UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.	))	**Docket No. ER03-647-004**

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.'S ANSWER TO THE MOTIONS TO INTERVENE AND COMMENTS OF CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND ORANGE AND ROCKLAND UTILITIES, INC., MULTIPLE INTERVENORS, AND NEW YORK STATE ELECTRIC & GAS CORPORATION AND ROCHESTER GAS AND ELECTRIC CORPORATION

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure,[1] the New York Independent System Operator, Inc. (the "NYISO"), hereby respectfully submits its answer to the Motion to Intervene and Comments of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (the "Companies"), the Motion To Intervene and Comments of Multiple Intervenors, and the Motion To Intervene and Comments of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation ("NYSEG and RG&E") (collectively, the "Parties") all filed on December 29, 2003.[2] For the reasons stated below, the NYISO requests that the Commission accept the NYISO's compliance filing filed on December 8, 2003 (the "December 8, 2003 Compliance Filing").

The NYISO recognizes that the Commission generally discourages parties from filing answers to protests and does not wish to burden the Commission with an extraneous answer. If

[1] 18 C.F.R. §§ 385.212 and 385.213 (2003).

[2] The following three motions in support of the NYISO were also filed on December 29, 2003: Motion to Intervene and Comments of AES Eastern Energy, L.P.; Motion to Intervene and Comments of the Independent Power Producers of New York, Inc.; Comments of the NRG Companies. In addition, on December 29, 2003, Central Hudson Gas & Electric Corporation, LIPA, New York Power Authority, and Niagara Mohawk Power Corporation, a National Grid Company collectively filed the Motion to Intervene of the Indicated New York Transmission Owners.

the Commission deems that its policy discouraging answers to protests applies here, the NYISO requests that the Commission, nevertheless, allow the NYISO to answer the Parties. The Commission has allowed answers to help clarify complex issues, provide additional information that will assist the Commission or develop the record in a proceeding.[3] This answer will facilitate the Commission's review in this proceeding by providing the Commission with information that corrects the Parties' mischaracterizations and inaccurate conclusions.[4]

SUMMARY OF ARGUMENT

The NYISO filed the December 8, 2003 Compliance Filing pursuant to the Commission's May 20, 2003 Order accepting, with modifications, revisions to the NYISO's Market Administration and Control Area Services Tariff (the "Services Tariff") implementing an ICAP Demand Curve in the NYISO's Installed Capacity market (the "Demand Curve Filing")[5] (the "May 20, 2003 Order").[6] The Compliance Filing contained a report on the implementation of the ICAP Demand Curve (the "Implementation Report") and a report on withholding behavior

[3] *See, e.g., Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 63,017, *slip op.* at 6 (2000) (accepting an answer that was "helpful in the development of the record . . .."); *New York Independent System Operator, Inc.*, 91 FERC ¶ 61,218 at 61,797 (2000) (allowing an answer deemed "useful in addressing the issues arising in these proceedings . . .."); *Central Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,137 at 61,381 (1999) (accepting prohibited pleadings because they helped to clarify the issues and because of the complex nature of the proceeding); *BES Hydro Co.*, 45 FERC ¶ 61,478 (1988) (accepting to "consider all relevant filings in this case, due to the nature of the issues and in order to have a more complete record on which to base our decision").

[4] To the extent necessary, the NYISO requests permission to file this answer one day out-of-time.

[5] New York Independent System Operator, Inc. *New York Independent System Operator, Inc.'s Filing of Revisions to the ISO Market Administration and Control Area Services Tariff: ICAP Demand Curve* (March 21, 2003) (hereinafter, the Demand Curve Filing).

[6] *New York Independent System Operator, Inc.* 103 FERC ¶ 61,201 (2003) (hereinafter, the May 20, 2003 Order.)

under the ICAP Demand Curve.[7] In response, the Parties filed comments arguing primarily that the NYISO's December 8, 2003 Compliance Filing was misleading and did not adequately describe the impact of the ICAP Demand Curve on costs to load serving entities ("LSEs"). NYSEG and RGE concurred with the arguments set forth in the Companies' motion.

The NYISO's Implementation Report is not misleading in any way. The NYISO, as ordered, analyzed the market effects of the ICAP Demand Curve predicted by the Demand Curve Filing approved by the Commission, focusing on the short period *after* implementation of the ICAP Demand Curve rather than drawing incongruous comparisons with earlier Installed Capacity markets under alternative market designs as the Parties urge in their pleadings. The NYISO provided, in figures, graphs and text, all of the data in support of its observations in the Implementation Report. The NYISO's conclusions therefore, are, transparent, not obscured as argued by the Parties.

