

102 FERC ¶ 61,313
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc. Docket Nos. ER03-303-000
and ER03-303-001

ORDER ON TARIFF FILING

(Issued March 21, 2003)

1. In this order, the Commission conditionally accepts, with modification, tariff revisions submitted by the New York Independent System Operator, Inc. (NYISO) to improve administration of its demand-side response programs. This order benefits customers by enhancing market performance and preserving system reliability.

BACKGROUND

Existing Demand Reduction Programs

2. NYISO has three demand-side response programs under which participants in the energy and unforced capacity (UCAP)¹ markets in the New York Control Area may receive payments for committing to reduce their energy usage: the Emergency Demand Response Program; the Day-Ahead Demand Response Program; and the Special Case Resources Program.

¹NYISO defines UCAP at Section 4.12, "Special Case Resources," of its Installed Capacity Manual as, "The Unforced Capacity of a Special Case Resource corresponds to its pledged amount of Load reduction as adjusted by historical performance factors and as increased by the Transmission District loss factor."

3. Under the Emergency Demand Response Program,² NYISO pays qualified demand resources (Resources) for reducing their energy consumption when NYISO declares an operating reserves shortage or major emergency state. Resources responding to NYISO's declaration and participating during program activation curtail their load or utilize generators not synchronized to the system to serve load that would otherwise be served over the system. These Curtailment Service Providers are paid \$500/MWH or the appropriate Locational Based Marginal Price (LBMP), whichever is higher, for verified load reductions. NYISO has activated the Emergency Demand Response Program eight times since the program's inception in May 2001.³

4. The Day-Ahead Demand Response Program⁴ allows a Resource to offer, in the day-ahead energy market, an amount of load reduction, at a set price, that the Resource is willing to provide if its bid is selected. These bids are treated the same as supply side bids and can set the market clearing price.

5. Special Case Resources⁵ are ICAP suppliers whose loads are capable of being interrupted upon demand, or distributed generators, rated 100 kW or higher, who receive payments from NYISO in return for NYISO's ability, over a specified contract period, to

²NYISO's Emergency Demand Response Program is set forth in Attachment G to NYISO's Market Administration and Control Area Services Tariff (Services Tariff), which the Commission accepted for filing on April 27, 2001, to be effective May 1, 2002 through October 31, 2002. New York Independent System Operator, Inc., 95 FERC ¶ 61,136 (2001), clarified, 98 FERC ¶ 61,268 (2002) (April 2001 order). By unpublished letter order of November 26, 2002 (2002 letter order), Commission staff, acting pursuant to delegated authority, extended the Emergency Demand Response Program through December 31, 2002.

³NYISO's third semi-annual compliance report on demand response programs at 3, n.8 (Docket No. ER01-3001-004), December 3, 2002 (NYISO's 3d compliance report).

⁴NYISO's Day-Ahead Demand Response Program is set forth at Article 4 and Attachments C and D of NYISO's Services Tariff, which the Commission accepted for filing on May 16, 2001, to be effective from May 1, 2001 through October 31, 2003. 95 FERC ¶ 61,223 (2001), clarified, 98 FERC ¶ 61,268 (2002) (May 2001 order).

⁵The Commission first approved inclusion of Special Case Resources within NYISO's ICAP market design on March 29, 2000. New York Independent System Operator, Inc., 90 FERC ¶ 61,319 (2000) (March 2000 order).

interrupt their loads when needed to reduce energy consumption. Unlike Emergency Demand Response Program participants, Special Case Resources are subject to penalties if they fail to curtail. At present, Special Case Resources receive no further payments; however, they are also allowed to register in the Emergency Demand Response Program. Whenever NYISO interrupts the Special Case Resources' loads, NYISO also activates the Emergency Demand Response Program, thus enabling Special Case Resources to use the same megawatts of demand reduction in both programs. As of December 2002, approximately two thirds of the 681 MW registered in the Special Case Resources Program are also registered in the Emergency Demand Response Program.⁶

Proposed Revisions

6. On December 20, 2002, as amended on February 6, 2003, NYISO filed with the Commission proposed revisions to its Services Tariff pertaining to these three demand response programs. NYISO states that the proposed revisions have the approval of appropriate stakeholder working groups as well as NYISO's Management Committee and the NYISO Board of Directors. NYISO requests an effective date after 60 days from the original date of filing, or February 19, 2003, for all the revisions except continuation of the Emergency Demand Response Program. To prevent a lapse in the Emergency Demand Response Program, NYISO requests waiver of the 60-day prior notice requirement to permit an effective date of January 1, 2003.

