

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. ER01-3001-016
ER03-647-009

ORDER CONDITIONALLY ACCEPTING INFORMATIONAL REPORTS

(Issued May 18, 2007)

1. In this order, the Commission conditionally accepts a compliance filing submitted by the New York Independent System Operator, Inc. (NYISO) containing reports providing information on: (1) its progress in implementing its Installed Capacity (ICAP) Demand Curves; (2) Demand Side Management programs; and (3) new generation projects in the New York Control Area. However, the Commission will require NYISO to submit, within 60 days of the date of this order, a further compliance filing, as directed in the body of this order.

Background

2. In an order issued on May 20, 2003, in Docket No. ER03-647-000, the Commission conditionally accepted a NYISO proposal to establish ICAP Demand Curves for New York State and required NYISO to file annual compliance reports, beginning December 1, 2003. Each filing was to contain two reports: one report on implementation of the ICAP Demand Curve and the other report on withholding behavior under the ICAP Demand Curve.¹ In a September 22, 2004 Order on NYISO's December 2003 annual reports in Docket No. ER03-647, the Commission further required the subsequent annual reports on implementation of the ICAP Demand Curve to include an examination of trends in the amount of capacity purchased and the impact of the ICAP Demand Curve on new investment.² In a June 20, 2005 order on NYISO's December 1, 2004 annual ICAP Demand Curves reports on ICAP Curves implementation and

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

² *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,280, at P 10 (2004).

withholding,³ the Commission directed NYISO to include in its next (2005) report,⁴ either a detailed examination of the impact of the ICAP Demand Curve or specification of the period of time necessary to begin observing the effects of the Demand Curve on new generation. Further, the June 20, 2005 Order directed NYISO to include documentation that supports its conclusions on the impact of the ICAP Demand Curve on new generation in New York in its next report. On January 3, 2006, following an extension of time to do so, NYISO submitted its next annual compliance report on its ICAP Demand Curves implementation efforts and withholding behavior of New York ICAP suppliers to comply with the June 20, 2005 Order and earlier orders in Docket No. ER03-647.⁵ In an order issued October 23, 2006, the Commission accepted NYISO's January 3, 2006 compliance filing, but required NYISO to make further annual filings for the next three years by December 1st of each year, detailing the effectiveness of the NYISO ICAP Demand Curves. The Commission specifically required NYISO to provide in all such future reports: (1) price and capacity times series data dating back to NYISO's inception; (2) a list of investments in new generation projects in New York (including a description and current status) regardless of the stage of project development; (3) 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); and (4) information regarding demand response participation in the ICAP market.⁶

3. In addition, in a series of orders issued in Docket No. ER01-3001 beginning in 2001,⁷ the Commission had directed NYISO to submit two semi-annual reports, beginning December 1, 2001: one, a report on NYISO's progress on its demand response programs and the second, a report on the addition of new generation resources in the New York Control Area. By Notice issued November 28, 2006, the Commission granted NYISO permission to submit the two winter semi-annual reports in Docket No. ER01-3001 and its annual report in Docket No. ER03-647 (both otherwise due December 1st), by January 15th of each year in a single filing.

³ *New York Independent System Operator, Inc.*, 111 FERC ¶ 61,427 (2005).

⁴ *Id.* at 62,771 n.7.

⁵ The filing deadline was extended in a notice issued on December 1, 2005.

⁶ *New York Independent System Operator, Inc.*, 117 FERC ¶ 61,086 (2006) (October 23, 2006 Order)

⁷ *New York Independent System Operator, Inc.*, 97 FERC ¶ 61,095 (2001); *New York Independent System Operator, Inc.*, 100 FERC ¶ 61,081 (2002); *New York Independent System Operator, Inc.*, 100 FERC ¶ 61,243 (2002); *New York Independent System Operator, Inc.*, 105 FERC ¶ 61,115 (2003).

