STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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July 23, 2001

Honorable David Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 1-A209
Washington, D.C. 20426

Re: Docket No. ER01-2536-000 - New York Independent System Operator, Inc.

Dear Secretary Boergers:

For filing please find the Notice of Intervention and Comments of the New York State Public Service Commission in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 486-2652.

Very truly yours,

Saul A. Rigberg
Assistant Counsel

Enclosures

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.	) Docket No. ER01-2536-000

MOTION FOR LATE INTERVENTION AND COMMENTS OF THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK

Pursuant to Rule 214(d)(1) of the Commission's Rules of Practice and Procedure (18 C.F.R. §385.214), the Public Service Commission of the State of New York (NYPSC) hereby submits its Motion for Intervention out of time and Comments in the above-captioned proceeding. Our Comments address one issue--the appropriate numerical value to use in the translation of the in-City mitigated generator owners' bid cap under an Installed Capacity (ICAP) methodology to an equivalent Unforced Capacity (UCAP) level.

The NYPSC regulates electric service in New York State. Accordingly, the NYPSC's participation in this proceeding is in the public interest and cannot be protected adequately by any other party. Because we were unable to complete our review, NYPSC did not timely file comments. The NYPSC's intervention, one business day late, will not prejudice any party or disrupt any proceedings because the date for comment passed only a short time ago and the Commission has not acted. Thus, our motion should be granted.

For the reasons expressed below, the NYPSC urges the Commission to use the most recent 12 months of confidential generator operating data for the mitigated in-City generators in aggregate, on file at the New York Independent System Operator, Inc. (NYISO), to determine the appropriate numerical value. Our approach would ensure that suppliers do not derive financial benefits solely as a result of the change in methodology; it is also consistent with the way improved availability is currently handled under ICAP. Improved availability from the date of conversion, going forward, however, will produce revenue enhancements for generation owners. In contrast, the generator owners' approach, using data based upon Consolidated Edison's performance prior to divestiture, would potentially increase their revenues by more than $80 million per year just because of the change in methodology.[1]

Copies of all correspondence and pleadings should be addressed to:

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[1] This estimate is based on the difference resulting from converting the cap using the lower end of NERC class average data vs. the in-City weighted average outage rate based on data from 1996 through 1998 (see July 6 Filing, at 20). Based on the NYPSC's review of recent $EFOR_D$ data on file at the NYISO, we believe this figure to be representative of the potential overpayment.

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Ronald Liberty
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Background

On July 6, 2001, the NYISO filed with the Commission, pursuant to Section 205 of the Federal Power Act, a request to implement a market design in the New York electricity markets that would establish a new methodology for measuring installed capacity (July 6 Filing). ICAP is currently measured on the basis of the dependable maximum net capacity (DMNC) rating of a capacity supplier, which represents the megawatts a generator can demonstrate it is capable of producing for a designated four-hour period. Under UCAP, the amount that a generator can sell will generally be measured on the basis of its DMNC rating and its Equivalent Demand Forced Outage Rate ($EFOR_D$), which represents the portion of time a unit is in demand, but is unavailable due to forced outage. The amount of UCAP will thus equal the "unforced rate" ($1-EFOR_D$) times the DMNC rating of that generator.[2]

The Commission previously set a cap for ICAP payment of $105/kW-year for in-City generation owners.[3] The translation to

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2 This method is designed to recognize the probability that the generator will be able to reliably respond to the commitment and dispatch directions of the NYISO.

3 Order Accepting Market Power Mitigation Measures, as Modified, for Filing, 84 FERC ¶ 61, 287.

UCAP results from dividing the current $105/kW-year cap by the aggregate unforced rate of the mitigated units. If both the quantity being sold and the price received for that quantity are converted using the same translation rate, the revenue stream received for that quantity will remain unchanged. For example, if a 100 MW generator has a 10% $EFOR_D$ it would be able to sell 90 MW. If the $105/kW-year cap is translated at 10% then the cap would become $116.67/kW and the total revenues would be $10.5 million per year. This is the same maximum payment that would have been received under DMNC based ICAP, i.e., 100 MW times $105/kW-year equals $10.5 million/year. Conversely, if the quantity being sold and the rate paid for that quantity are not converted using the same rate, the generator will either gain, or lose revenues relative to its revenue stream under ICAP.[4] Because market participants were unable to agree upon the numerical value to use in the translation of the in-City mitigated generators' bid cap, the NYISO requested the Commission make that determination.[5]

[4] For instance, in the previous example, if the ICAP cap were translated at an historically-derived $EFOR_D$ of 20%, then the UCAP cap would become $131.25. If the generator currently has a 10% $EFOR_D$, it would be able to sell 90 MW and receive a maximum payment of $11.8 million, or an additional $1.3 million.

