the event the Commission were to act on the RMR Agreement, NYSEG stated that it has concerns with the RMR Agreement,

¹ "Notice of Extension of Comment Period," Docket No. ER13-405-000, issued November 27, 2012.

² "Notice of Extension of Time," issued January 7, 2013.

³ The NY Transmission Owners are: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, Niagara Mohawk Power Corporation d/b/a National Grid, and Orange and Rockland Utilities, Inc.

including Cayuga's use of original depreciated cost, as opposed to the recent purchase price established as part of a bankruptcy proceeding, to establish the rate base, return, and income tax computation.

7. NYISO did not intervene but filed limited comments stating that it was not a party to the development or filing of either the RMR agreement or the RSSA. NYISO expressed concern that protestors have asked the Commission to use this proceeding to impose changes on the NYISO markets and market power mitigation rules. NYISO stated that it believes this is not the appropriate forum to address such matters and that any such changes should be vetted through the stakeholder process. NYISO stated that its Services Tariff already requires it to actively monitor the markets for conduct that would substantially distort or impair the competitiveness of any of the NYISO administered markets.⁴

8. On January 25, 2013, IPPNY filed a request for an expedited order, asking the Commission to prohibit Cayuga from implementing the *de minimus* offer provision of the RSSA, and an answer to NYISO's comments.

III. Cayuga's Motion to Withdraw and Comments

9. On February 28, 2013, Cayuga filed, pursuant to section 35.17(a) of the Commission's regulations,⁵ a motion to withdraw its November 16, 2012 filing of the RMR Agreement (Motion to Withdraw).⁶ Cayuga stated that on December 17, 2012, the New York Commission issued an order approving the Term Sheet.⁷ Cayuga stated that, under the terms of the RSSA, Cayuga and NYSEG agreed to seek abeyance of the Commission proceeding until the NYPSC's December 17, 2012 order became final and non-appealable.⁸ Cayuga stated that it filed the RMR Agreement with the Commission in the event the negotiations with NYSEG over the RSSA were unsuccessful. Cayuga asserted that, under its market-based rate authority, it always had the ability to negotiate a

⁴ NYISO Services Tariff Attachment H at § 23.1.1.

⁵ 18 C.F.R. § 35.17(a) (2014).

⁶ Cayuga also filed an expedited motion to extend or suspend the March 4, 2013 comment deadline in this proceeding until the Commission acts on the Motion to Withdraw.

⁷ Cayuga Motion to Withdraw at 2. The executed RSSA between Cayuga and NYSEG was filed at the New York Commission on January 3, 2013. Motion to Intervene and Comments of NYSEG at 3.

⁸ On February 14, 2013, the New York Commission issued an order denying rehearing of its December 17, 2012 order.

power sales agreement with NYSEG, and that such an agreement would not need to be filed with the Commission.⁹ Cayuga further stated that the proposed RMR Agreement is now moot, that it has never made power sales to NYSEG under the RMR Agreement, and that it has no plans to do so, because the RSSA has been executed and effective for several months. Cayuga asserted that any issues raised by the commenters are unrelated to its RMR Agreement and are best addressed through another proceeding.

10. Notice of Cayuga's Motion to Withdraw was published in the *Federal Register*, 78 Fed. Reg. 14,789 (2013), with interventions and comments due by March 15, 2013. Timely motions to intervene were filed by the PSEG Companies and Brookfield Energy Marketing LP. IPPNY, NYSEG, TC Ravenswood, and the NY Transmission Owners filed answers to and comments on Cayuga's Motion to Withdraw. TC Ravenswood filed a motion to keep the proceeding open and to condition withdrawal on leaving materials in the record. Entergy Nuclear filed an answer in support of TC Ravenswood's motion. The NY Transmission Owners filed an answer to IPPNY and TC Ravenswood's answers.

11. IPPNY contended that the Commission must assert jurisdiction over the RSSA to ensure that that agreement does not artificially suppress competitive market pricing in New York. IPPNY asserted that the RSSA's requirement to offer capacity at *de minimus* prices will adversely affect the New York capacity market, which is subject to the Commission's exclusive jurisdiction. IPPNY requested that the Commission deny the motion to withdraw and direct Cayuga to file the RSSA in the instant docket for Commission review. In the event that Cayuga is permitted to withdraw its RMR agreement, IPPNY requested that the Commission issue a show cause order directing Cayuga to either file its RSSA for Commission review or explain why it should be permitted to implement the RSSA absent Commission review given the adverse impacts alleged by IPPNY.

12. TC Ravenswood stated that it does not oppose Cayuga's request to withdraw its RMR filing. However, TC Ravenswood also moved that the docket remain open and that the withdrawal be conditioned upon a requirement that materials relevant to the issues remain in the record. TC Ravenswood raised essentially the same issues as IPPNY – that the RSSA undermines the New York competitive markets.

13. NYSEG and the NY Transmission Owners each filed comments supporting Cayuga's Motion to Withdraw. The NY Transmission Owners also filed an answer to

⁹ Cayuga Motion to Withdraw at 2. Cayuga noted that its market-based rate authority was approved through delegated letter order on May 25, 2012 in Docket Nos. ER12-1562-000 and ER12-1563-000.

IPPNY and TC Ravenswood. The NY Transmission Owners stated that IPPNY's real objection is directed at New York's capacity markets and the way prices are determined.¹⁰

IV. Discussion

Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept the January 25, 2013 answer of IPPNY and the March 27, 2013 answer of the NY Transmission Owners because they have provided information that assisted us in our decision-making process.

Commission Determination

16. Section 35.17(a) of the Commission's regulations provides that a public utility may withdraw in its entirety, a rate schedule, tariff, or service agreement that has not become effective and upon which no Commission or delegated order has been issued, by filing a withdrawal motion with the Commission. Cayuga's filing has neither become effective, nor has the Commission issued any previous orders regarding this filing. Thus, Cayuga may seek to withdraw its earlier November 16, 2012 RMR filing. Cayuga has also informed us that it does not intend to execute this agreement and that no service will be provided under it.

17. IPPNY's and TC Ravenswood's arguments in opposition to Cayuga's Motion to Withdraw focus on the RSSA's requirement to offer capacity at a *de minimus* price, which they claim will adversely impact the New York capacity market and, more particularly, the structure of NYISO's existing mitigation provisions, which are designed to prohibit bidding practices that will artificially increase or suppress prices in the NYISO capacity markets.¹¹ To the extent these parties are asking the Commission to direct NYISO to expand its existing market power mitigation provisions, we find that such a request is beyond the scope of this proceeding.

¹⁰ NY Transmission Owners Answer at 2.

¹¹ On May 10, 2013, as amended March 25, 2014, IPPNY filed a complaint against NYISO raising these same issues in Docket No. EL13-62-000. IPPNY's complaint is pending before the Commission.

18. We find that the issues raised by IPPNY and TC Ravenswood do not concern Cayuga's November 16, 2012 RMR filing and are beyond the limited scope of this proceeding. In light of the foregoing, no reason exists to continue proceedings in this docket. Accordingly, the Commission will grant Cayuga's Motion to Withdraw its November 16, 2012 RMR filing, effective as of the date of issuance of this order, and will deny the requests by IPPNY and TC Ravenswood for further action in this proceeding.

The Commission orders:

(A) Cayuga's motion to withdraw its November 16, 2012 RMR filing is hereby granted, effective as of the date of issuance of this order.

(B) The requests for further action of IPPNY and TC Ravenswood are hereby denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.