

113 FERC ¶61,271
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

New York Independent System Operator, Inc.

Docket No. ER05-428-005

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued December 15, 2005)

1. On October 18, 2005, New York Independent System Operator, Inc. (NYISO) filed with the Commission revisions to its Market Administration and Control Area Services Tariff (Services Tariff) to implement transparent and efficient procedures for setting and reviewing future Installed Capacity (ICAP) Demand Curves' parameters. In this order, the Commission accepts NYISO's proposed tariff revisions, conditioned on NYISO making one tariff modification.

Background and Description of Filing

2. In an order dated April 21, 2005,¹ the Commission accepted, as modified, the ICAP Demand Curves proposed by NYISO for Capability Years 2005/2006, 2006/2007, and 2007/2008. The April 2005 Order also directed NYISO to file revisions to its Services Tariff within 180 days to implement changes to the procedures for setting and reviewing the parameters to ensure that future reset processes are efficient and transparent.

3. The April 2005 Order explained that the directed compliance filing would help to avoid delays in the review of future NYISO ICAP Demand Curve filings. In addition, in the April 2005 Order the Commission suggested that, in light of the controversy associated with the proceeding, within 180 days of the date of issuance of the order, NYISO implement changes to its procedures to ensure that future reset processes are sufficiently transparent and workable.

4. On October 18, 2005, NYISO filed the instant proposed Services Tariff revisions with the Commission to comply with the April 2005 Order. The instant filing proposes to clarify the factors to be considered in reviewing the demand curves, including: (1) the

¹ *New York Independent System Operator, Inc.*, 111 FERC ¶ 61,117 (April 2005 Order), *reh'g denied*, 112 FERC ¶ 61,283 (2005).

localized levelized embedded cost of gas turbines in each New York Control Area (NYCA) and the rest of state; (2) the projected net annual energy and ancillary services revenues for such gas turbines under conditions in which the available capacity would equal or slightly exceed the minimum ICAP requirement; (3) the appropriate shape, slope, and zero crossing point; and (4) translation of the gas turbines' annual net revenue requirements into monthly values taking into account seasonal differences in the amount of available capacity.

5. The instant filing also sets forth the components of the schedule and procedures for the periodic review in order to enhance the review's transparency and efficiency as directed by the April 2005 Order. The instant filing provides that a proposed schedule for each periodic review will be reviewed by the stakeholders and issued no later than May 30 of the year prior to the year of filing the ICAP Demand Curves with the Commission. The instant filing further provides that the schedule and procedures shall include collaboration by NYISO, NYISO's independent Market Advisor, and the NYISO stakeholders in the development of a request for proposals for the services of an independent consultant to determine recommended values for the factors discussed above and the appropriate methodologies for such determinations. NYISO, the Market Advisor, and the stakeholders will then review and comment on the independent consultant's report. NYISO will then issue proposed demand curves taking into consideration the independent consultant's report as well as the comments and views of the Market Advisor and stakeholders. The instant filing proposes then to allow stakeholders to submit requests to the NYISO Board of Directors to review and adjust the proposed ICAP Demand Curves, and to make presentations to the NYISO Board of Directors explaining their views on NYISO's recommendations. Finally, the instant filing proposes that NYISO will file the proposed ICAP Demand Curves with the Commission, as approved by the NYISO Board of Directors and incorporating the results of the periodic review, no later than November 30 of the year prior to the year in which the ICAP Demand Curves would apply.

Notice of Filing and Responsive Pleadings

6. Notice of NYISO's filing was published in the *Federal Register*,² with motions to intervene and protests due on or before November 8, 2005. Mirant Americas Energy Marketing LP, Mirant New York Inc., Mirant Bowline LLC, Mirant Lovett LLC, and Mirant NY-Gen LLC (collectively, Mirant Companies), the New York Transmission Owners, and the Independent Power Producers of New York, Inc. (IPPNY) filed timely motions to intervene and comments. The New York Transmission Owners filed an answer to IPPNY and Mirant Companies' comments.

² 70 Fed. Reg. 66,830 (2005).

Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,⁴ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the New York Transmission Owner's answer because it has provided information that assisted us in our decision-making process.

B. NYISO's Proposed Tariff Revisions

1. Use of Gas Turbines

Protest of the New York Transmission Owners

9. In their November 8 comments, the New York Transmission Owners generally support NYISO's proposal, with one exception, and offer a suggested modification to rectify the problems they see with the proposed tariff language. The New York Transmission Owners object to the exclusive selection of gas turbines as the technology of choice in the development of the demand curves. The New York Transmission Owners claim that technological advancements in the industry may devalue gas turbines to the point where gas turbines may not continue as an economically viable technology for new entrants. Also, the New York Transmission Owners argue that relying on estimates of gas turbine costs in setting the demand curves is likely to increase the amount of error in the calculations of net cost of entry.

10. To remedy this perceived problem, the New York Transmission Owners request that the Commission direct NYISO to consider all economically viable technologies at the time of resetting the ICAP Demand Curves, estimate each net cost of entry, and use the average of those numbers.

³ 18 C.F.R. § 385.214 (2005).

⁴ 18 C.F.R. § 385.213(a)(2) (2005).

