

111 FERC ¶ 61,336
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

KeySpan-Ravenswood, LLC

v.

New York Independent System Operator, Inc.

Docket No. EL05-17-001

ORDER DENYING REHEARING

(Issued June 1, 2005)

1. In this order, the Commission denies rehearing of its February 10, 2005 Order,¹ which denied a complaint by KeySpan-Ravenswood, LLC (Ravenswood) against the New York Independent System Operator, Inc. (NYISO). The complaint alleged that, during the Summer 2002 Capability Period (May–October 2002), NYISO charged its members rates that were not consistent with its filed rate schedules by improperly translating installed capacity (ICAP) requirements into unforced capacity (UCAP), thus understating the amount of capacity that load serving entities (LSEs) were required to obtain for that period. The Commission in the February 2005 Order found Ravenswood’s complaint without merit because the rates charged by NYISO during the Summer 2002 Capability Period conformed with the Commission’s applicable orders governing NYISO’s ICAP and UCAP requirements and are consistent with NYISO’s then-effective rate schedules. Nothing in Ravenswood’s rehearing request persuades us to revise the findings in our February 2005 Order.

Background

NYISO’s ICAP and UCAP Requirements

2. The Commission approved the New York State Reliability Council (NYSRC) agreement (NYSRC Agreement) and the establishment of the NYSRC in *Central Hudson Gas & Electric Corp., et al.*, 83 FERC ¶ 61,352 (1988), *order on reh’g and clarification*, 87 FERC ¶ 61,135 (1999). Later, the Commission approved a NYISO tariff revision,

¹ *KeySpan-Ravenswood, LLC v. New York Independent System Operator, Inc.*, 110 FERC ¶ 61,116 (2005) (February 2005 Order).

effective on November 18, 1999, requiring NYISO to comply with the requirements of the NYSRC Agreement. *See Central Hudson Gas & Electric Corp., et al.*, 88 FERC ¶ 61,138 at 61,380 n.7, 61,404 (1999).

3. The NYSRC Agreement allows NYSRC to establish the installed reserve margin requirement for LSEs statewide and in New York City (NYC). NYSRC established an 18 percent reserve margin for 2002.

4. Starting in November 2001, NYISO implemented a new system to measure available capacity in New York State. The new system measures capacity in units of unforced capacity or UCAP, which reflects de-ratings of installed capacity based on historical equivalent forced outage rates. The new market design incorporating the UCAP methodology was approved by the Commission in *New York Independent System Operator, Inc.*, 96 FERC ¶ 61,251 (2001), *order on reh'g*, 98 FERC ¶ 61,180 (2002), *reh'g denied*, 99 FERC ¶ 61,072 (2002) (collectively, *UCAP Orders*).

5. The Commission found that the UCAP methodology would provide a better incentive for individual generators to improve the performance, efficiency, and reliability of their units and would result in more capacity being available in New York. The Commission also found that the new market design had the advantage of mirroring PJM's market design, thus reducing seams between NYISO and PJM. In October 2004, Ravenswood filed the complaint against NYISO that initiated the instant proceeding. Ravenswood's complaint argued that, for the Summer 2002 Capability Period, NYISO charged its members rates that were not consistent with its filed rate schedules, by failing to comply with NYSRC's Reliability Rules incorporated in three Commission-approved rate schedules.

6. Ravenswood argued that NYISO erroneously computed the amount of ICAP that statewide LSEs were required to acquire for the Summer 2002 Capability Period, based on a failure to accurately translate ICAP requirements into UCAP (the units of capacity used in NYISO's capacity auctions). Ravenswood calculated that it lost about \$23.3 million in sales as a result of NYISO's actions, and its complaint sought refunds to redress these losses.

