

110 FERC ¶ 61,116
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

KeySpan-Ravenswood, LLC

v.

Docket No. EL05-17-000

New York Independent System Operator, Inc.

ORDER DENYING COMPLAINT

(Issued February 10, 2005)

1. In this order, we deny a complaint by KeySpan-Ravenswood, LLC (Ravenswood) against the New York Independent System Operator, Inc. (NYISO). Ravenswood alleges that, for the Summer 2002 Capability Period (May–October 2002), NYISO charged its members rates that were not consistent with its filed rate schedules, by improperly translating installed capacity (ICAP) requirements into unforced capacity (UCAP), thus understating the amount of capacity that load serving entities (LSEs) were required to obtain for that period. Ravenswood argues that NYISO’s miscalculation resulted in LSEs receiving the reliability benefits of the additional capacity free of charge, because units with unsold capacity were also required to supply energy necessary to maintain system reliability. Ravenswood seeks refunds of \$23.3 million based on its calculation of sales it lost due to NYISO’s actions.

2. We find Ravenswood’s complaint without merit because the rates charged by NYISO for the Summer 2002 Capability Period conformed with the Commission’s applicable orders governing NYISO’s ICAP and UCAP requirements, and were consistent with NYISO’s then-effective tariffs, rate schedules and manuals. This order benefits customers by assuring that NYISO properly calculated UCAP requirements for the Summer 2002 Capability Period.

Background

NYISO's ICAP and UCAP Requirements

3. In 1998, the Commission approved the New York State Reliability Council (NYSRC) agreement and the establishment of the NYSRC in *Central Hudson Gas & Electric Corp., et al.*, 83 FERC ¶ 61,352 (1998), *order on reh'g*, 87 FERC ¶ 61,135 (1999). Later, the Commission approved a NYISO tariff revision, effective on November 18, 1999, requiring NYISO to comply with the requirements of the NYSRC agreement. *See Central Hudson Gas & Electric Corp., et al.*, 88 FERC ¶ 61,138 at 61,380 n.7, 61,404 (1999).
4. The NYSRC agreement allows NYSRC to establish the installed reserve margin (IRM) requirement for New York LSEs. NYSRC established an 18 percent reserve margin for 2002. When added to the forecasted peak load of 30,475 MW for the Summer 2002 Capability Period, this resulted in a statewide LSE ICAP requirement of 35,960.5 MW, including 5,485.5 MW of reserves. New York City (NYC or In-City) LSEs, in particular, were required to have 10,665 MW of ICAP for the Summer 2002 Capability Period. Consistent with its tariffs, NYISO also determined that, due to transmission constraints, 80 percent of this latter amount (or 8,532 MW of In-City ICAP) needed to be supplied by sources located within NYC.
5. Starting in November 2001, NYISO implemented a new system to measure available capacity in New York State. The new system measures capacity in units of unforced capacity or UCAP, which reflects de-ratings of installed capacity based on historical equivalent forced outage rates.¹ The new market design incorporating the UCAP methodology was approved by the Commission in *New York Independent System Operator, Inc.*, 96 FERC ¶ 61,251 (2001), *order on reh'g*, 98 FERC ¶ 61,180, *reh'g denied*, 99 FERC ¶ 61,072 (2002), *opinion on appeal*, 348 F.3d 1053 (D.C. Cir. 2003), *order on remand*, 108 FERC ¶ 61,309 (2004) (collectively, *UCAP Orders*). As we stated in our first order on rehearing, 98 FERC ¶ 61,180 at 61,664-65:

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

¹ In the transmittal letter that accompanied the filing, NYISO explained that the translation would, pursuant to its Services Tariff, define UCAP by reference to the "ISO Procedures," *i.e.*, the ICAP Manual. *See* Transmittal Letter at 10, Docket No. ER01-2536-000 (filed July 6, 2001); *cf. id.* at 12-14.

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 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.

6. The Commission found that the UCAP methodology would provide a better incentive for individual generators to improve the performance of their units and would result in more capacity being available in New York. The Commission found that the new market design also had the advantage of mirroring PJM's market design, thus reducing seams issues. 96 FERC ¶ 61,251 at 61,993.