I. The Implementation Report Focuses on Market Trends Under the ICAP Demand Curve Anticipated by the NYISO and the Commission

While the Parties focus their arguments on the claim that the NYISO did not adequately describe the short-term cost impacts of the ICAP Demand Curve in the Implementation Report, the NYISO points out that short-term cost savings were never cited as a reason for developing or approving the ICAP Demand Curve proposal, nor were they predicted by the NYISO or cited by the Commission in the May 20, 2003 Order. The primary market trends anticipated in the Demand Curve Filing were price stability and an increased amount of capacity in the market.[8] The NYISO explains in the Implementation Report that "the ICAP Demand Curve has already

[7] New York Independent System Operator, Inc. *Report on Implementation of the ICAP Demand Curve* at 8. (December 8, 2003) (hereinafter, the Implementation Report). New York Independent System Operator, Inc. *Report on Withholding Behavior Under the ICAP Demand Curve*. (December 8, 2003).

[8] Demand Curve Filing at pp. 5 and 6.

begun to stabilize prices in the Installed Capacity market, which will help create incentives for investment in new generation" and "the total amount of capacity offered into the Installed Capacity auctions has increased."[9]

The Commission also cited predicted price stability and an increase in the amount of capacity offered into the auctions as reasons for its approval of the Demand Curve Filing.[10] In fact, in the May 20, 2003 Order, the Commission responded to arguments raised by LSEs about the potential for increased rates by concluding that "[t]he ICAP Demand Curve proposal was crafted to elicit, among other things, *additional generation*. By signaling that reserves above the 118 percent level have value, the proposal should help develop adequate generation supply and thus provide *long term* benefits to NYISO markets and customers."[11]

II. The Implementation Report Provides Accurate Observations About Capacity Prices From the Six-Month Period After Implementation of the ICAP Demand Curve

In the Implementation Report, the NYISO focused on market trends since implementation of the ICAP Demand Curve, and, therefore, relied on data from that period in making its conclusions. Capacity prices did, in fact, decline over the course of the Summer 2003 Capability Period. The Parties' allege that this observation is misleading, because Summer 2003 capacity prices were higher than those of the Summer 2002. The NYISO never suggested otherwise.

The Parties argue that capacity prices under the ICAP Demand Curve should have been compared to capacity prices that existed prior to its implementation. The NYISO, however, did

[9] Implementation Report at p. 1.

[10] The May 20, 2003 Order at p. 13.

[11] Id. at p. 17 (emphasis added).

not consider this comparison useful. The Installed Capacity market that existed prior to implementation was a different market than the one that currently exists. A comparison of the two markets, therefore, would not have been instructive.

The Companies go on to claim that the Strip Auction normally produces the highest prices of the three Installed Capacity auctions and that prices then decline over the course of a Capability Period. This trend was not, however, evident in the Summer 2002 Capability Period when prices were initially higher in the Monthly and Deficiency Auctions than in the Strip Auction. For example, the New York City Summer 2002 Capability Period Auction price was $9.20, the May Monthly Auction price was $9.38, and the May Deficiency Auction price was $9.39. Only after it became obvious that there was excess capacity available under the old market design did prices decline, but they declined to prices as low as $.01 in the Deficiency Auction, a price that clearly did not support new capacity. The NYISO noted in the Implementation Report that the ICAP Demand Curve has eliminated these price spikes and stabilized capacity prices in the market.[12]

In addition, the Companies claim that it is inappropriate to compare Summer prices to Winter prices in the Implementation Report, as the NYISO did. In footnote 5 of the Implementation Report, the NYISO explains that the price comparison includes Winter data and that NYCA resources have a higher capacity rating in the Winter.[13] Figure 3 of the report provides the individual monthly prices for the Summer and Winter Capability Periods and plainly reveals an overall trend of decreasing prices in the ICAP Spot Market Auctions.[14]

---

[12] Implementation Report at p. 1.

[13] Id. at p. 6.

[14] Id. at p. 4.

The Companies argue that, during the period covered by the Implementation Report, the price of capacity in New York City increased because the In-City price caps are now higher in the Summer and lower during the Winter. On the contrary, auction prices in New York City in May of 2003 (prior to the implementation of the ICAP Demand Curve) were clearly higher than those in the Summer 2002 Capability Period. The ICAP Demand Curve reduced auction prices in New York City after May 2003. Although Winter 2003-2004 prices will be higher than Winter 2002-2003 prices, the NYISO's experience with the ICAP Demand Curve during the Summer of 2003 suggests that those prices will decline over the course of the Winter Capability Period as well.

The Parties argue that the Implementation Report does not quantify the aggregate cost of the ICAP Demand Curve on consumers. The Implementation Report focused primarily on market effects anticipated by the Demand Curve Filing such as price stability and increased capacity offered and purchased in the auctions. In response to concerns about increased consumer costs, the NYISO said, in the Demand Curve Filing, "Dr. Patton has explained that these short-term costs are transitional and will be eliminated over time as the market moves toward a long-run equilibrium."[15] Because the Demand Curve Filing anticipated that true consumer cost impacts would only be apparent in the long-run, the NYISO considered the short period since implementation of the ICAP Demand Curve an insufficient amount of time in which to draw conclusions based on those costs. The NYISO did, however, provide data regarding capacity prices and purchases since implementation of the ICAP Demand Curve and made no attempt to obscure consumer costs.

