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

KeySpan-Ravenswood, LLC,)	
Complainant,)	
v.)	Docket EL05-17-000
New York Independent System Operator,)	
Respondent.)	

MOTION TO INTERVENE, COMMENT AND ANSWER OF CONSOLIDATED EDISON SOLUTIONS, INC., AMERADA HESS CORPORATION, CONSUMER POWER ADVOCATES, AND THE ECONOMIC DEVELOPMENT CORPORATION OF THE CITY OF NEW YORK TO THE KEYSpan-RAVENSWOOD COMPLAINT

Pursuant to Rules 212, 213 and 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§§ 385.212, 385.213 and 385.214 (2004), Consolidated Edison Solutions, Inc., Amerada Hess, Inc., Consumer Power Advocates, the Economic Development Corporation of the City of New York, and **[add any other parties here]** (collectively “Companies”) respectfully move to intervene, comment and answer in the above-captioned docket. In support hereof, the Companies respectfully state as follows.

I. SUMMARY OF ANSWER

In the complaint (“Complaint”) filed on October 27, 2004, by KeySpan Ravenswood, LLC (“Keyspan”) in the above-captioned proceeding, Keyspan alleges that the New York violated its Market Administration and Control Area Services Tariff (“Services Tariff”) and certain reliability rules promulgated by the New York State

Reliability Council (“NYSRC”). KeySpan’s also claims that the NYISO violated its bilateral agreement with the NYSRC¹ by failing to require load serving entities (“LSEs”) in New York City and New York State to acquire enough capacity for the summer 2002 capability period².

As the Companies explain in this Answer, Keyspan’s Complaint is without merit because the NYISO followed the terms of its tariff and associated manuals in determining the amount of capacity LSEs were required to procure in the summer 2002 capability period. Accordingly, Keyspan is not entitled to any relief and the Complaint should be denied by the Commission.

II. THE NYISO’S ACTIONS WERE CONSISTENT WITH ITS TARIFF

KeySpan alleges that the NYISO failed to ensure that sufficient capacity was committed during the summer 2002 capability period³ because the NYISO used a 10 year average of forced outage rates to translate LSEs’ capacity obligation from Installed Capacity (“ICAP”) to Unforced Capacity (“UCAP”) but used a 1 year average of forced outage rates to translate individual generator’s capacity ratings from ICAP to UCAP. According to KeySpan this translation error created a capacity deficiency of 400.2 MW in-City and 1687 MW in the ROS, based on a UCAP measurement,⁴ in violation of the Services Tariff.⁵ KeySpan also alleges that the NYISO committed a tariff violation by

¹ ISO/NYSRC Agreement.

² May2002 – October 2002

³ KeySpan Complaint, ¶ 24.

⁴ Id. at ¶¶ 27, 31.

⁵ Id. at ¶ 49.

violating a provision of the NYSRC/ISO Agreement which requires the NYISO to follow the NYSRC's reliability rules.⁶

The capacity "deficiency" that Keyspan identifies in its complaint not a result of a failure of the NYISO to follow its tariff. Rather, it is the natural result of the UCAP market design that the Commission approved in docket ELXX-XXX and which the NYISO implemented beginning in November 2001, six month in advance of the summer 2002 period that is the focus of this Complaint. The apparent discrepancy is a result of the mix of generation that LSEs contracted with in the summer of 2002 having a an improved availability as compared to the historic levels that were used to translate the traditional installed capacity ("ICAP") requirement into a UCAP equivalent. Keyspan incorrectly argues, that because the actual UCAP purchases resulted in a procurement of less than expected ICAP, the NYISO violated their tariff. The relevant part of Section 5.11.4 of the Services Tariff, which was approved by the NYISO Management Committee on May 6, 2001, reads:

The ISO will determine the Locational Installed Capacity Requirements, stated as a percentage of the Locality's forecasted Capability Year peak Load and expressed in Unforced Capacity terms, that shall be uniformly applicable to each LSE serving Load within a Locality. In establishing Locational Installed Capacity Requirements, the ISO will take into account all relevant considerations, including the total NYCA Installed Capacity Requirement, the NYS Power System transmission Interface Transfer Capability, the Reliability Rules, and any other FERC-approved Locational Installed Capacity Requirements.⁷

⁶ Id. at ¶¶ 44-48.

⁷ See Exhibit C.

