

**NYISO BOARD OF DIRECTORS DECISION**  
**ON**  
**APPEAL OF THE MANAGEMENT COMMITTEE VOTE**  
**ON THE SUPPLEMENTAL SUPPLY FEE FOR THE INSTALLED CAPACITY DEMAND CURVE**

Keyspan-Ravenswood, LLC (“Keyspan” or the “Appellant”) appeals from the Management Committee’s (“MC’s”) June 18, 2003 vote to implement a revised supplemental supply fee for the ICAP Demand Curve. New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (the “Energy East Companies”), and the City of New York (collectively, the “Appellees”) have filed Motions in Opposition to Keyspan’s appeal. No Motions in Support of Keyspan’s appeal have been filed.

For the reasons set forth below, we deny the appeal and direct the NYISO to file the supplemental supply fee revisions to the Services Tariff with the Federal Energy Regulatory Commission (“FERC” or “the Commission”) pursuant to Section 205 of the Federal Power Act

**Analysis and Decision**

Keyspan argues that the MC and the NYISO incorrectly interpreted FERC’s May 20, 2003 Order approving the ICAP Demand Curve (the “May 20, 2003 Order”) as prohibiting the NYISO from establishing the supplemental supply fee at a price higher than the ICAP Spot Market Auction Market-Clearing Price. Keyspan contends that the NYISO may face situations where suppliers will only be willing to provide supplemental Installed Capacity at prices above the Market-Clearing Price because of cost factors and because the ICAP Demand Curve has been set below the cost of entry. Keyspan then concludes that those situations may impact the NYISO’s ability to meet the New York State Reliability Council’s (“NYSRC”) minimum statewide and locational reliability requirements. Therefore, Keyspan proposes that the Board reject the MC’s proposal and instead allow the NYISO to purchase Installed Capacity at a “reasonable price” above the Market-Clearing Price if there is a post-auction deficiency.

Appellees argue that FERC’s May 20, 2003 Order prohibits the NYISO from purchasing Installed Capacity at prices higher than the Market-Clearing Price. Furthermore, they argue that allowing the NYISO to purchase Installed Capacity at levels above the Market-Clearing Price would encourage withholding, market power abuse and gaming — the same concerns raised by FERC in rejecting the initial supplemental supply fee proposal. Appellees assert that allowing the NYISO to purchase supplemental Installed Capacity at levels up to the Market-Clearing Price will be sufficient to meet NYSRC reliability requirements. The Energy East Companies note that after a recent ICAP Spot Market Auction, the NYISO procured an additional 25 MW of Installed Capacity from Installed Capacity Suppliers at the Market-Clearing Price. The City of New York contends that the Market-Clearing Price will be higher when less supply is bid into the ICAP Spot Market Auction, thereby raising the amount that the NYISO will be able to pay for supplemental Installed Capacity to meet reliability requirements. Appellees ask the Board to deny Keyspan’s appeal and approve the MC’s proposal for filing with the Commission.

After careful review of the documents submitted by the parties, we decline to overturn the MC’s June 18, 2003 decision to file with FERC a revised supplemental supply fee for the ICAP

Demand Curve. We do not accept Keyspan's proposal to allow the NYISO to purchase Installed Capacity at a "reasonable price" above the Market-Clearing Price.

In rejecting the original supplemental supply fee, FERC noted in the May 20, 2003 Order: "Our concern with the Supplemental Supply Fee is that sellers accepted in the auction would receive a lower amount than the Supplemental Supply Fee, and thus, suppliers would have an incentive to stay out of the auction in order to receive a higher price after the auction." (May 20, 2003 Order at 25, n.37.) The Commission clearly stated that the NYISO should determine, after experience with the ICAP Demand Curve, the parameters most appropriate, and should establish the supplemental supply fee in a way that will not potentially encourage withholding. The MC's proposal sets the supplemental supply fee at a price that does not exceed the Market-Clearing Price. Keyspan's proposal to allow the NYISO to purchase Installed Capacity at "reasonable prices" above the Market-Clearing Price does not address the Commission's concerns in the May 20, 2003 Order that a higher supplemental supply fee would encourage market abuse and gaming.

Keyspan asserts in its Notice of Appeal that the Commission stated in the May 20, 2003 Order that it was willing to entertain new proposals to address "the possible need for higher capacity payments for capacity purchases when minimum reserve requirements are not met by the Demand Curve spot auction." (Keyspan Appeal at 3.) In fact, the Commission held that, "[i]f the NYISO concludes, after some experience with the ICAP Demand Curve mechanism, that a higher ICAP price is needed when the auction clears at an ICAP level less than 118 percent, it is free to propose a Demand Curve that includes higher prices for ICAP levels less than 118 percent." (May 20, 2003 Order at 25, n.37.) Keyspan mistakenly suggests that the Commission's statement refers to establishing a higher supplemental supply fee, rather than higher prices for the ICAP Demand Curve.

We also find no support for Keyspan's position that the MC's proposal will impact reliability. Reliability was a primary impetus for the ICAP Demand Curve proposal and the NYISO remains committed to meeting NYSRC reliability requirements. The NYISO's risk with respect to meeting NYSRC requirements is no more significant with deficiency charges and supplemental supply fees equal to the Market-Clearing Price than it was with the negotiated, fixed deficiency charges set forth in the original Services Tariff and used by the NYISO since its inception.<sup>1</sup> A supplemental supply fee equal to the Market-Clearing Price actually reduces reliability risks by eliminating incentives for withholding and, therefore, mitigating the potential for post-auction deficiencies. As the NYISO has done, it must continue to vigorously pursue purchasing Installed Capacity in the market to cover any post-auction Installed Capacity deficiency. There is no evidence, and Keyspan cites none, that an upper limit of the Market-Clearing Price will encourage deficiencies. The Market-Clearing Price merely replaces the old deficiency charges previously used by the NYISO prior to the ICAP Demand Curve.

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<sup>1</sup> Under the Services Tariff, a supplier is assessed a deficiency charge if it is deemed to have had a shortfall (*e.g.*, when the amount of Unforced Capacity that it supplies is found to be less than the amount it was committed to supply). Section 5.14.2. Similarly, an LSE is charged a supplemental supply fee if it has not met its minimum installed capacity requirements. Section 5.14.1(c).

The Board denies the appeal filed by Keyspan and directs the NYISO to file the proposed supplemental supply fee revisions to the Services Tariff with FERC pursuant to Section 205 of the Federal Power Act.

8/19/03