Current Filing

4. On January 16, 2007, NYISO submitted a compliance filing containing the three required informational reports.⁸ In its semi-annual “NYISO 2006 Demand Response Programs” report in Docket No. ER01-3001-016, NYISO states that the Emergency Demand Response Program (EDRP) and Special Cases Resources (SCR) have 2,594 participants enrolled providing a total of 1,789.5 MW of demand response, an increase of seven percent over the 2005 MW registration.⁹ NYISO explains that since making EDRP and ICAP/SCR exclusive, EDRP registration and MW have decreased and ICAP/SCR registration and MW have increased. NYISO states that it has activated its EDRP and SCR on five occasions for a total of 35 hours in 2006. NYISO states that performance in 2006 was well above historical levels, (typically around 40-45 percent) particularly in Zone J. NYISO states that average SCR performance on August 2 over the 6 hour event period was over 73 percent of estimated. For the Day-Ahead Demand Response Program (DADRP), NYISO states that there were very few participants and nearly every bid that was submitted was accepted, and for the full amount. NYISO reports total performance for the analysis period is almost 3,500 MWh, about 75 percent more than 2005 due to more resources and higher prices. NYISO states that in 2006 DADRP market impacts were approximately equal to DADRP curtailment payments, indicating a beneficial net result.

5. In its other semi-annual report in Docket No. ER01-3001-016, “NYISO Report on New Generation Projects,” NYISO submitted a list of 235 Interconnection Request and Transmission Projects for the New York Control Area as of January 2, 2007. The status, electrical output, type fuel and proposed in-service date are indicated for each project. NYISO reports that proposed generation and transmission projects undergo up to three studies (feasibility, reliability impact and facilities studies).

6. In its annual report in Docket No. ER03-647-009, “NYISO Report on Installed Capacity Demand Curves,” NYISO submitted capacity price data and a net revenue analysis, referring to the foregoing semi-annual reports for information on new generation projects and demand response programs in New York that the October 23, 2006 Order had directed be included in its annual report in Docket No. ER03-647. To comply with the requirement regarding capacity price data, NYISO included a spreadsheet list of prices for its ICAP market since its inception in November 1999. The

⁸ NYISO’s compliance reports are one day out of time. We will, nonetheless, accept the reports for filing, subject to the conditions of this order, but caution NYISO that future compliance filings should be made on time.

⁹ NYISO reports that ICAP/SCR represents 68 percent of the total reliability program enrollments and 68.4 percent of the total reliability program registered MW.

list shows the Weighted Average NYISO Auction Market Prices and includes comments on the timing of first auctions and changes in requirements. NYISO reports that no auctions were held in the first winter period beginning November 1999; all transactions were bilateral. It reports that the first auctions were held in the summer 2000 period beginning in May 2000. To comply with the requirement to provide a net revenue analysis, NYISO submitted a net revenue analysis for hypothetical combustion turbine and combined cycle units in three zones: New York City; Long Island; and “Rest-of-State.” The analysis includes net revenues for both technologies in all three areas since the inception of the NYISO. NYISO details the assumptions used for calculating the revenue streams for the two technologies. NYISO reports that, prior to May 2003, capacity in the New York City area was sold in a single market-auction (besides external transactions and bilateral arrangements). Since May 2003, it reports, capacity is transacted in three separate auctions – the strip, monthly, and spot auctions.

Notice

7. Notice of the January 16, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 3,830 with comments or protests due on or before February 6, 2007. Comments were filed by Multiple Intervenors¹⁰ and by the New York Transmission Owners (NYTOs).¹¹ NYISO filed an answer and motion for leave to correct its filing.

8. Multiple Intervenors state that NYISO’s Report on 2006 Demand Response Programs demonstrates that these programs are an effective means of incorporating demand response into NYISO’s energy markets and assist in maintaining system reliability. However, Multiple Intervenors contend that NYISO’s Report on New Generation Projects and Report on ICAP Demand Curves fail to comply with the Commission’s orders to submit a detailed report on whether the ICAP Demand Curve incentives for new generation in New York are effective. Multiple Intervenors submit that the Demand Curve has cost New York customers hundreds of millions of dollars since it was adopted. Multiple Intervenors also insist that NYISO’s list of potential new generation includes projects that were scheduled prior to the inception of the Demand

¹⁰ Multiple Intervenors is an unincorporated association of about 55 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located in New York State.