7. In our February 2005 Order, we denied Ravenswood's complaint, finding that the rates charged by NYISO for the Summer 2002 Capability Period conformed with the Commission's *UCAP Orders* governing NYISO's ICAP and UCAP requirements, and were consistent with NYISO's then-effective tariffs, rate schedules and manuals.² We explained that NYISO's translation of ICAP to UCAP for the Summer 2002 Capability Period applied the methodologies that were in place at that time, methodologies that were adopted through a Commission-approved stakeholder process and methodologies that the

² February 2005 Order at P 1-2, 34-35.

Commission approved for NYISO's use in September 2001 in the first of the *UCAP Orders*.³ This being the case, we found Ravenswood's allegation that NYISO's actions violated its tariffs and the NYSRC's Reliability Rules, and thus the filed rate, without merit.⁴

8. Further, we explained that the relevant ICAP Manual specified a different outage rate to be used for LSEs as opposed to generators and, thus, rejected the contention that NYISO should have used different outage rates than those it did use for its UCAP calculations for the capability period at issue. Finally, we found that NYISO's subsequent amendment to its methodology did not invalidate the applicability of the prior methodology during the capability period at issue.⁵

Request for Rehearing

9. Ravenswood filed a request for rehearing, arguing that the Commission erred in denying Ravenswood's complaint. Ravenswood reiterates its argument that the NYSRC, the NYISO Business Issues Committee (BIC), NYISO staff, and the Independent Market Advisor all found that the method of translating ICAP into UCAP resulted in a significant ICAP shortfall in violation of the Reliability Rules. Ravenswood argues that the February 2005 Order fails to explain why the findings of each of these entities, or the mathematical analysis set forth in the complaint, is not accurate. Ravenswood also reiterates its argument that the fact that subsequent to the Summer 2002 Capability Period NYISO changed its translation methodology shows that NYISO's earlier methodology violated the NYSRC's Reliability Rules.

10. Ravenswood notes previous Commission orders dealing with the establishment of a revenue neutral price cap for certain NYC UCAP suppliers that involved an ICAP to UCAP translation. Ravenswood states that, in those orders, the Commission elaborated on the need to use the same translation methodology for both supplies and prices in order to achieve a revenue neutral translation of the price cap. Ravenswood states that those Commission orders demonstrate the need to use consistent methodologies when translating ICAP to UCAP. However, Ravenswood states that the Commission's decision here disregards those Commission orders.

11. Ravenswood states that the Commission's February 2005 Order is supported by the ICAP Manual, but that order does not explain how the manual can support its decision since the manual was never filed with the Commission for review and approval.

³ *Id.* at P 34.

⁴ *Id.*

⁵ *Id.* at P 35.

According to Ravenswood, the methodology prescribed in the ICAP Manual was in conflict with the Reliability Rules and three existing rate schedules that had been filed with the Commission. Thus, Ravenswood argues, the fact that NYISO used the translation methodology prescribed in the ICAP Manual does not excuse NYISO's errors, it documents them.

12. Ravenswood states that, while the Commission's order relies on a stakeholder process for support, the order does not clearly identify the stakeholder process to which it refers or explain how a stakeholder process could have changed the requirements of the NYSRC's Reliability Rules and three filed rate schedules. Ravenswood states that, presumably, the stakeholder process on which the Commission's order relies consists of BIC meetings held prior to the issuance of the ICAP Manual, but Ravenswood argues that the possibility of changing NYISO's obligation to comply with Reliability Rules was never discussed at BIC meetings. Ravenswood adds that it was not alone in the expectation that NYISO would adopt procedures that complied with the Reliability Rules.

13. Finally, Ravenswood argues that the Commission abused its discretion in refusing to consider Ravenswood's answer to NYISO's answer without providing a basis. Ravenswood states that the answer met the required showing of good cause and clarified certain issues, and thus should have been accepted by the Commission.

Answers

14. Consolidated Edison Company of New York, Inc., Orange & Rockland Utilities, Inc., Central Hudson Gas & Electric Corporation, and the New York Power Authority (collectively, TOs) filed an answer. Ravenswood filed an answer opposing the TO's answer.