---

[15] Demand Curve Filing at p. 5.

III. The Implementation Report Provides Data To Support the Conclusion That the Amount of Capacity Purchased Has Increased Under the ICAP Demand Curve

Contrary to the Companies' assertion, the NYISO did not suggest in the Implementation Report that the ICAP Demand Curve has created "additional sources of capacity."[16] Rather, the NYISO clearly stated in the Implementation Report that "there has been insufficient time and experience with the ICAP Demand Curve (only seven months) to gauge other potential effects (for example, increased commitments to Bilateral Transactions and incentives to build new generation)."[17]

In addition, the NYISO did not claim, as the Companies allege, that the amount of imports subscribed increased because of the ICAP Demand Curve. The NYISO provided data regarding imports to point out that more capacity has been entering the market and will combine with capacity increases under the ICAP Demand Curve to achieve the results anticipated by the Demand Curve Filing and the May 20, 2003 Order.

The Companies claim that the increase in the average amount of capacity purchased each month in Installed Capacity auctions was a result of the new LSE purchase obligation approved as part of the Demand Curve Filing, and not a result of the ICAP Demand Curve. The increased LSE purchase obligation, however, is an integral component of the ICAP Spot Market Auction design and was proposed by the NYISO as a complement to the ICAP Demand Curve; therefore, the increased amount of capacity purchased is, in fact, the result of implementation of the ICAP Demand Curve, as the NYISO stated in the Implementation Report.[18]

---

[16] Motion to Intervene and Comments of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. at p. 6. (December 29, 2003).

[17] Implementation Report at p. 8.

[18] Id. at p. 6.

The Companies argue that the amount of capacity committed to Bilateral Transactions has decreased since implementation of the ICAP Demand Curve. There was, in fact, a general decrease in the amount of capacity committed to Bilateral Transactions *prior to* implementation of the ICAP Demand Curve. Prior to implementation, parties were hesitant to negotiate Bilateral Transactions. Because auction prices were erratic, it was difficult for parties to reach agreement on a price. The NYISO continues to predict that over time, with a more stable market, more capacity will be committed to Bilateral Transactions, because parties will have more confidence in the negotiated price.

In addition, Multiple Intervenors argue that the Implementation Report does not confirm that the ICAP Demand Curve has encouraged the retention of existing generators. The NYISO emphasizes that there has not been sufficient time since implementation to determine the long-term effects of the ICAP Demand Curve such as investment and retirement decisions. Furthermore, the retention of existing generators was not a goal of the Demand Curve Filing. Nevertheless, the NYISO has not observed a trend of retirement since implementation of the ICAP Demand Curve.

Finally, the Companies argue that the Implementation Report does not properly explain that the origin of deficiencies in the first five ICAP Spot Market Auctions for New York City after the implementation of the ICAP Demand Curve were the result of the new In-City price caps. These deficiencies were insignificant and easily cured, and the NYISO considered it more important to note in the Implementation Report that the market has stabilized over time and has not experienced further deficiencies than to analyze a situation that cannot, by Tariff design, occur again. In future Capability Periods, the In-City price caps will be lower by Tariff design than the ICAP Demand Curve reference points; therefore, In-City price caps will not create deficiencies in the ICAP Spot Market in the future.

CONCLUSION

The NYISO provided all data relevant to the impact of the ICAP Demand Curve in its Implementation Report. The NYISO developed conclusions and predictions in accordance with those data for the short period of time that the ICAP Demand Curve has been in effect. The Parties' motions mischaracterize the Implementation Report, make incorrect allegations, and misstate facts relating to implementation of the ICAP Demand Curve. For all these reasons, the NYISO respectfully requests that the Commission accept the December 8, 2003 Compliance Filing.

Respectfully submitted,

NEW YORK INDEPENDENT
SYSTEM OPERATOR, INC.

By: *_/s/ Kathy Robb______*
Counsel

Kathy Robb, Esq.
Meredith Winn, Esq.
Hunton & Williams LLP
200 Park Avenue, 31st Floor
New York, NY 10166-0136

cc: Daniel L. Larcamp
Alice M. Fernandez
Robert E. Pease
Michael A. Bardee

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2003).

Dated at Washington, DC this 14th day of January, 2004.

By: */s/ Catherine A. Karimi*

Catherine A. Karimi
Sr. Professional Assistant
Hunton & Williams LLP
1900 K Street, N.W.
Washington, DC 20006-1109
(202) 955-1500