[5] Not in dispute among the market participants is that a single numerical value be used for the translation, in contrast to a different value for each unit.

THE TRANSLATION INTO UCAP TERMS SHOULD BE REVENUE NEUTRAL FOR SUPPLIERS

The price cap for in-City mitigated generators should be translated in a manner that maintains, neither enhancing nor diminishing, generator owners' revenues from sales into the ICAP market. In contrast, the generator owners, under this method, are seeking a windfall totally unrelated to their units' prospective improvements in performance.

Generator owners assert that the translation rate should be based on the historical performance of the units for a period that predated their acquisition while the plants were operated by Consolidated Edison. They believe they should receive extra revenues for reliability improvements made since acquiring them from the utility. Thus, their UCAP revenues would increase because of the change in methodology.

The generator owners' argument ignores the fact that since the inception of the NYISO's markets energy sales have provided generator owners with a powerful incentive to improve the reliability of their units. This is because a large part of their revenues for base-load and load-following units is derived from the energy markets, which they cannot serve when they are forced off-line. Investments made by the new owners of generation to improve reliability were not driven by the prospect of additional ICAP payments because such increases do not occur under the current ICAP methodology.

Newly implemented incentives, such as those provided by the move to UCAP, are meant to influence future behavior, not reward past behavior. The proper translation to UCAP should recognize that capacity providers have been reacting to existing incentives in the energy market and will react to additional incentives, such as UCAP, when they are offered.

The issue before the Commission arises only in the New York City market. The lack of effective competition in the New York City capacity market is what led the Commission to mitigate that market through the use of a price cap. In the upstate market, competition should keep prices down in the translation. For example, new owners of utility-divested generators upstate may have increased their availability since the date they have acquired their units, giving them more capacity to sell under UCAP than had they not increased their availability. However, their resulting revenues may actually be lower than had ICAP remained in place, since other upstate generator owners may also have improved the availability of their units, thereby increasing the supply and holding down the unit price of UCAP.

We are recommending that the most recent 12 months be used, since that is the only full year for which data exists that are consistent with the UCAP definitions and best reflects the ownership/regulatory environment in which these units will operate. Consolidated Edison availability information is available, but it is flawed in that it was not gathered for this purpose and appears to have used different criteria.[6]

On a going forward basis, under the UCAP model, generators will properly receive greater capacity payments as a result of increased availability. However, there is no justification for increased payments merely because of a change in methodology.

Conclusion

For all of the above reasons, the NYPSC urges the Commission to use the most recent 12 months of generator operating data of the mitigated in-City generators in aggregate, for determining the appropriate numerical value for use in the translation of the in-City mitigated generators' bid cap from ICAP to UCAP. This would ensure that suppliers do not derive financial benefits solely as a result in a change of methodology and is consistent with the way improved availability is handled under ICAP, while at the same time fully preserving an incentive

[6] This data is flawed for several reasons: (1) the units were operated under a different economic climate prior to the transition to competition, such that decisions regarding availability were based on system needs and the overall cost to end-use customers as well as the imminent divestiture of the units; (2) prior to divestiture and acquisition, reliability data was often recorded in a manner that is inconsistent with current rules and would understate or overstate the conversion rate as a result; and (3) accordingly, the new data is a better predictor of potential operating improvements than the old, stale data.

for improving performance on a forward going basis.

Respectfully submitted,

Penny Rubin for
Lawrence G. Malone
General Counsel
By: Saul A. Rigberg
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of the State of New York
3 Empire State Plaza
Albany, NY 12223-1305
(518) 473-8178

Dated: July 23, 2001
Albany, New York

CERTIFICATE OF SERVICE

I, Karen Houle, do hereby certify that I will serve on July 23, 2001, the foregoing Notice of Intervention and Comments of the Public Service Commission of the State of New York by depositing a copy thereof, first class postage prepaid, in the United States mail, properly addressed to each of the parties of record, indicated on the official service list compiled by the Secretary in this proceeding.

Date: July 23, 2001
Albany, New York

Karen Houle