

147 FERC ¶ 61,147
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Allegany Generating Station LLC

Docket No. ER14-1680-000

ORDER DENYING WAIVER

(Issued May 27, 2014)

1. On April 7, 2014, Allegany Generating Station LLC (Allegany) filed a petition requesting a temporary and limited waiver of section 5.12 of the New York Independent System Operator, Inc. (NYISO) Market Administration and Control Area Services Tariff (Services Tariff) as necessary to qualify Allegany to supply unforced capacity.¹ As discussed below, the Commission denies the requested waiver.

Background and Details of the Filing

2. Section 5.12.6.1 of NYISO's Services Tariff sets forth how to calculate the amount of Unforced Capacity (UCAP) that each installed capacity supplier may supply in the New York Control Area pursuant to formulae provided in the NYISO procedures.² The NYISO UCAP calculation procedures are found in NYISO's Installed Capacity (ICAP) Manual.³ Allegany explains that a facility's UCAP is based on the average

¹ See [NYISO, MST, 5.12, MST Requirements Applicable to Installed Capacity Suppliers \(6.0.0\)](#).

² [NYISO, MST, 5.12.6.1, MST Requirements Applicable to Installed Capacity Suppliers \(6.0.0\)](#).

³ NYISO ICAP Manual, February 2014 Attachment J.

Equivalent Demand Forced Outage Rate (EFORd) value over preceding 12-month periods.⁴

3. Allegany explains that, on November 1, 2013, it acquired from Rochester Gas & Electric Corporation (Rochester) via an open auction process a 62-MW gas-fired combined-cycle power plant located in the Town of Hume, New York (Allegany Facility).⁵ Allegany explains that, during the auction process, the Allegany Facility underwent a scheduled maintenance outage from May 14, 2012 to May 29, 2012 and during this period, the need for additional extensive repairs was identified. Allegany explains that since no repairs were made, the plant remained inoperable for approximately 17 months until the completion of the sale (November 1, 2013).⁶ Allegany contends that the forced outage resulted in the Allegany Facility's derating factor for the Summer 2013 Capability Period (May 1, 2013 to October 31, 2013) to be greater than 99 percent, thereby making the Allegany Facility unable to participate in NYISO's capacity market for the Summer 2014 Capability Period.⁷ Allegany indicates that it has made substantial investment in the plant and brought the facilities back into operation within 45 days after the November 1, 2013 closing.⁸ Allegany argues that it is

⁴ Allegany Petition at 6 (citing ICAP Manual Attachment J Section at 3.1).

For each Capability Period, the NYISO will base the amount of Unforced Capacity a generating resource is qualified to supply on the average of EFORd values calculated for that Resource covering the 12-month periods ending in January, February, March, April, May and June for the subsequent Winter Capability Period and the average of EFORd calculations for that Resource covering the 12-month period ending in July, August, September, October, November and December for the subsequent Summer Capability Period.

⁵ *Id.* at 2. Allegany states that the Commission approved the transaction on August 20, 2013 (citing *Carthage Energy, LLC and Allegany Generating Station, LLC*, 144 FERC ¶ 62,140 (2013)), and the New York Public Service Commission (NYPSC) approved the transaction on October 18, 2013. *Id.* at 1-2.

⁶ *Id.* at 6.

⁷ *Id.* (citing NYISO ICAP Manual, February 2014 Attachment J Section J-1. UCAP = (1-EFORd) x Dependable Maximum Net Capability).

⁸ *Id.* at 3.

a new market participant that promptly effectuated repairs upon closing of the transaction but is barred from the capacity market for a prolonged period, even though a significant portion of that derating was during the period when there was uncertainty about whether the Allegheny Facility would return to service.

4. Accordingly, Allegheny requests a limited waiver of section 5.12 of NYISO's Services Tariff so that, when NYISO calculates EFORd for the Allegheny Plant, it may exclude the period of May 1, 2013 through October 31, 2013. In its place, Allegheny proposes that NYISO substitute the North American Energy Reliability Corporation (NERC) class average derating factor⁹ for that period and its recently demonstrated Dependable Maximum Net Capability.¹⁰ Allegheny asserts that the use of the NERC class average derating factor is consistent with current NYISO practice for mothballed units that return to service.