Discussion

A. Procedural Matters

15. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2004), prohibits an answer to a request for rehearing and, therefore, we will reject the TOs answer (along with Ravenswood's answer thereto).

B. Ravenswood's Rehearing Request

16. Ravenswood argues that the Commission failed to address Ravenswood's contention that, according to various entities, NYISO's method of translating ICAP into UCAP resulted in a significant ICAP shortfall in violation of the Reliability Rules. We note that the relevant NYSRC Reliability Rules in effect at the time were Rules A-R1 and A-R2. These rules established a statewide Installed Reserve Margin (IRM) requirement

and corresponding LSE ICAP requirements. Rule A-R1 dictated that NYISO observe the IRM requirement specified by the NYSRC (an 18 percent reserve margin at the time). Rule A-R2, in turn, required LSEs to purchase sufficient capacity to meet the requirements of Rule A-R1.

17. None of the NYSRC's Reliability Rules (including Rules A-R1 and A-R2) cover the subject of translating ICAP to UCAP while preserving the IRM. Instead, the applicable tariffs leave the methodology for fulfilling A-R1 and A-R2 (in terms of ICAP and UCAP translation) for NYISO implementation; NYISO did so in accordance with the methodology prescribed in the ICAP Manual. Thus, while NYISO was obligated to comply with Reliability Rules A-R1 and A-R2, nothing in those rules dictates the proper methodology to translate ICAP to UCAP.

18. We thus turn to the question of what methodology should have been used to translate ICAP to UCAP for the Summer 2002 Capability Period. It is undisputed that NYISO looked to its ICAP Manual for guidance on how to proceed in this matter. Ravenswood argues that this was improper, because the ICAP Manual was never subjected to Commission review under the Federal Power Act.⁶ Ravenswood maintains that, rather than relying on the ICAP Manual, NYISO should have followed the Reliability Rules and three existing rate schedules that had been filed with the Commission.

19. This argument has three flaws. First, as discussed above, nothing in the NYSRC's Reliability Rules governs how these calculations should be made, nor do the tariffs themselves expressly spell out the appropriate methodology. Hence, there could be no violation of a filed rate, the Reliability Rules, nor the tariffs, based on NYISO using the methodology described in the ICAP Manual to translate ICAP to UCAP. Second, the argument improperly presupposes that the methodology prescribed in the ICAP Manual conflicts with NYISO's tariffs. Again, this is simply not the case; there is no conflict as there is no methodology expressly delineated in NYISO's tariffs. Third, and likewise, the methodology now endorsed by Ravenswood was not directly prescribed in NYISO's tariffs and, in fact, is inconsistent with the ICAP Manual as it existed at that time. Thus, the use of Ravenswood's recommended methodology has less support than NYISO's.

⁶ Ravenswood seems to assume without any support that, if the ICAP-UCAP translation methodology was moved from the ICAP Manual to NYISO's tariffs (or if the ICAP Manual itself was submitted for Commission review and approval) this would, by itself, resolve the issue in Ravenswood's favor, as we would necessarily reject this ICAP-UCAP methodology. This assumption is unfounded.

20. Ravenswood argues that the “Commission’s Order relies on the ICAP Manual, but does not explain why the manual can be used to support its decision.”⁷ However, the Commission’s order does *not* solely rely on the ICAP Manual as a basis for its conclusion. The February 2005 Order states that the “rates charged by NYISO for the Summer 2002 Capability Period conformed with the Commission’s *UCAP Orders* governing NYISO’s ICAP and UCAP requirements” and also states they were “consistent with NYISO’s then-effective tariffs, rate schedules and manuals.”⁸ While our February 2005 Order referenced the ICAP Manual in reaching the conclusion that Ravenswood’s complaint was without merit, the Commission primarily relied on the fact that what NYISO did was not only consistent with the ICAP Manual, but also was consistent with Commission orders and was not inconsistent with any requirement in NYISO’s tariffs.