¹¹ The NYTOs are comprised of: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; LIPA; New York Power Authority; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation.

Curve and that there is no examination of factors affecting new generation other than the Demand Curve.

9. Multiple Intervenors also argue that the reports fail to include any discussion on economic withholding issues occurring in the New York markets in 2006. Citing evidence in Docket No. ER07-360-000, Multiple Intervenors state that in 2006 at least one Divested Generation Owner was engaging in economic withholding in the In-City ICAP market. Multiple Intervenors claim the one effect of such withholding was to artificially increase In-City ICAP prices, and the increase occurred even though approximately 1,000 MW of new capacity was added to the In-City ICAP market. Multiple Intervenors assert the such withholding caused less capacity to be available in the ICAP Market in the rest of New York, leading to substantial price increases in that market. Multiple Intervenors request that the Commission order NYISO to file a detailed report on the effectiveness of the ICAP Demand curve, including their impact on new generation in New York, and a report on the impact of the Demand Curve on economic withholding in NYISO's ICAP markets in 2006.

10. The NYTOs contend that NYISO's ICAP Demand Curves compliance report omits any analysis of whether the ICAP Demand Curves encouraged additional entry into the New York capacity markets and whether withholding took place during the most recent 12-month period. They maintain that without such an analysis the data submitted provides little insight into the effectiveness of the ICAP Demand Curves and the NYISO's capacity market monitoring and mitigation measures. The NYTOs assert that NYISO has not submitted an analysis of whether withholding occurred in regions in New York State outside of the New York City capacity market. The NYTOs claim that an objective examination of withholding behavior is critical at this time because the Commission is currently considering whether to adopt new procedures to control the exercise of market power in the New York City locational capacity market in Docket No. ER07-360-000.¹²

11. The NYTOs ask the Commission to clarify that the data the October 23, 2006 Order required NYISO to submit on December 1, 2006 and annually for two years thereafter, was not intended to replace a detailed analysis of the effectiveness of the ICAP Demand Curves and an examination of withholding behavior. Additionally, the NYTOs request that the Commission require NYISO to submit a complete report concerning its ICAP Demand Curves within 30 days of the issuance of the Commission's order in this proceeding.

¹² The NYTOs cite testimony in Docket No. ER07-360-000 concluding that there are indications of recent economic withholding in the New York City market to exercise market power.

12. On February 16, 2007, NYISO filed an answer to the comments and submitted a correction to the report due to a ministerial error. NYISO contends that it cannot be said to have failed to comply with the October 23, 2006 Order because it did not include information or analysis that it was not ordered to provide. NYISO states that if the Commission determines that it would benefit from additional analysis or information regarding the ICAP Demand Curves, NYISO has no objection to providing a supplemental report or compliance filing. However, NYISO states that depending on what the Commission may require, NYISO anticipates it would need 60-90 days to prepare such filing, rather than the 30 days proposed in the comments.

Procedural Matters

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits answers to protests unless otherwise ordered by the decisional authority. We will accept NYISO's answer because it has provided information that assisted us in our decision-making process.

Discussion

14. The Commission finds that, with certain exceptions addressed below, NYISO has complied with the informational reporting directives of the Commission.

15. The Commission finds the information in NYISO's Demand Response Programs report to be sufficient. NYISO reports that in 2006, 213 total demand resources sold 1216.2 MW into the ICAP market, representing a 5 percent increase in participating demand resources and a 12 percent increase in total MW sold compared with 2005. 85.4 percent of demand resource participation in the ICAP market involves resources in Long Island and New York City. In addition, NYISO explains that the EDRP and the ICAP/SCR program are now two mutually exclusive programs; as such, resources must choose between participation in the EDRP and ICAP/SCR programs. Participation in the ICAP/SCR program has increased and participation in EDRP has decreased consistent with NYISO's expectations. The ICAP/SCR program offers higher returns than the EDRP, and has subsequently seen an increase in participation rates, while the EDRP has declined.