5. Allegheny argues that its requested waiver meets the Commission's criteria for waiver. Specifically, Allegheny contends that the Commission has previously granted waiver when: (1) the applicant has acted in good faith, (2) the waiver is limited in scope and duration, (3) the waiver addresses a concrete problem, and (4) granting the waiver will not have undesirable consequences. Allegheny asserts that it acted in good faith by promptly restoring the Allegheny Facility to operation after closing on the transaction in accord with one of the enumerated public goals of the auction process: continued operation of the Allegheny Facility. Allegheny asserts that the requested waiver is limited in duration because it only proposes to exclude the Allegheny Facility's EFORd for a discrete period from May 1, 2013 through October 1, 2013. Thus, it states, the waiver is limited to exclude that six month period from the EFORd calculation for three Capability Periods: Summer 2014, Winter 2015, and Summer 2015. Allegheny argues that the scope of the waiver is also limited by the 62 MW size of the facility. Allegheny asserts that the Commission has previously found that waivers were limited in scope when the request would only affect a limited amount of capacity.¹¹ Allegheny also asserts that the waiver

⁹ NYISO ICAP Manual, February 2014 Attachment J Section 4.5 B. A NERC class average EFORd is based on the average outage rates of similar resources.

¹⁰ NYISO, MST, 2.4 MST Definitions-D. Dependable Maximum Net Capability is the sustained maximum net output of a generator, as demonstrated by the performance of a test or through actual operation, averaged over a continuous time period.

¹¹ Allegheny Petition at 8 (citing *North Carolina Elec. Membership Corp.*, 143 FERC ¶ 61,037, at P 6 (2013); *Appalachian Power Co.*, 143 FERC ¶ 61,032, at P 10 (2013); *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,140, at P 13 (2010); and *PJM Interconnection, L.L.C.*, 130 FERC ¶ 61,068, at P 8 (2010)).

resolves the concrete problem of disallowing Allegany Facility's full participation in NYISO's capacity market. Finally, Allegany asserts that the waiver would not have undesirable consequences, such as harming third parties, and that the participation of the Allegany Facility will not endanger or undermine the goals of the NYISO markets. It also asserts that, in fact, it is beneficial to allow Allegany to bring more capacity to the NYISO auction.

Notice of Filing and Responsive Pleadings

6. Notice of Allegany's petition was published in the *Federal Register*, 79 Fed. Reg. 21,222 (2014), with interventions and protests due on or before April 14, 2014. A notice of intervention was filed by Exelon Corporation (Exelon). NYISO filed a motion to intervene and comments. The Independent Power Producers of New York, Inc. (IPPNY), Entergy Nuclear Power Marketing, LLC (ENPM), and NRG Companies (NRG)¹² filed motions to intervene and protests. PSEG Companies (PSEG)¹³ filled a motion to intervene out of time.

7. NYISO states that it does not oppose Allegany's request for limited waiver.

8. IPPNY, ENPM and NRG request that the Commission reject Allegany's request for waiver as the request does not meet the Commission's criteria for granting waiver. ENPM notes that Allegany acquired the Allegany Facility over five months ago; however Allegany filed its petition on April 7, 2014 less than two weeks before resources must certify their available levels, April 18, 2014. ENPM suggests that Allegany's request for expedited action provides an unreasonable amount of time to consider the petition.¹⁴ ENPM and NRG note that Allegany is owned by an entity that owns additional generating facilities in New York that participate in the NYISO's markets.¹⁵ IPPNY and NRG challenge Allegany's claim that it has acted in good faith, suggesting that it knew at

¹² The NRG Companies are NRG Power Marketing, LLC; GenOn Energy Management, LLC; Arthur Kill Power LLC; Astoria Gas Turbine Power LLC; Dunkirk Power LLC; Huntley Power LLC; BRG Bowline LLC; Oswego Harbor Power LLC; and Energy Curtailment Services, Inc.

¹³ The PSEG Companies are PSEG Power LLC, PSEG Energy Resources & Trade LLC, and PSEG Power New York LLC.

¹⁴ ENPM at 3-4.

¹⁵ ENPM at 5, n.10; NRG at 3. Allegany is owned by Alliance Energy, New York LLC.

the time it negotiated the purchase price for the facilities that the forced outage would drastically derate its UCAP.¹⁶ IPPNY notes that the Allegheny Facility continued to sell UCAP when it was unable to operate at the beginning of its outage. IPPNY and NRG insist that Allegheny's offer to purchase the Allegheny Facility should have accounted for the expected loss of capacity revenues resulting from the derating. NRG states that Allegheny has not demonstrated why purchasing and restoring an asset represents good cause for granting waiver. IPPNY and NRG assert that Allegheny is attempting to "double-dip" and obtain additional revenues by requesting a waiver.