7. Briefly, NYISO's proposed tariff revisions include: (1) extending the Emergency Demand Response Program through October 31, 2005; (2) making Emergency Demand Response Program Resources eligible to participate in the New York Control Area energy market LBMP price setting mechanism; (3) adopting a zonal floor bid price for the Day-Ahead Demand Response Program; (4) extending the Day-Ahead Demand Response Program through October 31, 2004; (5) "de-linking" the Special Case Resources Program from the Emergency Demand Response Program so that NYISO may activate each program separately; (6) implementing load reduction payments to the Special Case Resources that verify load reduction in response NYISO's forecast of a reserve shortage; and (7) implementing changes in administering the Special Case Resources Program so as to facilitate NYISO's requests for load reductions from Special Case Resources participants.

8. More specifically, NYISO proposes two revisions to the Emergency Demand Response Program. The first extends the Emergency Demand Response Program

⁶NYISO's 3d compliance report, Attachment I at 13.

through October 31, 2005. The second is associated with establishing Emergency Demand Response Program resource eligibility for participation in the New York Control Area energy market LBMP price setting mechanism. According to the NYISO, "when EDRP Resources are called upon, and are the marginal Resources necessary to meet load, they should set price in the same manner as would a marginal generation Resource."⁷ NYISO did not, however, file the specific mechanisms by which the Emergency Demand Response Program will be incorporated into the LBMP methodology in Attachment B to the Services Tariff and Attachment J to the Open Access Transmission Tariff. NYISO states that it "is still reviewing with its market participants the mechanisms by which EDRP and SCR Resources will be incorporated into the LBMP methodology."⁸ The proposed revisions that NYISO filed to Attachment G of the Services Tariff state only that the Emergency Demand Response Program Resources will set prices in "accordance with ISO procedures."

9. NYISO proposes two revisions to the Day-Ahead Demand Response Program. The first is to extend it through October 31, 2004. NYISO states that the proposed extension "will allow for the continued use of the demand response method and provide an additional year of experience with the DADRP so that the NYISO and NYCA [New York Control Area] market participants can better evaluate the program's efficacy."⁹ The second proposed revision is adoption of a zonal floor bid price for the Day-Ahead Demand Response Program. NYISO proposes to implement a zonal floor bid price of \$50/MWh for all Day-Ahead Demand Response Program Resources that bid into the Day-Ahead Energy market. The justification for this floor is to prevent a Day-Ahead Demand Response Program Resource from submitting low bids for periods of time when its load would already be off-line for maintenance or regularly scheduled shutdowns.¹⁰ This minimum price is intended to discourage gaming and free-ridership and to discourage bidding behavior that provides no real benefit to the New York Control Area.

10. NYISO proposed four revisions to its administration of the Special Case Resources Program. First, NYISO proposes to "de-link" Special Case Resources from

⁷NYISO's December 20, 2002 filing at 4-5.

⁸Id. at 5.

⁹Id.

¹⁰An example is the customer who plans to be off-line, because of a weekend or holiday, and makes a lower than the market-clearing price bid (e.g., \$15/MWh), which NYISO accepts.

Resources participating in the Emergency Demand Response Program so that NYISO may activate each program separately. Currently, NYISO is required to call all Special Case Resources and Emergency Demand Response Program participants together when load reductions are needed. Resources are also permitted to participate in both the Special Case Resources Program and the Emergency Demand Response Program, using the same MW of demand reduction for both programs. NYISO states that the linkage of the two programs often results in more load reduction than is needed. NYISO proposes to accomplish the de-linking through the following changes in the Services Tariff:

- ! Adding language prohibiting Special Case Resources that are supplying UCAP in the New York Control Area from volunteering the same load reduction associated with that unforced capacity in the Emergency Demand Response Program; and
- ! Revising Attachment G to remove the obligation to call upon the demand response of both Special Case Resources and Emergency Demand Response Program participants whenever any demand reduction is needed. The revised section will state that the NYISO may activate the Emergency Demand Response Program when it notifies Special Case Resources to reduce their consumption of energy.

NYISO explains that these changes will allow it to treat demand reduction Resources more flexibly by first calling on those Resources that have committed their load reduction capabilities to the New York Control Area through UCAP sales or self-supply. Another advantage, NYISO continues, is that it will be able call less than the total number of available demand Resources and so to tailor each load reduction response to each forecast reserve shortage.