Ravenswood's Complaint

7. This matter began on October 27, 2004 when Ravenswood filed its complaint against NYISO. Ravenswood's complaint argues that, for the Summer 2002 Capability Period, NYISO charged its members rates that were not consistent with its filed rate schedules, by failing to comply with NYSRC's Reliability Rules incorporated in three Commission-approved rate schedules.

8. Ravenswood argues that NYISO erroneously computed the amount of ICAP that statewide LSEs were required to acquire for the Summer 2002 Capability Period, based on a failure to accurately translate ICAP requirements into UCAP, the units of capacity used in NYISO's capacity auctions. Ravenswood calculates that it lost about \$23.3 million in sales as a result of NYISO's actions, and seeks refunds to redress these losses.

NYISO's Answer

9. NYISO makes two main points in response to Ravenswood's complaint. First, NYISO states that, on the merits, its UCAP translation methodology used for the Summer 2002 Capability Period was consistent with its tariffs and with NYSRC's Reliability Rules. This being the case, NYISO argues, Ravenswood's arguments that NYISO violated its tariffs and the filed rate doctrine are without merit and its complaint should be rejected.

10. Second, NYISO also objects, procedurally, to the manner in which Ravenswood raised its objections. In this regard, NYISO notes that Ravenswood's current position, as expressed in its complaint, contradicts the positions it advanced earlier as part of NYISO's consensus stakeholder process at the time the decisions at issue were being formulated.

Notice, Interventions, and Additional Pleadings

11. Notice of the complaint was published in the *Federal Register*, with interventions or protests to be filed by November 17, 2004.² This date was subsequently extended to November 22, 2004.

12. Timely motions to intervene were filed by: New York State Electric & Gas Corporation and Rochester Gas & Electric Corporation (jointly); Consolidated Edison of New York, Inc. and Orange & Rockland Utilities, Inc. (collectively referred to as ConEd/O&R) (with comments and an answer); Consolidated Edison Solutions, Inc., Amerada Hess Corporation, the City of New York, Constellation NewEnergy, Inc., Consumer Power Advocates, and Strategic Power Management, Inc. (collectively, Responding Parties) (with comments and answer); NRG Companies (with comments); indicated New York Transmission Owners³ (NYTO) (with comments); New York Municipals and Cooperatives; New York Municipal Power Agency; and Reliant Energy, Inc. Strategic Energy, L.L.C., filed a motion for leave to intervene one day out of time. In addition, Dynegy Power Marketing, Inc. and Dynegy Northeast Generation, Inc. (DNG) (collectively, Dynegy) filed a motion for leave to intervene out of time and to submit comments in support of the complaint.

13. Responding Parties and ConEd/O&R each filed an answer arguing that Ravenswood's complaint is without merit and must be dismissed. NYTO's comments raise similar points.

14. Finally, Ravenswood sought leave to file an answer to NYISO's answer and to the other parties' comments.

² 69 Fed. Reg. 64,743 (2004).

³ In this context, NYTO refers to Central Hudson Gas & Electric Corporation, LIPA, New York Power Authority, New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, and Niagara Mohawk Power Corporation.

Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene in this proceeding serve to make the entities that filed them parties to this proceeding. Furthermore, we will grant the late-filed interventions of Strategic Energy and Dynegy, given their interest in the proceeding, the early stage of the proceeding, and lack of undue prejudice or delay.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Ravenswood's answer. Thus, we will reject Ravenswood's answer.

B. Translation of ICAP to UCAP

17. Ravenswood argues that NYISO miscalculated the statewide and In-City UCAP requirements for the Summer 2002 Capability Period, required by NYSRC's Reliability Rules and incorporated into NYISO's tariff. Consequently, it argues that NYISO's imposition of the incorrect UCAP constituted a violation of the filed rate, subject to Commission-ordered refunds.

18. The three Commission-approved rate schedules applicable to NYISO required NYISO to enforce ICAP requirements for 2002 for both statewide and In-City generation. To enforce this requirement, NYISO translated the ICAP requirement into separate statewide and In-City UCAP requirements for LSEs and generators. In conformance with its ICAP Manual, NYISO's translation took account of the applicable outage rates for LSEs and generators. After accounting for generator outage rates, NYISO required statewide LSEs to acquire 34,189 MW of ICAP for the Summer 2002 Capability Period, and required In-City LSEs to acquire 8,106.4 MW of ICAP from generators located in New York City for the Summer 2002 Capability Period.