9. IPPNY, ENPM, and NRG contend that Allegheny does not properly identify a problem that will be resolved by the waiver. IPPNY, ENPM, and NRG assert that NYISO's tariff correctly ensures that Allegheny is permitted to participate in the ICAP market based upon the likelihood of its availability.¹⁷ ENPM suggests that Allegheny's inability to earn additional capacity market revenues in the absence of waiver does not constitute a concrete problem that warrants Commission action. ENPM suggests that the Allegheny Facility's Dependable Maximum Net Capability test results do not confirm that the Allegheny Facility will reliably operate during the Summer 2014 Capability Period. ENPM contends that Allegheny has not shown that the generic class average derating factor will produce a reasonable UCAP rating that reflects the Allegheny Facility's expected operational capability.

10. IPPNY contends that granting Allegheny's waiver will harm other power suppliers and the reliability of the bulk power system. IPPNY and NRG suggest that the purpose of the UCAP methodology is to encourage ICAP suppliers to maintain their facilities and return them to service as quickly as possible if they break down.¹⁸ IPPNY, ENPM, and NRG assert that Allegheny's waiver will reward Allegheny Facility rather than penalize it for its failure to return to service in a timely manner.

11. IPPNY and ENPM suggests that the waiver will also artificially increase the amount of UCAP that will be offered in to the market, reducing the ICAP revenues for other suppliers that wish to participate in the ICAP market. NRG indicates that the requested waiver impacts NYISO's capacity markets for 18 months by excluding the EFORd data from three Capability Periods. NRG contends that giving the Allegheny

¹⁶ IPPNY at 7; NRG at 1, 3.

¹⁷ IPPNY at 6; ENPM at 5; NRG at 3.

¹⁸ IPPNY at 4-5 (citing *New York Independent System Operator, Inc.*, 96 FERC ¶ 61,251, at 61,993 (2001) (*NYISO*)); NRG protest at 5 (citing *New York Independent System Operator, Inc.*, 98 FERC ¶ 61,180, at 61,666 (2002)).

Facility a higher historic availability distorts the market on both the load and supplier side. ENPM contends that Allegheny has failed to show why the grant of its waiver request will not artificially devalue the capacity of other generators in the upcoming capacity auction.

12. IPPNY, ENPM, and NRG refute Allegheny's claims that the waiver is limited in scope. IPPNY and NRG contend the waiver will establish a bad precedent because it will allow assets that were inoperable, prior to purchase, an opportunity to participate in the capacity market that is not available to other generators in the NYISO markets.¹⁹ IPPNY and ENPM claim that Allegheny has not demonstrated why the Allegheny Facility deserves special treatment while other similarly situated generators face the same economic consequences as a result of forced outages. IPPNY and ENPM suggest that such treatment would be unduly discriminatory. NRG similarly suggests that the Commission should treat an owner that returns its own unit to service in the exact same manner as if the owner sells its unit to a third party.

13. NRG suggests that, to the extent Allegheny has concerns about how the availability of a generating unit is measured and its EFORD is calculated under NYISO's tariff, Allegheny should be required to file a complaint bearing the burden of proving that NYISO's existing procedures are unjust and unreasonable.

Discussion

Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will grant the late-filed motions to intervene of PSEG Power LLC, PSEG Energy Resources & Trade LLC, and PSEG Power New York LLC given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

Commission Determination

15. The Commission has previously granted requests for waivers of tariffs in situations where: (1) the applicant has been unable to comply with the tariff provision at issue in good faith, (2) the waiver is of limited scope; (3) a concrete problem must be

¹⁹ IPPNY at 5; NRG at 2.

remedied; and (4) the waiver does not have undesirable consequences, such as harming third parties.²⁰ As discussed below, we will deny Allegany's waiver request because Allegany has failed to show good cause to grant waiver of section 5.12 of the NYISO Services Tariff.

16. Allegany requests that the Commission grant waiver of section 5.12 of the NYISO Services Tariff to exclude, in the calculation of the EFORd for the Allegany Facility, the period of May 1, 2013 through October 31, 2013. Allegany explains that, then, its EFORd for the next three Capability Periods starting May 1, 2014, will not reflect that six-month outage period and, thus, will allow Allegany Facility to offer more of its capacity into the NYISO ICAP market. In its place, Allegany proposes that NYISO substitute the NERC class average derating factor for that period and use Allegany's recently tested Dependable Maximum Net Capability.²¹