11. Second, NYISO proposes to provide Special Case Resources with payments for verified load reductions in response to a request to perform by NYISO. Currently, Special Case Resources do not receive payments for verified load reductions. However, because Special Case Resources are also able to participate in the Emergency Demand Response Program, they can receive payments through Emergency Demand Response Program participation. NYISO's proposed tariff revision would provide Special Case Resources with payments for verified load reductions in response to a NYISO request to reduce load due to a forecast reserve shortage. Such payments are intended to substitute for the payments that Resources could receive through dual program eligibility, which NYISO proposes to terminate.

12. The third change is to require Special Case Resources to submit a price bid for the load reduction that they are willing to provide. NYISO proposes to introduce a new term

to Section 5.12.11(a) of its Services Tariff, "Minimum Payment Nomination," which it defines as "an offer, submitted in dollars per Megawatt-hour and not to exceed \$500 per Megawatt hour, to reduce Load equal to the Installed Capacity Equivalent of the amount of Unforced Capacity a Special Case Resource is supplying to the NYCA"¹¹ NYISO proposes to use Minimum Payment Nominations to request load reduction from fewer than the total number of Special Case Resources, in the New York Control Area or a Load Zone, when a partial Special Case Resources load reduction is needed, on a least cost basis. With Minimum Payment Nominations, NYISO states that it will have the ability to match the need for load reductions with the subset of committed Special Case Resources, on both a Load Zone and New York Control Area basis, that are best located to meet NYISO's need, and to use the Special Case Resources' Minimum Payment Nominations to meet the need for load reductions on a least cost basis.

13. Finally, like the proposed revisions to the Emergency Demand Response Program, NYISO proposes to revise the Services Tariff to allow a Minimum Payment Nomination by a Special Cases Resources participant to set prices, in accordance with NYISO procedures, when Special Case Resources are requested to perform due to a forecast reserve shortage. NYISO states that the specific mechanisms by which Special Case Resources will be incorporated into the LBMP methodology, in Attachment B to the Services Tariff and Attachment J to the Open Access Transmission Tariff, are still under review with NYISO's market participants, and will be filed when the stakeholder discussion process is complete. NYISO's proposed revisions to the Services Tariff state only that the Special Case Resources are eligible to set prices in "accordance with ISO procedures."

14. The proposed Minimum Payment Nomination will also allow the NYISO to determine if a Special Case Resources participant is eligible for a Bid Production Cost Guarantee payment in the event that, for the duration of a NYISO Special Case Resources request, the Minimum Payment Nomination of a Special Case Resources participant exceeds the LBMP over the same period. NYISO filed revisions to the Services Tariff and Attachment C of the Services Tariff to effect this change to the Bid Production Cost Guarantee.

NOTICES, INTERVENTIONS, COMMENTS, AND PROTEST

¹¹NYISO's December 20, 2002 filing at 7, February 6, 2003 filing at 1, and Substitute Second Revised Sheet No. 50.

15. Notices of NYISO's December 20, 2002 and February 6, 2003 filings, in Docket Nos. ER03-303-000 and ER03-303-001, respectively, were published in the Federal Register, 68 Fed. Reg. 552 and 7995 (2003), with protests, or interventions due on or before February 27, 2003. AES Eastern Energy, L.P. (AES), Keyspan-Ravenswood, LLC (Ravenswood), Multiple Intervenors,¹² the New York Transmission Owners (Transmission Owners),¹³ and Reliant Resources, Inc. (Reliant) filed timely motions to intervene and comments. The Mirant Companies (Mirant) filed a timely motion to intervene, comments, and a limited protest.

16. Generally, all the intervenors, including Mirant, support NYISO's proposed changes to the demand response programs, as a total package, and NYISO's proposed time extensions for the Emergency Demand Response Program and Day-Ahead Demand Response Program.

17. Mirant's limited protest goes to NYISO's lack of specificity in detailing how it will permit Emergency Demand Response Program and Special Case Resources participants to set prices in the LBMP market when these participants are the marginal Resources necessary to meet load. Although supporting NYISO's proposed tariff revisions, Mirant notes that the December 20, 2002, filing does not include the specific procedures under which Emergency Demand Response Program and Special Case Resources participants will be eligible to set prices. Mirant requests the Commission to require NYISO to file revisions to its Services Tariff, under section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2000), that identify the specific procedures by which the Emergency Demand Response Program and Special Case Resources participants will be eligible to set prices, prior to any pricing procedures becoming effective.

18. Transmission Owners urge the need to implement pricing mechanisms consistent with those approved by NYISO's stakeholders, and cites the September 25, 2002,

¹²Multiple Intervenors is an unincorporated association of large commercial and industrial energy consumers.

