

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 No. ER03-647-008

ORDER ACCEPTING COMPLIANCE REPORT ON
IMPLEMENTATION OF ICAP DEMAND CURVES

(Issued October 23, 2006)

1. In this order, the Commission accepts, without modification, a compliance report submitted by the New York Independent System Operator, Inc. (NYISO) providing information on its progress in implementing its Installed Capacity (ICAP) Demand Curves, because we find that NYISO's filing complies with our directives in earlier orders to provide a detailed annual report on the ICAP Demand Curves and their implementation, as well as reporting on the withholding behavior of New York ICAP suppliers. However, for the next three years, the Commission will require NYISO to make further annual filings by December 1st of each year, detailing the effectiveness of the ICAP Demand Curves.

Background

2. In an order issued on May 20, 2003, the Commission accepted a NYISO proposal to establish ICAP Demand Curves for New York State.¹ In a subsequent order on NYISO's December 1, 2004 ICAP Demand Curves report,² the Commission directed NYISO to file a compliance report on its ICAP Demand Curves by December 1, 2005.³

¹ *New York Independent System Operator, Inc.*, 103 FERC ¶ 61,201, *reh'g denied*, 105 FERC ¶ 61,108 (2003) (May 20 Order).

² *New York Independent System Operator, Inc.*, 111 FERC ¶ 61,427 (2005) (2005 Letter Order).

³ *Id.* at 62,771 n.7.

3. On January 3, 2006, NYISO submitted a compliance report on its ICAP Demand Curves implementation efforts (Report).⁴ In the Report, NYISO explains that it has observed the positive trends and behaviors in the ICAP markets that were anticipated as benefits of ICAP Demand Curves. NYISO's Report explains that the capacity committed to the New York markets has trended upwards for the New York Control Area, as well as for New York City and Long Island. NYISO explains that this upward trend has resulted from both new in-state capacity and imports from outside the control area.

4. NYISO's Report also points out that unforced capacity prices have remained stable thanks to the increase of available capacity. The Report explains that New York City and Long Island prices have also remained stable, due partly to price caps in New York and the bilateral nature of the Long Island market. NYISO states that it has yet to observe a distinct change in the proportion of load-serving entity capacity requirements being met from sources other than the New York capacity markets.

5. NYISO states in the Report that it sees no evidence of significant physical or economic withholding in the ICAP markets. The Report explains that offer patterns continue to support the conclusion that the clearing prices derived from the ICAP Demand Curves in the monthly spot market auctions continue to be attractive enough to capacity suppliers for them to offer previously unsold capacity resources for the month.

6. Finally, NYISO explains in the Report that, given the brief history of the ICAP Demand Curves, the comparatively long lead time required to develop new generating resources and other barriers to constructing new capacity, particularly in New York City and Long Island, it is still too early to isolate and reach any definite conclusions regarding the effects of the ICAP Demand Curves on investment in new generation in New York. NYISO adds that the low pace of new generation investment in New York likely reflects the current excess capacity situation and low market prices, neither of which is conducive to new investment, although the ICAP Demand Curves continue to fulfill their function of providing compensation for capacity above minimum requirements. Despite this inconclusiveness, NYISO claims that the ICAP Demand Curves remain sound in principle and would only provide a positive incentive to development of new capacity, particularly in comparison with the prior *de facto* vertical demand curve.

⁴ The filing deadline was extended in a notice issued on December 1, 2005.

7. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 4,908 comments were filed by Multiple Intervenors⁵ and by Indicated New York Transmission Owners (accompanied by a motion to intervene).⁶

8. Multiple Intervenors contend that NYISO has failed to comply with a directive in the May 20 Order that NYISO conduct a detailed examination of the impact of the ICAP Demand Curves on new generation in New York. Multiple Intervenors also argue that NYISO fails to justify its claim that four more years are required before the effects of the ICAP Demand Curves can be known. Multiple Intervenors request that the Commission direct NYISO to file a revised report correcting these deficiencies.

9. Indicated New York Transmission Owners likewise contend that NYISO's compliance report fails to fully satisfy the Commission's directives. Specifically, they object to the absence of an equilibrium analysis, *i.e.*, an analysis of whether the ICAP Demand Curves have led to prices that approach the levelized cost of new entry.⁷ They request that the Commission direct NYISO to include an equilibrium analysis in its subsequent annual reports.

Discussion

10. As a preliminary matter, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motion to intervene serves to make Indicated New York Transmission Owners a party to this proceeding.

