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November 2, 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 Motion to File Answer and Answer 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 TO FILE ANSWER AND ANSWER OF
THE NEW YORK STATE PUBLIC SERVICE COMMISSION
TO REQUEST FOR REHEARING**

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, the Public Service Commission of the State of New York (NYPSC) hereby submits its motion to file an answer and its answer to the "Request For Rehearing Of The Mitigated Generators," filed October 3, 2001, in response to the Commission's September 4, 2001 Order Accepting Tariff Revisions And Directing Translation Of The In-City Price Cap¹ (September 4 Order). Although Rule 213(a)(2) does not permit answers to requests for rehearing unless otherwise ordered by the Commission, the Commission has accepted pleadings for good cause, such as when the information will ensure a complete and accurate record, clarify issues and factual evidence, and aid the Commission in its understanding and resolution of the

¹ New York Independent System Operator, Inc., 96 FERC ¶ 61,251.

issues.² Good cause exists to allow this answer because it will contribute to the development of a complete and accurate record and assist the Commission's understanding and deliberations on this matter.

The Generators' claims of Commission error and failure to follow Commission precedent in determining a revenue-neutral translation rate for the conversion of Installed Capacity (ICAP) to Unforced Capacity (UCAP) are based on erroneous or unproven assumptions as well as arguments previously rejected by the Commission. Their Request For Rehearing should be denied.

BACKGROUND

The NYISO imposes an ICAP requirement upon Load Serving Entities (LSEs) to ensure that they have sufficient generating capacity available to ensure the reliable operation of the bulk power system. LSEs may procure ICAP from a generator resource through bilateral agreements or through an auction process in which eligible ICAP providers submit bids to sell their capacity.

Under the ICAP methodology, a generation unit's availability to provide ICAP is based upon seasonal Dependable Maximum Net Capability (DMNC) tests or operational logs. These

² See, e.g., Tennessee Gas Pipeline Company, 95 FERC ¶61,096 (2001) (allowing an answer to a request for rehearing in order to ensure a complete and accurate record).

methods measure the sustained maximum net output of a generator over a continuous but short period of time (generally four hours). The market design of the UCAP methodology recognizes the reality that because of forced outages, a generating resource is not always available to supply energy when directed to do so.

The UCAP methodology builds on the prior ICAP methodology by incorporating the probability that a generator will actually be available to supply energy. The NYISO uses operating data submitted by generators to calculate the probability that a generator may be unavailable due to forced outages. This rate is known as the Equivalent Demand Forced Outage Rate (EFOR_d). The amount of UCAP that a generator will be qualified to supply for a particular month is based on that unit's DMNC multiplied by one minus its EFOR_d, which, in turn, is based on operating data from the most recent 12 months.

The NYISO and its Market Participants agreed that paying generators under the UCAP methodology will better match actual capacity with performance and, on a going-forward basis, will create an incentive for generators to improve the availability of their generating assets and improve reliability in New York. In Consolidated Edison Company of New York, Inc.,³ the Commission found that when Con Edison divested its three bundles of

³ 84 FERC ¶ 61,287 (1998).

generating units, the three new owners would be in a position to exercise market power. Thus, the Commission ruled that a bid and price cap of \$105/kW-year would apply to these ICAP suppliers.⁴

In its September 4 Order, the Commission rejected the Generators' proposal to translate the in-City mitigated generator's price cap of \$105/KW-year from an ICAP to a UCAP basis using outage data from the period prior to the divestiture, which would result in a \$126.14 cap. In doing so, the Commission expressed agreement with the NYPSC that the translation of the existing \$105 per kW-year in-City cap to UCAP terms must be revenue neutral, leaving the Generators neither worse off nor better off than under the ICAP methodology.⁵

REQUEST FOR REHEARING

The Generators assert that the Commission violated its goal of achieving revenue neutrality by using data from too short a

⁴ The Commission imposed the in-City price cap prior to the divestiture of generation by Con Edison to alert potential purchasers about mitigation measures that could affect their profits. The Commission noted that "the potential purchasers were afforded an opportunity to adjust their bids for the generation being divested by the amount necessary to compensate them for effects of mitigation measures." September 4 Order at 61,993-94.

⁵ If both the quantity being sold and the price received for that quantity are converted using the same translation rate, then the revenue stream received for that quantity will remain unchanged.

time period to measure accurately generator availability. Rather, they claim, the calculation must use data from a sufficiently representative period of time, at least five years, as a better indicator of performance. According to the Generators, “[r]evenue neutrality requires the UCAP bid and price cap translation of \$105/kW-year to reflect reasonable outage rates over the *long run* - not an opportunistic or overly pessimistic calculation based upon anomalous short-term results.”⁶

The Generators also claim that the Commission deviated in its September 4 Order from the methodology that it had previously approved for the PJM Interconnection. Finally, the Generators assert that the Commission erred in stating that the UCAP methodology would afford them the opportunity to increase revenues by improving performance.

I. THE COMMISSION CORRECTLY DETERMINED THAT 12 MONTHS OF DATA FOR A NUMBER OF GENERATING UNITS PROVIDE A REALISTIC PICTURE OF HOW OPERATING UNITS WILL PERFORM IN THE FUTURE.