Commission Determination

11. The Commission agrees with the New York Transmission Owners regarding their assessment of the future economic viability of gas turbines in relation to the resetting of the ICAP Demand Curves. It is entirely possible, due to future advancements in technology, that gas turbines may not be the preferred type of unit to use in the future resets of the NYISO ICAP Demand Curves. However, the Commission disagrees with the New York Transmission Owners' suggested remedy, *i.e.*, to use an average of all economically viable units' net costs of entry in resetting future NYISO ICAP Demand Curves.

12. The preferred unit to be used in the development of future NYISO ICAP Demand Curves is a peaking unit. A peaking unit is defined as the unit with technology that results in the lowest fixed costs and highest variable costs among all other units' technology that are economically viable. Peaking units, by nature, operate the fewest hours out of a given year in comparison with all other units. This characteristic reduces the difficulty and uncertainty in calculating the marginal revenue for peaking units since fewer assumptions about the operating costs of such units need to be made. Since the peaking unit at the time of the development of the ICAP Demand Curves is knowable, there is no need to consider other units' net costs of entry and come up with some sort of average of those costs. Such a calculation would only serve to obscure the clarity provided by the use of the peaking unit's cost. Therefore, NYISO is directed to remove all references in the proposed Services Tariff language to "gas turbines" and replace them with "peaking units," as defined herein. NYISO is further directed to submit the revised tariff sheets in the compliance filing ordered below.

2. Seasonal Capacity Differences

Protest of IPPNY and Mirant Companies

13. IPPNY and Mirant Companies both support the compliance filing. However, both parties claim that there is a fatal disconnect between the language in the transmittal letter – of which both parties approve – and the tariff language. IPPNY and Mirant Companies argue that the proposed tariff language is ambiguous and that there is an inconsistency between NYISO's transmittal letter and its proposed tariff language. Specifically, they argue that the calculation of net revenues for gas turbines should be done under "approximate equilibrium conditions."⁵ Instead, the proposed tariff language provides that, "the appropriate translation of the annual net revenue requirement of the [incremental unit], *determined from the factors specified above*, into monthly values that take into account seasonal differences in the amount of capacity available in the ICAP

⁵ Approximate equilibrium conditions describe conditions when available capacity equals or slightly exceeds the minimum ICAP requirement.

Spot Market Auctions.”⁶ IPPNY and Mirant Companies claim that the italicized phrase above does not dictate that both the examination of incremental units’⁷ projected annual energy and ancillary services net revenues and the translation of net revenue requirements for gas turbines into monthly values be computed under approximate equilibrium conditions. Further, they argue that this computation should be made under approximate equilibrium conditions.

Answer of the New York Transmission Owners

14. In its answer, the New York Transmission Owners state that if the Commission were to direct the changes requested by IPPNY, the curves would be set using assumptions that are inconsistent with NYISO’s expectations regarding how the supply of ICAP would actually vary between the summer and winter. The New York Transmission Owners claim that there is no consensus among NYISO market participants regarding reliance on translation procedures done under approximate equilibrium conditions.

15. Specifically, the New York Transmission Owners claim that NYISO’s projected ICAP for the next three years will be inaccurate if it is computed under long-run equilibrium market conditions rather than the winter-to-summer ICAP supply ratio that NYISO expects to observe in the next three-year period.

Commission Determination

16. Regarding the issue of how to account for seasonal capacity differences, we will accept NYISO’s proposed tariff language. The proposed language would start with the annual net revenue requirement of the Incremental Unit “determined from the factors specified above.” This amount clearly includes the current localized leveled embedded cost of the unit (item “i” in the proposed language), reduced by the likely projected net annual energy and ancillary services revenues of the unit received under conditions in which the available capacity would equal or slightly exceed the minimum ICAP requirement. The proposed language would then translate the net annual revenue requirement into monthly values that take into account seasonal differences in the amount of capacity available in the ICAP spot market auctions.

⁶ Section 5.14.1(b) of Services Tariff, Sixth Revised Sheet No. 157(*emphasis added*).

⁷ In the proposed language, the incremental units are gas turbines. As explained in P 12 above, this order directs NYISO to remove all references to gas turbines and replace them with “peaking units.”

17. The dispute among commenters concerns how the seasonal capacity difference should be taken into account. IPPNY and Mirant Companies argue that the seasonal capacity differences should be those that would exist in “approximate equilibrium,” that is, when available capacity equals or slightly exceeds the minimum ICAP requirement. They request that the proposed Tariff language be clarified to achieve this result. The New York Transmission Owners contend that the appropriate seasonal capacity differentials should be those that are projected to exist over the coming three years, whether or not the capacity market is in approximate equilibrium. They request that the proposed Tariff language be clarified to achieve their preferred result.

18. In the April 2005 Order, the Commission established the Demand Curves currently in effect based (among other things) on current and projected near-term seasonal capacity differences, consistent with the New York Transmission Owners’ position. However, in the April 2005 Order, the Commission did not consider the position offered here by IPPNY and Mirant (that the seasonal capacity differences should be computed under approximate equilibrium conditions) because that position was not offered in comments leading up to the April 2005 Order. Rather than rule on the merits of this issue here, we conclude that the prudent course is to revisit the issue during the next periodic review of the ICAP Demand Curves, after experience has been gained with the Demand Curves that are currently in effect, and with all NYISO stakeholders having an opportunity to express their views on this issue.

The Commission orders:

NYISO’s proposed tariff revisions are hereby conditionally accepted for filing, subject to a compliance filing to be made within 30 days of the date of issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.