17. We find that Allegany has not demonstrated good cause for the requested waiver. Accordingly, we deny the requested waiver. Allegany suggests that good causes exists because it promptly restored the Allegany Facility to operation after purchasing it and, if the waiver is granted, additional capacity will be provided to NYISO's capacity market. While Allegany promptly restored the Allegany Facility to operation once the purchase was completed, we agree with IPPNY, ENPM, and NRG that Allegany has not demonstrated why its restoration of the Allegany Facility – while laudable – is relevant to support its requested waiver of the tariff provision at issue. Allegany was aware of its predecessor's actions and the limitation on the amount of capacity the Allegany Facility would be able to offer in the capacity market due to the forced outage and the need for repairs.²² IPPNY also notes that the Allegany Facility continued to sell UCAP when it was unable to operate at the beginning of its outage.²³ Thus, it appears that Allegany acquired the facility with full knowledge of its limited ability to participate in the NYISO

²⁰ See, e.g., *New York Indep. Sys. Operator, Inc.*, 139 FERC ¶ 61,108, at P 14 (2012); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011); *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *California Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010).

²¹ Allegany states that on December 16, 2013 and on April 1, 2014, it submitted Dependable Maximum Net Capability testing data for the Allegany Facility demonstrating a sustained maximum net output of 59.7 MW and 61.4 MW, respectively. Allegany Petition at 3.

²² Allegany Petition at 3, n.7.

²³ IPPNY at 6.

capacity market in the future.²⁴ While we acknowledge that granting the waiver would be to Allegany's financial benefit and denying it would be to Allegany's financial detriment, we cannot conclude on this record that Allegany has met the first of the four factors we typically consider in evaluating waiver requests. That is, we cannot find its knowing purchase of the facility in the state that it was then in, coupled with its subsequent work on the facility, in and of itself warrants excepting Allegany from the requirements of the Tariff.

18. Further, participation in NYISO's ICAP market is based upon the likelihood of a facility's availability based on the average EFORd value over preceding 12-month periods. NYISO's methodology creates an effective economic signal to incent facility owners to keep facilities in good repair and maintain operability and reliability.²⁵ We are concerned that granting waiver may undermine reliability. Allegany has not shown that Allegany's proposed solution, using the NERC class average derating factor and the Allegany Facility's recent Dependable Maximum Net Capability test results, are reflective of the expected operational capability of the unit. In fact, protestors allege that allowing Allegany's Facility to participate in the capacity market without a historical demonstration of its availability to provide such capacity may serve as a disincentive to generation to keep facilities in good repair and maintain their operability. As noted in accepting NYISO's provisions, if a generator can improve its EFORd, we find that it will have additional capacity and additional energy to sell, which serves as an incentive to generators to improve reliability.²⁶

19. Allegany suggests that its requested waiver is limited in scope because the proposed period for which the EFORd data is to be replaced is discrete. We question whether a waiver in this context – covering three capability periods – is truly limited in scope. Granting the waiver would affect, and increase, the eligibility of Allegany's capacity and, therefore, would affect the capacity markets for the next 18 months, over three consecutive Capability Periods, starting with Summer 2014 (starting May 1, 2014) through Summer 2015 (through October 31, 2015).

²⁴ In this regard, on this record, we also fail to see any reason for Allegany's delay in seeking the instant waiver until shortly before the date when it would need the waiver approved to be able to sell capacity in the capacity market for the 2014 Summer Capability Period.

²⁵ *NYISO*, 96 FERC at 61,993, *New York Independent System Operator, Inc.*, 98 FERC ¶ 61,180 at 61,666 (2002).

²⁶ *NYISO*, 96 FERC at 61,993.

20. We also find that, while Allegany has identified a concrete problem and that granting the waiver would be to Allegany's financial benefit, we cannot conclude on this record that Allegany has met the four factors we typically consider in evaluating waiver requests. As discussed above, we cannot find its knowing purchase of the facility in the state that it was then in, coupled with its subsequent work on the facility, in and of itself warrants excepting Allegany from the requirements of the Tariff. Granting waiver may result in undesirable consequences and potential harm to third parties as discussed above in terms of affecting reliability and impacting the capacity market.

21. Finally, granting Allegany's requested waiver may create undue discrimination because generating assets that were inoperable prior to purchase, because of the purchase, can escape the effect of their inoperability and thus have an opportunity to participate in the capacity market that is not available to other generators in the NYISO markets.²⁷ In its waiver, Allegany has failed to persuade us that such treatment is not unduly discriminatory. Therefore, Allegany's request for limited waiver of section 5.12 of NYISO's Services Tariff is hereby denied.

The Commission orders:

Allegany's request for limited waiver of section 5.12 of NYISO's Services Tariff is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁷ IPPNY at 5; NRG at 2.