The Generators argue that the Commission erred in requiring that the translation rate of the In-City Mitigated Generator ICAP bid and price cap be calculated on the basis of 12 months' worth of EFOR_d data. The Generators allege that “for an outage rate to depict accurately the availability of a generating unit,

⁶ Request for Rehearing at 1-2; emphasis in original.

EFOR_d data must be taken from a period of no less than five years of current operation."⁷ Request For Rehearing at 3. The Generators further state that this period "is necessary to capture the operation and maintenance cycles of generating units and to normalize the various outage "anomalies" that may occur. Id.

If the translation were performed on the basis of the one-year history of a *single* generating unit, then the generators' position would have some merit. However, the translation approved by the Commission is calculated on the basis of the outage history of *more than 90 units*, each one at a different point in its maintenance cycle. Because of the large sample used, and the fact that those units are at various points in their maintenance cycles, the data can be expected to include outage histories from units operating better, and units operating worse, than average long-term performance levels. Therefore, the aggregate data used for the approved translation should smooth out the variations and anomalies by capturing a normalized outage level for the Generators' collective fleet of units.

⁷ In their July 23, 2001 filing in this proceeding, the Generators suggested a seven-year period, from 1992 through 1998.

Moreover, adding additional years prior to the most recent 12 months would not improve the validity of the calculated conversion rate, but would introduce data from a prior period when the previous owner operated the units below optimal performance levels. Their proposed approach would not be revenue neutral because it would guarantee them a higher revenue stream than if the currently approved translation approach were retained.⁸ Accordingly, the Commission should not disturb its previous conclusion.

II. PJM'S METHODOLOGY AND THE NYISO'S METHODOLOGY ARE CONSISTENT, CONTRARY TO THE CLAIM OF THE GENERATORS

The Generators note that the "PJM L.L.C.'s ('PJM') UCAP methodology, which the Commission asserts is similar to that of the NYISO, uses a five year period for UCAP reserve calculations of EFOR_d." Id. at 4. They then ask: "How can the NYISO ignore the effect of maintenance and operating cycles with a short-term

⁸ Referring to the Report of the New York City Subgroup of the Installed Capacity (ICAP) Working Group, the Generators incorrectly claim that at one time the NYPSC agreed that using data from shorter periods of time could result in distorted outage figures. Although the report was prepared by two Department of Public Service employees on behalf of the subgroup, it was, to quote the report, a "mutually agreeable conceptual approach" (using four or fewer years of outage data) that market participants settled upon as a tentative way to implement UCAP in New York City without litigation. The ICAP Working Group did not accept the recommendations in the report.

view, while the adjoining system, PJM, utilizes these longer-term availability calculations?"

The Generators incorrectly describe the PJM approach by mixing concepts. As the Generators suggest, the PJM methodology uses a five-year average pool-wide EFOR_d rate to set its UCAP reserve requirements and a one-year history to determine the amount of UCAP a supplier may sell. However, New York's reserve requirement is similarly set using a multi-year history and the New York UCAP methodology likewise uses a one-year history to determine the amount of UCAP a supplier may sell.

More significant, though, the PJM approach is irrelevant to the subject of this rehearing request. At issue here is not how to determine how much UCAP LSEs must buy or how much suppliers may sell, but how to set the bid and price cap that is to be applied to UCAP offered by generators that possess market power for that product. There is no such bid and price cap applied to PJM UCAP suppliers because none possess market power. The Generators' arguments to the PJM methodology are, therefore, irrelevant and should be rejected.

III. WITH UCAP, GENERATORS WILL RECEIVE ADDITIONAL REVENUES AS THEY IMPROVE AVAILABILITY

The Generators contend that the Commission erred in concluding that "once the UCAP methodology is implemented, in-city generators likely are to receive larger ICAP payments and

additional revenue from energy generated by the expanded capacity." Id. at 6. The Commission was correct in observing in its September 4 Order that the UCAP methodology provides a strong incentive for the Generators to improve their availability and that the Generators will react to that incentive by prospectively improving the performance of their units.

By using the fleet of in-City units' recent outage history to set the UCAP conversion rate, the Generators will have the opportunity to collect more revenues under the UCAP methodology than under the previous ICAP methodology as their performance improves and they have more UCAP to sell. Further, while the implementation of UCAP will not necessarily result in a physical expansion of a supplier's generating capacity, it should increase the time that capacity is physically available to generate energy and, therefore, increase the opportunity to derive additional energy revenue. The Generators miss the mark on this claim as well.

CONCLUSION

For the reasons expressed above, the NYPSC urges the Commission to reject the Generators' Request for Rehearing.

Respectfully submitted,

Lawrence G. Malone
General Counsel
By: Saul A. Rigberg
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Public Service Commission
of the State of New York
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Albany, NY 12223-1305
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Dated: November 2, 2001
Albany, New York

CERTIFICATE OF SERVICE

I, Karen Houle, do hereby certify that I will serve on November 2, 2001, the foregoing Answer 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: November 2, 2001
Albany, New York

Karen Houle