19. Ravenswood objects to the manner in which NYISO adjusted generators' ICAP requirements to reflect outage rates. Ravenswood argues that NYISO's methodology resulted in a shortfall of 1,771 MW of ICAP compared to what should have been required had NYISO properly computed the LSEs' locational ICAP requirement.⁴ Furthermore,

⁴ Ravenswood states that, had NYISO properly translated ICAP to UCAP, it would have required statewide LSEs to hold or acquire 35,960 MW of ICAP for the Summer 2002 Capability Period (based on an 18 percent reserve margin above the statewide forecasted peak).

Ravenswood argues that NYISO's methodology also resulted in a shortfall of 425.6 MW of ICAP compared to what should have been required had NYISO properly computed the In-City LSEs' locational ICAP requirement.⁵ Ravenswood argues that the LSEs received the reliability benefits of the additional capacity free of charge, because units with unsold capacity were still required to supply energy necessary to maintain system reliability.

20. Ravenswood argues that NYISO's errors were caused by its failure to accurately translate ICAP requirements into UCAP, the units of capacity used in NYISO's capacity auctions.⁶ Ravenswood calculates that it lost about \$23.3 million in sales as a result of NYISO's actions.

21. NRG and Dynegy filed comments supporting Ravenswood's complaint, arguing that, as a result of NYISO's violation of the filed rate, UCAP supply was overstated and UCAP obligations were understated, creating an artificial surplus of capacity that depressed capacity prices and providing LSEs with unsold capacity at no charge. NRG and Dynegy argue that all In-City capacity providers be placed in the position they would have been in had NYISO calculated UCAP as recommended by Ravenswood.

22. NYISO responds that, reducing these generalities to specifics, the parties' dispute is whether, when NYISO translated generators' ICAP to UCAP for the Summer 2002 Capability Period, it should have used a long-term generator outage rate (consistent with the time period used for the LSE ICAP to UCAP translation) and not the short-term (12-month average) generator outage rate it did use.⁷

23. Ravenswood contends that NYISO's use of different generator forced outage rates for translating ICAP to UCAP for LSEs (*i.e.*, long-term) and generators (*i.e.*, short-term) violates NYISO's tariff by failing to comply with NYSRC's Reliability Rules, and that NYISO should have used the same outage rate to translate ICAP to UCAP for both LSEs

⁵ Ravenswood states that, had NYISO properly translated ICAP to UCAP, In-City LSEs would have been required to hold or acquire 8,532 MW of ICAP from generators located in New York City, which was 80 percent of the In-City LSEs' locational ICAP requirement.

⁶ Ravenswood calculates that, in UCAP terms, the statewide capacity deficiency for the Summer 2002 Capability Period was 1,682.5 MW and the capacity deficiency for New York City was 400.2 MW.

⁷ While Ravenswood disputes NYISO's translation of ICAP to UCAP for generators for the Summer 2002 Capability Period, Ravenswood does not dispute NYISO's translation of ICAP to UCAP for LSEs for the Summer 2002 Capability Period.

and generators. Ravenswood notes that this view is shared by the New York Independent Market Advisor (Market Advisor). Ravenswood states that the Market Advisor described the translation "*error*" as follows:

The installed capacity requirement was converted to an unforced capacity number using a historic forced outage rate covering a long time period [10 years]. This is not consistent with the shorter term [12-month] forced outage rate used to calculate the unforced capacity that may be offered by each generating unit. Since forced outage rates have generally declined in New York since the deregulation of the wholesale markets, the outage rate used to calculate the requirement was too large, resulting in a depressed UCAP requirement. [⁸]

24. Ravenswood further argues that the NYSRC, the Business Issues Committee of NYISO, the Market Advisor, and NYISO's staff all agree that NYISO violated the NYSRC's Reliability Rules for the Summer 2002 Capability Period.

25. NYISO responds that its use of the short-term generator outage rate to translate generator supply ICAP to UCAP and a long-term generator outage rate to translate required LSE ICAP to UCAP for the Summer 2002 Capability Period was entirely appropriate and consistent with the requirements of its tariffs. Furthermore, NYISO states that it would have been inappropriate for it to use the method advocated in Ravenswood's complaint without Commission approval.