21. Ravenswood also complains, even while it argues that the ICAP-UCAP translation methodology in NYISO’s ICAP Manual could not properly be relied on, that the Commission should have devoted more attention to critiquing the mathematical analysis in the ICAP Manual. The real issue, however, was whether NYISO’s methodology was consistent with Commission orders and its tariffs and, for the reasons stated, we find it was.

22. Nor is the Commission persuaded by Ravenswood’s arguments regarding NYISO’s stakeholder process. Ravenswood states that it “was not alone in the expectations that NYISO had adopted procedures that complied with the Reliability Rules.”⁹ It is difficult to understand what Ravenswood would have us make of this argument. The ICAP Manual was the product of a stakeholder process. In this regard, Ravenswood had the opportunity to voice its concerns during stakeholder deliberations. Not only did Ravenswood not raise its objections in that forum, it appears that it actually took a contrary position on the issue at that time.

23. Ravenswood observes that the Commission cited two prior orders dealing with translating ICAP to UCAP in the February 2005 Order, *i.e.*, *New York Independent System Operator, Inc.*, 96 FERC ¶ 61,251 (2001), and *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,309 (2004). In these orders, the Commission approved UCAP as the unit of measurement in the New York capacity markets and addressed the translation from ICAP to UCAP. The Commission found that in order to achieve a neutral translation of the price cap, the same translation methodology must be applied to both supplies and prices.

⁷ Rehearing Request at 9.

⁸ February 2005 Order at P 34.

⁹ Rehearing Request at 12.

24. Ravenswood states that “the Commission’s prior UCAP orders are either irrelevant to the issues raised in the Complaint, or provide support for Ravenswood’s position.”¹⁰ We disagree. The two orders cited in footnote 12 of the February 2005 Order instructed NYISO to translate ICAP to UCAP.¹¹ The two orders did not prescribe the use of Ravenswood’s recommended particular methodology to translate ICAP to UCAP for generators and LSEs and, albeit in a different context, spoke approvingly of the approach NYISO took (i.e., using short-term generator outage rates).¹²

25. Thus, we affirm our finding in the February 2005 Order that the translation methodology used by NYISO conformed with NYISO’s tariffs and with the Commission’s orders.

26. Ravenswood next argues that the fact that the ICAP Manual was later amended to revise its methodology proves that use of the pre-existing methodology was improper. In this regard, Ravenswood argues that the “Commission’s Order erroneously fails to address the reason why NYISO changed its translation methods.”¹³ However, the Commission agrees with NYISO’s original response that every improvement in tariff methodology does not necessarily mean that the prior provisions were unjust and unreasonable, and that all market participants should be treated as if the new and improved tariff had been in place all along.¹⁴

27. Further, had NYISO actually used the ICAP to UCAP translation supported by Ravenswood, it still remains unclear what prices would actually have been paid by LSEs because of the nature of the translation and the auction. This lack of clarity, and no instances of reliability problems arising from capacity shortages during the Summer 2002 Capability Period, leads the Commission to conclude that, even if we agreed with

¹⁰ Rehearing Request at 7.

¹¹ February 2005 Order at P 22. In those cases and here, the methodology used by NYISO was, as noted earlier, not inconsistent with NYISO’s tariffs and conformed with directives in Commission orders.

¹² See February 2005 Order at P 22. Also note that, in our first UCAP Order, we stated, 96 FERC ¶ 61,251 at 61,993, that “implementation of NYISO’s proposed UCAP methodology [using a short-term generator outage rate to calculate the in-city price cap] will result in more capacity being available in NYISO’s ICAP market; additional capacity should increase competition, reduce costs, and enhance reliability.”

¹³ *Id.* at 6.

¹⁴ February 2005 order at P 29; *accord New York Independent System Operator, Inc.*, 110 FERC ¶ 61,244 at P 59 & n.67 (2005).