The Tariff does mention either a specific megawatt level of ICAP or UCAP for New York City LSEs to procure nor a specific methodology by which the NYISO must use to make this determination. Rather, the tariff leaves many of the details of the calculation up to the discretion of the NYISO and to the NYISO's procedures which were contained in its capacity manual and which the NYISO correctly followed. Similarly, the NYISO's actions did not jeopardize the reliability of the bulk power system or violate the obligation to maintain sufficient resources to meet the one day in ten years loss of load expectancy required by the NYSRC's Reliability Rules

III. KeySpan's Requested Relief Would Violate the Filed Rate Doctrine and Undermine the Effectiveness of all Capacity Hedges in Summer 2002

The Filed Rate Doctrine prohibits KeySpan's argument that the NYISO should retroactively alter the results of the Summer 2002 auction to reflect a better method of translating ICAP to UCAP. Neither Section 205 of the Federal Power Act ("FPA"), 16 U.S.C. 824 (d), nor Section 206 of the FPA, 16 U.S.C. 824(e), provide authority to order refunds for periods prior to the effective date of a proposed rate change. Likewise, Section 206 of the FPA contains no express authorization to provide retroactive refund relief for rates covering the period prior to the institution of a complaint proceeding, even if the Commission determines that existing rates are unjust and unreasonable.

Together, sections 205 and 206 of the FPA form the basis for the "Filed Rate Doctrine," which "forbids a regulated entity [from] charg[ing] rates for its services other than those properly filed with the appropriate regulatory authority."⁸

⁸ Arkansas Louisiana Gase Co. v. Hall, 453 U.S. 571, 577 (1981)

Market participants properly hedged the capacity requirements that were posted by the NYISO in advance of the summer 2002 capability period and it would be inappropriate to retroactively increase capacity obligation two years after the fact and render prior hedges ineffective. Clearly paying Keyspan and other suppliers additional funds more than two years after the fact provides no reliability benefit to and would only create a wealth transfer from parties that followed the NYISO's instructions and fully hedged their capacity obligations to those parties that failed to sell their capacity either on a forward basis or in the NYISO administered auctions.

IV. KeySpan's Requested Relief Would Undermine the UCAP Market Design Create an Asymmetric Risk for LSEs Hedging Capacity Obligations

Keyspan's proposal would effectively revert the summer 2002 NYISO capacity market back to an ICAP construct by obligating LSEs to procure additional resources to meet the initial ICAP target even though the resources they actually purchased provided improved reliability through higher availability. This would effectively penalize LSEs and network customers and require them to pay for the higher of 1) the published UCAP based on the NYISO's ICAP to UCAP translations and 2) the traditional ICAP requirement and effectively make it impossible for LSEs to hedge their capacity obligations. This "greater of" UCAP and ICAP construct creates an asymmetric risk for LSEs as it would fail to reduce the UCAP requirement if the resources procured has a lower than average availability and, from an ICAP perspective, resulted in an aggregate purchase that was greater than the traditional ICAP requirement.

V. CONCLUSION

The NYISO establishing the installed capacity requirements for the Summer 2002 Capability Period in accordance with the provisions of its Services Tariff filed with the Commission. KeySpan's allegation that the NYISO somehow violated its filed tariff and failed to allocate capacity obligations to the LSEs is utterly baseless. As indicated above, the UCAP market design was filed with and approved by the Commission in 2001. Keyspan was an active participant in the working group and committee processes that led up to the UCAP market implementation and should have been fully aware of the NYISO's methodologies for translating ICAP into UCAP for both suppliers and for LSEs. If Keyspan had a concern with the NYISO methodologies, they should have raised it back in 2001.

VI. MOTION TO INTERVENE

In support of its motion to intervene, the Companies state they are the real parties in interest in this case and have particular interests in this proceeding that cannot adequately be addressed by any other party.

Consolidated Edison Solutions Inc. and Amerada Hess Corporation are LSEs providing electric commodity services to residential and commercial customers in New York State.

Consumer Power Advocates ("CPA") is a non-profit association comprised of customers in the Con Edison service territory in New York City. Among its members are hospitals, universities and major employers in New York City. These members purchase

electricity and delivery services under various agreements and tariffs, including both bundled Full Service and Competitive Retail Access tariffs.

The City of New York ... **[need to add this]**

Thus, the Companies request that the Commission grant their request to intervene as parties to this proceeding with all rights to participate in this proceeding.

VII. NOTICES AND CORRESPONDANCE

All communications, pleadings and orders with respect to this proceeding should be sent to the following individuals⁹:

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⁹ Waiver of the Commission's regulations (18 C.F.R. § 385.203) is requested to the extent necessary to permit the inclusion on the service list of all of the parties listed above.

For the City of New York [Need to add this]

Respectfully submitted,

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