26. NYISO states that it used formulas as stated in the ICAP manual, which were incorporated by reference in the tariff language approved by the Commission in September 2001. NYISO also states that it is only permitted to charge the rates and follow the procedures that are on file with the Commission or incorporated by reference.

27. While maintaining that its ICAP to UCAP translation in 2002 was consistent with the ICAP Manual and the *UCAP Orders*, NYISO states that recent generator outage rates reflect a significant improvement over the historic rates used by NYSRC. As a result, NYISO and a majority of its stakeholders have since concluded that the use of short-term outage rates for both the LSE UCAP translation as well as the generator UCAP translation recognizes these improvements.

⁸ Minutes of NYSRC Executive Committee Meeting No. 42 - October 11, 2002, item 5.3, at 4 (issued Nov. 11, 2002), attached to Ravenswood Complaint as Exhibit D.

28. NYISO adjusted the UCAP methodology such that, for each Capability Period, the NYCA and Locality ICAP requirements would be translated to UCAP requirements based on the average EFOR_d value of the six most recent, rolling 12-month EFOR_ds of all NYCA or Locality Resources. The amount of UCAP each resource would be eligible to supply would also be based on the average of the six most recent rolling, 12-month EFOR_ds for that resource.

29. While NYISO has changed the implementation of the tariff by way of the ICAP manual, it argues that this change does not constitute an admission that the prior translation violated the tariff in effect for the Summer 2002 Capability Period. In this regard, NYISO states that,

[a]s the Commission has previously recognized, every improvement in tariff methodology does not mean that the prior provisions were unjust and unreasonable, and that all market participants should be compensated as if the improved tariff had been in place all along. [⁹].

30. ConEd/O&R likewise argue that the existence of a revised methodology for translating ICAP into UCAP does not indicate that a tariff violation occurred. ConEd/O&R cite *Bangor Hydro-Electric Company*, 98 FERC ¶ 61,298 (2002), where the Commission recognized that the implementation of a suboptimal method does not imply a tariff violation.

31. NYISO further states that the load-side ICAP to UCAP translation adopted in the ICAP Manual was consistent with the NYSRC capacity determination. Specifically, NYISO states that the generator outage rate used for the Summer 2002 Capability Period to translate the statewide and In-City LSE ICAP requirements into statewide and In-City LSE's UCAP requirements was the outage rate used by NYSRC in determining the statewide IRM. NYISO states that, because the LSE UCAP translation was based on the NYSRC outage rate, the UCAP translation resulted in loads purchasing the amount of capacity called for by NYSRC's IRM.¹⁰ NYISO states that, if the lower short-term outage rate had been applied on the load side, the IRM would have been lower, and the LSEs would have been required to purchase less capacity to meet that lower IRM.

32. Moreover, NYISO states that the ICAP Manual clearly specified that *a different outage rate would be used for loads as opposed to generators*. For the load side, section 2.5 of the ICAP Manual provides that the NYISO is to calculate the New York Control Area (NYCA) UCAP Requirement using the outage rate for the NYCA based on the data used to determine the IRM by NYSRC, *i.e.*, a long-term rate. In contrast,

⁹ NYISO Answer at 7.

¹⁰ NYISO's IRM is currently 18 percent of peak.

Attachment J of the ICAP Manual states that a rolling, cumulative, 12-month outage rate will be calculated for each generator that submits Generating Availability Data System data, *i.e.*, a short-term rate.

33. NYTO agrees that NYISO met the requirements of its tariffs and argues, specifically, that NYISO's calculation of the Summer 2002 UCAP requirement conforms precisely with the terms of section 5.10 of the Services Tariff. Given that NYISO followed the exact procedures implemented in accordance with the Services Tariff to calculate the UCAP requirements for the Summer 2002 Capability Period, NYTO argues that this shows that no tariff violation occurred.