Ravenswood that NYISO's actions violated its tariffs, Ravenswood still would not have met its burden to show that it was entitled to any refunds, let alone the \$23.3 million in refunds that it requested.

28. Finally, Ravenswood argues that the February 2005 Order erred by refusing to consider Ravenswood's reply. Ravenswood misunderstands Rule 213(a)(2). Answers to answers and answers to protests are expressly barred unless otherwise affirmatively allowed by the Commission. Thus, the presumption is that answers can and will be rejected unless good cause exists to make an exception and allow an answer. The Commission is obligated to affirmatively explain why it is allowing an answer notwithstanding the prohibition in its regulations, and not why it is allowing its regulations to take effect as written. The burden, in short, rests on Ravenswood, and Ravenswood did not meet that burden.¹⁵

The Commission Orders:

Ravenswood's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Kelliher dissenting with a separate statement attached.

(S E A L)

Linda Mitry,
Deputy Secretary.

¹⁵ While perhaps unnecessary to state, we note that Ravenswood's answer did not add value to the record. It merely restated arguments already advanced in the complaint and did not add any additional material information. Thus, there was no need to include this pleading in the record.

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(Issued June 1, 2005)

Joseph T. KELLIHER, Commissioner *dissenting*:

I disagree with the Commission's decision to deny Ravenswood's request for rehearing of the February 10 order. In my view, the NYISO violated the FPA when it used a methodology to translate ICAP requirements into UCAP that had not been approved by the Commission, but was simply set forth in NYISO's ICAP Manual.

Section 205 of the FPA states that every public utility shall file with the Commission schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classification, practices, and regulations affecting such rates and charges.¹ At issue in this case is the NYISO's methodology for translating ICAP requirements into UCAP. This methodology is used to determine UCAP supply and UCAP obligations, which directly "affect" rates within the meaning of section 205. For that reason, the methodology must be filed with the Commission under section 205, and it cannot lawfully be used to fix capacity rates without review and approval by the Commission.²

The Commission's order readily concedes that "[i]t is undisputed that the NYISO looked to its ICAP Manual for guidance on how to proceed in this matter."³ Moreover,

¹ 16 U.S.C. § 824d (2000).

² See e.g., *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,157 at P 560 (2004) (requiring formulas calculating locational marginal pricing to be filed because they "directly affect the price of energy paid by market participants").

³ Order at P 18.

neither the Commission nor the NYISO dispute Ravenswood's assertion that the ICAP Manual was never subjected to Commission review under the FPA.⁴ As neither the ICAP Manual nor the methodology contained therein were ever reviewed or approved by the Commission, the conclusion is inescapable that they could not be used by the NYISO to affect rates by translating ICAP requirements to UCAP.⁵

The Commission attempts to escape this conclusion with a rationale that is creative, but legally unsupportable. The Commission maintains that reliance on the ICAP Manual is immaterial because since "the tariffs themselves [do not] expressly spell out the appropriate methodology . . . there could be no violation of a filed rate."⁶ In essence, the Commission reasons that there was no violation of a filed rate because there was no filed rate in the first place.

This line of reasoning cannot withstand scrutiny. If the UCAP rate methodology was not in the tariff, as the Commission maintains, then there was no Commission-approved rate on file, and the Commission cannot enforce rates that are not on file.

The proper course would be for the NYISO to make a section 205 filing that includes its methodology for translating ICAP requirements to UCAP, or for the Commission to initiate a section 206 proceeding to revise the NYISO tariff accordingly.

I dissent from the Commission's order denying rehearing.

Joseph T. Kelliher

⁴ *Id.*

⁵ *Quest Energy, LLC v. Detroit Edison Co.*, 106 FERC ¶ 61,227 (2004) (granting a complaint on the pricing of ancillary services that violated the tariff and reaffirming that "[t]he Commission has stated on numerous occasions that a company's tariff, not its manuals or handbooks, must define the rates, terms and conditions of jurisdictional services provided by the company.").

⁶ Order at P 19.