¹³Transmission Owners consists of eight electric systems that transferred operational control over significant portions of their transmission facilities to NYISO, namely, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, and Niagara Mohawk Power Corporation. Transmission Owners filed a separate motion to intervene in Docket No. ER03-303-001.

determination by the NYISO Business Issues Committee that the criteria used to call upon Special Case Resources and Emergency Demand Response Program Resources be the same as the criteria used for price setting. Also regarding pricing mechanisms, Ravenswood is concerned that the potential for demand response to be treated out-of-merit still exists, and that rules similar to NYISO's hybrid fixed block pricing methodology used to set LBMP when fixed block Resources are dispatched would be a good starting point for determining the ability of Emergency Demand Response Program Resources to set LBMP.

19. Multiple Intervenors note that NYISO's proposed zonal floor price for the Day-Ahead Demand Response Program is not the perfect approach to solving the "free rider" issue, but agree that it is a better alternative than developing complex market monitoring rules for end users. Multiple Intervenors note further that de-linking the Emergency Demand Response Program and the Special Case Resources Program is acceptable as long as Special Case Resources participants are eligible to receive both the energy and capacity payments. AES comments that, when NYISO has activated the Emergency Demand Response Program and the Special Case Resources Program in the past, the real-time market clearing prices have been artificially depressed despite the presence of scarcity conditions on the transmission system. Reliant is in accord with AES, and comments that the existing demand response program has resulted in depressed wholesale prices and caused wrong signals to be sent to the rest of the market's load and Resources. Ravenswood observes that NYISO will not know how well it has corrected problems until it implements the revisions, and asks that NYISO report the results to the Commission in its semi-annual compliance reports on demand response programs. Transmission Owners agree with the need for reporting, and ask that NYISO file an evaluation of changes in the NYISO markets caused by these tariff revisions no later than October 31, 2003.

DISCUSSION

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

21. The Commission will conditionally accept NYISO's December 20, 2002, filing of tariff revisions to its Emergency Demand Response Program, Day-Ahead Demand Response Program, and Special Case Resources Program, as amended February 6, 2003, to become effective February 19, 2003 (with one exception noted below), subject to the conditions below, relating to eligibility of Emergency Demand Response Program and Special Case Resources participants to set prices in accordance with NYISO procedures,

and to reporting to us the effects of the tariff revisions. We will also grant waiver of the 60-day prior notice requirement and allow extension of the Emergency Demand Response Program to take effect on January 1, 2003, as NYISO has requested, so as to permit uninterrupted program applicability.¹⁴

22. While we will accept NYISO's requested extensions of the Emergency Demand Response Program until October 31, 2005, and the Day-Ahead Demand Response Program until October 31, 2004, we note that NYISO will have had several years of experience with these programs. Prior to these extended dates, NYISO should evaluate whether these programs are the most effective means to incorporate demand response into the NYISO market, and whether the programs should remain temporary or become permanent. The Commission therefore directs NYISO to develop and file, beforehand, a detailed evaluation of the efficacy of these programs, including the costs and benefits of changing their status, and to propose any related tariff revisions. NYISO must provide at least 60-day prior notice before a requested effective date for any proposed tariff revisions.

23. We anticipate that NYISO's proposal to set a zonal floor bid of \$50/MWh for all Day-Ahead Demand Response Program Resources that bid into the Day-Ahead Energy Market, like the floor bid currently in use by ISO New England, Inc. for its Day-Ahead Demand Response Program, will encourage reduced consumption during peak periods when demand is high relative to supply and when energy prices rise. We also believe that it is reasonable to limit payment, as an incentive for reducing demand, when supply is ample, relative to demand.¹⁵

24. While the Commission will accept the uncontested \$500/MWh cap on Minimum Payment Nominations in the Special Case Resources Program, the Commission will require NYISO to provide, within 30-day of the date of this order, a full explanation of the rationale for the cap, including an explanation of why Special Case Resources should not be subject to the \$1,000/MWh bid cap applied to supply side bids.

25. The Commission agrees in principle with the comments of AES and Reliant on NYISO's proposed revisions that make Emergency Demand Response Program Resources and Special Case Resources eligible to set market-clearing prices. When these

¹⁴See Central Hudson Gas & Electric Corporation, 60 FERC ¶ 61,106, reh'g denied, 61 FERC ¶ 61,089 (1992).

¹⁵See New England Power Pool and ISO New England, Inc., 101 FERC ¶ 61,344 at P 44 (2002), clarification requested.