Commission Conclusion

34. The rates charged by NYISO for the Summer 2002 Capability Period conformed with the Commission's *UCAP Orders* governing NYISO's ICAP and UCAP requirements, and were consistent with NYISO's then-effective tariffs, rate schedules and manuals. NYISO's translation of ICAP to UCAP for the Summer 2002 Capability Period applied the methodologies that were in place at that time,¹¹ methodologies that were adopted through a Commission-approved stakeholder process and methodologies that the Commission approved for NYISO's use in September of 2001 in the first of the *UCAP Orders*.¹² This being the case, we find Ravenswood's allegation that NYISO's actions violated its tariffs and the NYSRC's Reliability Rules, and thus the filed rate, without merit.

35. Further, as noted by NYISO, the relevant ICAP Manual specified a different outage rate to be used for LSEs as opposed to generators. For LSEs, section 2.5 of the manual provided that the ISO would calculate the NYCA UCAP requirement using an outage rate based on the data used by NYSRC to determine the IRM (implying a 10 year, historical outage rate). However, for generators, Attachment J of the manual stated that a rolling, cumulative, 12-month outage rate would be used in the calculation of UCAP.

¹¹ See, e.g., *Consolidated Edison Company of New York, Inc., et al.*, 108 FERC ¶ 61,059 at P 37-38 (2004). Since, subsequent to the events at issue in this case, NYISO revised the translation methodology to match the methodology sought by Ravenswood, Ravenswood's complaint relates solely to a request for refunds regarding events in a past (locked-in) period.

¹² See *supra* n.1; 96 FERC ¶ 61,251 at 61,991, 61,993; *cf. id.* at 61,994 (approving, in a different context, translation from ICAP to UCAP using a short-term generator outage rate); 108 FERC ¶ 61,309 at P 15-22 (same).

Thus, we reject Ravenswood's contention that NYISO should have used different outage rates for UCAP calculations for the capability period at issue. The fact that NYISO later amended its methodology to use a unified outage rate does not change the applicability of the prior methodology implemented in accordance with the then-effective ICAP Manual.

C. NYISO's Stakeholder Process for Adopting Operational Changes

36. A number of the parties have also raised concerns about the fact that Ravenswood's complaint sidesteps NYISO's Commission-approved stakeholder process, in which Ravenswood was an active participant, to challenge NYISO's actions before the Commission even though it apparently did not object to NYISO's methodology at the time it was being developed and even though it chose not to appeal the NYISO Business Issues Committee's decision to approve the ICAP Manual to NYISO's Management Committee. The parties also object to Ravenswood's complaint on the ground that it constitutes a "collateral attack" on the prior Commission order approving the UCAP methodology.

Commission Conclusion

37. While we have some sympathy for the concerns raised as to Ravenswood's behavior in sidestepping NYISO's stakeholder process and filing a complaint inconsistent with positions it took on the issues at the time these matters were being addressed within the NYISO stakeholder process, given our finding that NYISO acted in compliance with its tariffs and applicable Commission orders, we need not address this factor in making our decision.

The Commission Orders:

Ravenswood's complaint against NYISO is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Kelliher concurring with a separate statement attached.

(S E A L)

Linda Mitry,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Keyspan-Ravenswood, L.L.C.

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v.

New York Independent System Operator, Inc.

(Issued February 10, 2005)

Joseph T. KELLIHER, Commissioner *concurring*:

I write separately because this case highlights my growing concern with the practice of regional transmission organizations and independent system operators of placing provisions in their manuals and operating procedures that, in my view, should be filed with and approved by the Commission under section 205 of the Federal Power Act.¹ Section 205 states that every public utility shall file with the Commission schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classification, practices, and regulations affecting such rates and charges. At issue in this case is the New York Independent System Operator, Inc.'s (NYISO) procedures for translating installed capacity (ICAP) requirements into unforced capacity (UCAP). Currently, these procedures are contained in NYISO's ICAP Manual. However, these formulas determine UCAP supply and UCAP obligations, which directly "affect" rates within the meaning of section 205. For that reason, they must be submitted to the Commission under section 205. Had the procedures at issue here been submitted to the Commission for approval, interested parties would have had the opportunity to be heard on the merits of the proposed provisions and the Commission would have had the opportunity to review whether the procedures are just and reasonable and not unduly discriminatory or preferential prior to their implementation, thus decreasing the likelihood of complaints like the one presented here.

Joseph T. Kelliher

¹ See *ANP Funding, LLC v. ISO New England, Inc.*, 110 FERC ¶ 61,010 (2005) (Kelliher dissenting in part).