

98 FERC ¶ 61, 180
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

New York Independent System Operator, Inc. Docket No. ER01-2536-002

ORDER ON REHEARING

(Issued February 15, 2002)

In this order, we deny the Mitigated In-City Generators'¹ request for rehearing of the September 4, 2001 order (September 4 Order)² in which we directed translation of the in-city mitigated units' \$105/kW-year price cap into Unforced Capacity (UCAP) terms based on a revenue-neutral methodology. We believe that our decision in this order will promote confidence in the NYISO-administered markets, which will increase supply, improve reliability, and in the long run, produce efficient energy prices.

Background

The September 4 Order accepted for filing NYISO's proposal to implement a permanent Installed Capacity (ICAP) market design based on a UCAP methodology. The UCAP methodology is designed to recognize in the market design the reality that because of forced outages, a generating resource is not always available to supply ICAP. It translates the ICAP planning process, ICAP suppliers' qualification requirements and LSEs requirements, into terms that account for the forced outage rates of ICAP providers' generating units. Under the UCAP methodology, potential ICAP suppliers are required to submit operating data that show their forced outages. NYISO uses these operating data to calculate a resource's Equivalent Demand Forced Outage Rate (EFOR_d), or the probability that a resource will be in demand but unavailable due to forced outages. The amount of ICAP that a resource will be qualified to supply for a particular month is based

¹ Orion Power New York Inc., Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, and KeySpan-Ravenswood, Inc.

² New York Independent System Operator, Inc., 96 FERC ¶ 61,251 (2001).

on that unit's Dependable Maximum Net Capability determined by seasonal tests multiplied by one minus its $EFOR_d$, which is based on operating data from the most recent twelve months.

The September 4 Order also acted on NYISO's request that the Commission determine the appropriate translation of the \$105/kW-year price cap imposed on New York City ICAP suppliers.³ The September 4 Order states in pertinent part that:

... the translation of the existing \$105 in-city price cap to the UCAP terms must be revenue neutral. We find that the in-city price cap must be translated based on the ratio of UCAP to ICAP for the in-city generation subject to mitigation (i.e., the translated in-city price cap is to be fixed at an amount determined on the date of the first in-city capacity auction under UCAP methodology, by multiplying the total ICAP of the in-city generators subject to mitigation by the current price cap of \$105, and dividing the resulting total by the UCAP of the in-city mitigated generation from the most recent 12-month period).

On rehearing, the Mitigated In-City Generators argue that the Commission erred in directing NYISO to use only the most recent twelve months of $EFOR_d$ to determine the price cap translation. In the petitioners' view, a just and reasonable price cap translation must use outage data based on sufficient unit outage history over no less than five years. They argue that this minimum period is necessary to capture the operation and maintenance cycles of generating units to normalize the various outage "anomalies" that may occur. The Mitigated In-City Generators further state that the Commission contradicts itself by pointing out in the September 4 Order that NYISO's UCAP methodology is similar to that of PJM Interconnection L.L.C.'s (PJM), while PJM uses a five-year period for calculation of $EFOR_d$.

The In-City Mitigated Generators also argue that the use of a one-year period as opposed to a five-year period will have a confiscatory effect on their substantial investments to improve reliability of the mitigated in-city units. The petitioners explain that because numerous in-city mitigation measures deprive them of the opportunity to recover fixed costs in its energy sales, they can be adequately compensated only with appropriate capacity payments reflecting the value of these long-term improvements. The In-City Mitigated Generators challenge the September 4 Order's reasoning that the price cap translation will not result in confiscatory rates because the In-City Mitigated

³ See Consolidated Edison Company of New York, Inc., 84 FERC ¶ 61,287 (1998).

Generators had an opportunity to adjust their bids for Consolidated Edison Company of New York, Inc.'s (ConEd) generating units to take into account the price cap, which was imposed prior to the divestiture. The In-City Mitigated Generators argue that while they were on notice of the \$105/kW-year ICAP price cap, they did not and could not have foreseen that the price cap will be lowered as a result of the translation into the UCAP terms.

The Mitigated In-City Generators also argue that contrary to the September 4 Order's conclusion, the conversion to the UCAP methodology will not result in larger ICAP payments and additional revenues from energy generated by the expanded capacity. In the petitioners' view, the UCAP methodology will reduce capacity available for sale because the twelve-month period is too short and will be representative of unusually high outage rates.

On November 2, 2001, the New York Public Service Commission filed an answer to the Mitigated In-City Generators' request for rehearing, in which they maintain that the 12 months of data used by NYISO provide a realistic picture of how operating units will perform in the future, that PJM's methodology and NYISO's methodology are consistent, and that under the proposed UCAP, generators will receive additional revenues as they improve their reliability.

Discussion

We believe that the Mitigated In-City Generators misinterpreted our decision in the September 4 Order. In that order, we did not order a change in the level of the in-city price cap, we directed its translation into the UCAP terms. To determine the appropriate UCAP translation method, we chose to use operating data from the most recent twelve months because they reflect a more current outage rate. Moreover, our decision in the September 4 Order ensures that the UCAP conversion terms are consistent throughout the New York State. The $EFOR_d$ factor applied in the conversion of the in-city price cap into UCAP terms is the same as the $EFOR_d$ factor used to determine the UCAP availability of an individual generator in the rest of the state.

Also, we disagree with the Mitigated In-City Generators that the conversion method chosen by the Commission will have a confiscatory effect. As we stated in the September 4 Order, because the in-city price cap was imposed prior to the divestiture of generation by ConEd, potential purchasers were afforded an opportunity to adjust their bids for the generation being divested by the amount necessary to compensate them for the effects of the price cap. Moreover, the UCAP methodology enables a generator to increase its ICAP revenues by improving its individual outage rate.

For these reasons, we deny the Mitigated In-City Generators' request for rehearing.

The Commission orders:

The Mitigated In-City Generators' request for rehearing is hereby denied.

By the Commission. Commissioner Brownell concurred with a
separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

(Issued February 15, 2002)

BROWNELL, Commissioner, concurring:

Today's order upholds the use of the installed capacity market in New York City, with modifications. My support for this order rests not on a firm belief in the NYISO's particular installed capacity market design, but on the need to recognize a more realistic picture of the availability of units within New York City. My support also rests on the knowledge that this is an interim solution and that PJM, NYISO and ISO-NE are working toward a regional generation adequacy model that I expect will be a market-oriented solution. I encourage market participants to work toward such a solution to generation adequacy and look forward to continued dialogue.

For these reasons, I respectfully concur with this order.

Nora Mead Brownell