

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

New York Independent System Operator, Inc.                      Docket Nos. ER07-360-001 and  
EL07-39-001

ORDER DENYING REQUEST FOR CLARIFICATION OR REHEARING

(Issued March 28, 2007)

1. On March 6, 2007, the Commission issued an order<sup>1</sup> (the March 6 Order) rejecting proposed tariff revisions filed by the New York Independent System Operator, Inc. (New York ISO) pursuant to section 205 of the Federal Power Act<sup>2</sup> (FPA) in Docket No. ER07-360-000. In the same order, the Commission instituted a proceeding pursuant to section 206 of the FPA<sup>3</sup> in Docket No. EL07-39-000 to investigate “the justness and reasonableness of the New York ISO’s in-city installed capacity (ICAP) market and whether and how market rules need to be revised to provide a level of compensation that will attract and retain needed infrastructure and thus promote long-term reliability while neither over-compensating nor under-compensating generators.”<sup>4</sup>
2. On March 13, 2007, the New York ISO filed a request for expedited clarification or, in the alternative, for rehearing, of the Commission’s March 6 Order.<sup>5</sup> The New York ISO requests that the Commission clarify that the hearing and settlement judge proceedings do not extend beyond the scope of the original application made by the New York ISO on December 22, 2006 (the December 22 filing), and that the proceedings instituted in the March 6 order are not intended to supplant the ongoing New York ISO stakeholder ICAP market proceedings. In this regard, the New York ISO states that its

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<sup>1</sup> 118 FERC ¶ 61,182 (2007).

<sup>2</sup> 16 U.S.C. § 824d (2000).

<sup>3</sup> *Id.* § 824e.

<sup>4</sup> March 6 Order at P 17.

<sup>5</sup> Independent Power Producers of New York, Inc. and the NRG Companies filed answers to the New York ISO’s request for clarification or rehearing. The Commission’s Rules of Practice and Procedure prohibit answers to requests for rehearing. *See* 18 C.F.R. § 385.713(d)(1) (2006). Accordingly, we reject the Independent Power Producers’ answer.

December 22 filing addressed only limited issues: a proposed form of remedy for exercises of market power by owners of distributed generation (DGOs). In particular, the New York ISO expresses concern that the instant FPA section 206 investigation might conflict with the ongoing Demand Curve reset process.<sup>6</sup>

3. The Commission will deny the New York ISO's request. While the December 22 filing, in Docket No. ER07-360-000, may have been, in the New York ISO's view, narrow, the separate Commission proceeding initiated in Docket No. EL07-39-000 is not. As we stated in the March 6 Order, we intend that the proceeding in Docket No. EL07-39-000 address: "the justness and reasonableness of the New York ISO's in-city installed capacity (ICAP) market and whether and how market rules need to be revised to provide a level of compensation that will attract and retain needed infrastructure and thus promote long-term reliability while neither over-compensating nor under-compensating generators."<sup>7</sup>

4. In sum, the instant investigation is being conducted by the Commission, upon its own motion, to investigate the in-city ICAP market rules.<sup>8</sup> It is not limited by the section 205 filing that the New York ISO made, and that the Commission rejected. To the extent that this investigation necessitates discussion of the role of the ICAP demand curves in achieving a properly functioning capacity market in New York City, the demand curves (and any other issue relating to the capacity market) may be addressed. This does not mean, however, that we intend that the ongoing stakeholder processes should be postponed or discouraged in any way. We are investigating whether and how the NYISO's market rules need to be revised to achieve the objectives outlined in the March 6 Order and referenced above; the other processes may continue accordingly.

The Commission orders:

The New York ISO's request for clarification or rehearing of the Commission's March 6, 2007 Order instituting an investigation in Docket No. EL07-39-000 is hereby denied as discussed in the body of this order.

By the Commission.

( S E A L )

Philis J. Posey,  
Acting Secretary.

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<sup>6</sup> See December 22 filing at 4-6.

<sup>7</sup> March 6 Order at P 17.

<sup>8</sup> 16 U.S.C. § 824e(a) (2000).