Resources are called, they are the marginal resources required to meet reserve shortages. As the marginal resources, these Resources should set the market-clearing prices.

26. However, the Commission agrees with Mirant that NYISO's proposed tariff revisions, making Emergency Demand Response Program Resources and Special Case Resources eligible to set prices now according to mechanisms that NYISO and its market participants have yet to agree upon and that NYISO, as it acknowledges, has yet to file, are premature. Moreover, the proposal is inconsistent with Section 205 of the FPA.¹⁶ Public utilities, including Independent System Operators like NYISO, must file with the Commission, prior to implementation, practices and regulations that govern how jurisdictional rates will be determined.¹⁷

27. We will, therefore, direct NYISO to refile its proposed tariff revisions, within 30 days of the date of this order, omitting the provisions in Section 5.12.11 of the Services Tariff and in Section X of Attachment G to the Services Tariff that make Special Case Resources and Emergency Demand Response Program participants eligible to set prices in accordance with NYISO procedures. When NYISO files the specific procedures, it may then file tariff revisions making Emergency Demand Response Program and Special Case Resources participants eligible to set prices in accordance with the specific procedures.

28. We will direct NYISO to include, in its December 1, 2003 report and subsequent semi-annual reports: (1) information on customer enrollment for each demand response program, e.g., the number of customers and total potential load reduction in MWs; (2) information on total load reductions achieved per program per event during the prior six-month period, including NYISO system load at the time of any load reductions, total MWs reduced, total payment for reductions, and effects of the demand response programs on wholesale prices; and (3) information on the timing of Special Case Resources and Emergency Demand Response Program notifications, and on the

¹⁶Section 205(a) of the FPA gives the Commission authority to require the filing, with prior notice, of "all rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rate or charges shall be just and reasonable." 16 U.S.C. § 824d(a) (2000).

¹⁷See *id.* at § 824d(c); e.g., *Mirant Americas Energy Marketing, L.P. v. New York Independent System Operator, Inc.*, 95 FERC ¶ 61,189 at 61,673 (2001). *Accord* *Mirant Americas Energy Marketing, L.P. v. ISO New England, Inc.*, 96 FERC ¶ 61,201 at 61,860 & nn.8-9, *reh'g denied*, 97 FERC ¶ 61,108 (2001); *New England Power Pool*, 85 FERC ¶ 61,379 at 62,459 & n.17 (1998), *reh'g denied*, 95 FERC ¶ 61,074 (1999).

Minimum Payment Nomination bids received and accepted from Special Case Resources participants.¹⁸

29. In addition, the Commission agrees with the intervenors' requests for NYISO to report the effects upon the markets that NYISO administers of the tariff revisions that de-link the Special Case Resources Program and the Emergency Demand Response Program, that introduce a bid floor in the Day-Ahead Demand Response Program, and that introduce Minimum Payment Nominations and payments for Special Case Resources. We will therefore direct NYISO to include this information in its December 1, 2003 report.

The Commission orders:

(A) The Commission hereby conditionally accepts for filing the revisions to NYISO's Services Tariff, modified as discussed in the body of this order, to be effective, on February 19, 2003, except for extension of the Emergency Demand Response Program, for which we hereby grant waiver of the 60-day prior notice requirement to permit the extension to be effective as of January 1, 2003.

(B) NYISO is hereby ordered to make a compliance filing within 30-day of the date of issue of this order revising its proposed tariff revisions and describing the rationale for caps on the Minimum Payment Nomination in the Special Case Resources Program, as discussed in the body of this order.

(C) NYISO is hereby ordered to file a detailed evaluation of the efficacy of the Emergency Demand Response Program and the Day-Ahead Demand Response Program, including an evaluation of the costs and benefits of changing the status of these programs, and any related proposed tariff revisions, as discussed in the body of this order.

(D) NYISO is hereby ordered to include in its December 1, 2003 report, among other things, the effects on the markets that NYISO administers of the revisions to NYISO's Services Tariff accepted in this order, as discussed in the body of this order.

¹⁸This information is consistent with the information that we recently directed ISO New England, Inc. to provide. See ISO New England, Inc., 102 FERC ¶ 61,202 at P. 19 (2003).

Docket Nos. ER03-303-000 and ER03-303-001

- 12 -

(E) NYISO is hereby ordered to include in its December 1, 2003, and subsequent semi-annual reports, among other things, information on Special Case Resources Program and Emergency Demand Response Program notifications and on Minimum Payment Nomination bids, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.