16. However, as noted above, in the October 23, 2006 Order, the Commission ordered additional annual filings to detail the effectiveness of the ICAP Demand Curves. The Commission specifically found that the provision of this additional information "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 The data required by the October 23, 2006 Order was intended to supplement data previously

¹³ October 23, 2006 Order at P 12.

required by prior orders in Docket No. ER03-647, not replace the data requirements of the previous orders. As explained further below, NYISO should continue to provide the information required by the Commission's previous orders in Docket No. ER03-647 along with the additional information required by the October 23, 2006 Order in its future reports, and provide a detailed analysis regarding the effectiveness of the ICAP Demand Curves and the impact of the ICAP Demand Curves on new investment.

17. As required by the October 23, 2006 Order, NYISO provided price and capacity time series data dating back to NYISO's inception. However, it is difficult to analyze the data due to the small font size and lack of clarity of the photocopies. In addition, although NYISO provided this data, NYISO does not provide any analysis regarding the data related to the effectiveness of the ICAP Demand Curves. Therefore, we will require NYISO in its compliance filing and in future reports to expand the tables and graphs of price and capacity data beginning with NYISO's inception and ending with the most recent data available at the time of filing. We also direct NYISO to provide an analysis of the price and capacity data to determine the effectiveness of the ICAP Demand Curves on price stability and capacity.

18. Further, NYISO was directed to include a summary of the analysis of net revenue that it includes in its annual Net Revenue Analysis for two technologies, which included a peaking unit and a combined-cycle unit.¹⁴ NYISO included the data, but did not perform any specific analysis, as directed by the Commission.¹⁵ The Commission stated that the "Net Revenue Analysis will provide us information on whether the ICAP Demand Curves, in combination with other revenue sources, are providing adequate revenue in regions where additional resources are needed, a stated benefit of the ICAP Demand Curves approach."¹⁶ Therefore, the Commission directs NYISO to submit a complete Net Revenue Analysis, as required by the October 23, 2006 Order.

19. In addition, commenters argue that NYISO does not provide any discussion regarding economic withholding occurring in the NYISO markets.¹⁷ NYISO has provided this information in previous reports, and we agree that NYISO should provide information regarding withholding and its effect on the ICAP Demand Curves in its current filing and in future reports. Accordingly, NYISO is directed to submit this information for its current filing and in future reports.

¹⁴ *Id.* at 15.

¹⁵ *Id.* at P 15-16.

¹⁶ *Id.*

¹⁷ NYTOs Comments at 4-5; Multiple Intervenors Comments at 12.

20. As noted above, Multiple Intervenors object to NYISO's list of potential new generation projects. Multiple Intervenors claim the list is misleading since NYISO fails to include any discussion of whether the ICAP Demand Curves have been responsible for the new generation projects, or whether the projects were in response to other incentives.¹⁸ We agree with Multiple Intervenors that the list of new generation projects in New York is incomplete without an analysis by NYISO regarding the effectiveness of the ICAP Demand Curves in encouraging some or all of these projects. As such, NYISO is directed to submit this analysis for its current filing and in future reports.

21. The NYTOs ask the Commission to require NYISO to submit a complete compliance report within 30 days of the date that the Commission issues this order. However, we agree with NYISO that preparation of such information may require additional time. Therefore, the Commission directs NYISO to submit a compliance filing addressing the information, as discussed above, within 60 days of the date of this order.

The Commission orders:

(A) NYISO's January 16, 2007 compliance filing is conditionally accepted for filing as discussed in the body of this order.

(B) NYISO is directed to submit, within 60 days of the date of this order, a compliance filing, as directed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁸ For example, Multiple Intervenors claim that the New York Renewable Portfolio Standard and Request for Proposals could have encouraged these new generation projects. Multiple Intervenors note that several of the listed new generation projects were scheduled before the inception of the ICAP Demand Curves.