11. We disagree with Multiple Intervenors' contention that NYISO has failed to include sufficient detail. NYISO has provided pricing and capacity data since the implementation of the ICAP Demand Curves, and has provided an analysis of ICAP supplier withholding behavior. Additionally, while NYISO notes that there has been a "low pace" of new generation investment in New York, NYISO reasonably explains that is due in no small part to current excess capacity and low energy prices. We will accept this explanation and not require NYISO to file further information.

⁵ An unincorporated association of about 55 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located in New York State.

⁶ Comprised of: New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; and Rochester Gas and Electric Corporation.

⁷ In a competitive market, prices should reach equilibrium at or near to the levelized net cost of new entry.

12. However, for the next three years, the Commission will require NYISO to make further annual filings by December 1st of each year, detailing the effectiveness of the ICAP Demand Curves.⁸ We will require these reports to include the information detailed below. The Commission finds that the provision of these additional data by NYISO will allow the Commission to better assess the effectiveness of the ICAP Demand Curves on capacity, price stability, withholding, and investment in new generation.

13. First, all future annual reports on the ICAP Demand Curves should contain price and capacity time series data dating back to NYISO's inception. Although the instant filing includes price and capacity time series data starting with May 2003 (the date of implementation of the ICAP Demand Curves),⁹ it would be helpful to see all pricing and capacity data from the period prior to the ICAP Demand Curves' inception in order to compare the two periods. Therefore, we will require NYISO in the future reports to expand the tables and graphs of price and capacity data to include time series data, beginning with NYISO's inception and ending with the most recent data available at the time of filing.

14. Second, we will require NYISO to include in the future reports a list of investments in new generation projects in New York (including a description and current status of each such project), regardless of the stage of project development at the time of filing. NYISO's list should include all generation projects, including those that are completed or nearing completion, and those that are only in the planning stage.

15. Finally, NYISO is directed to include in the future reports a summary of the analysis of net revenue that it includes in its annual state of the market report (Net Revenue Analysis) for two technologies – a peaking unit and a combined-cycle unit. The Net Revenue Analyses should include the expected net revenues of a new unit of each technology from the capacity market, and from the energy and ancillary service markets, if that unit were to bid into the spot energy and ancillary service markets at its marginal costs. Each technology should be evaluated in each of New York's three zones (*i.e.*, New York City, Long Island, and Rest-of-State).

16. The Net Revenue Analysis will provide us information on whether the ICAP Demand Curves, in combination with other revenue sources, are providing adequate

⁸ Thus, the first such annual report will be due on or before December 1, 2006, the second annual report on or before December 1, 2007, and the third annual report on or before December 1, 2008. NYISO has reasonably explained in the instant filing that as many as three more years may be necessary to judge whether the ICAP Demand Curves create adequate incentives for investment in new generation. *See* NYISO January 3, 2006 Transmittal Letter at 2 and 11.

⁹ *See* NYISO January 3, 2006 Filing, Figures 1-9.

revenue in regions where additional resources are needed, a stated benefit of the ICAP Demand Curves approach. Using the time series data for the period beginning with NYISO's inception and ending in April 2003, NYISO should provide the expected net revenue for a new unit of each technology. NYISO should then compare that amount to the expected net revenue for a new unit of technology using the time series data from the period in which the ICAP Demand Curves have been in place. The Net Revenue Analysis may also indicate whether the ICAP Demand Curves have created greater revenue stability, and act as an incentive for investment.

17. We also note that NYISO's Report made no mention of demand response participation in the ICAP market. We will direct NYISO to include information regarding demand response participation in the ICAP market in the forthcoming status reports that we are requiring in this order.

18. We will deny the request of Indicated New York Transmission Owners that NYISO's future annual reports on the ICAP Demand Curves include an equilibrium analysis of whether capacity prices are in the vicinity of the levelized net cost of new entry. A more appropriate proceeding for an equilibrium analysis would be in NYISO's filing resetting the ICAP Demand Curves, as this analysis would help NYISO and the Commission determine just and reasonable parameters for the new ICAP Demand Curves. Thus, NYISO should include, as it has in the past, an equilibrium analysis with its upcoming filing resetting the ICAP Demand Curves.

The Commission orders:

(A) NYISO's January 3, 2006 compliance report is hereby accepted for filing, as discussed in the body of this order.

(B) NYISO is hereby directed to make further annual filings for the next three years, to be submitted by December 1st of each year, detailing the effectiveness of the ICAP Demand Curves, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.