

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**New York Independent System Operator, Inc.) Docket Nos. EL07-39-006
ER08-695-004**

**REQUEST FOR LEAVE TO ANSWER AND ANSWER OF THE NEW YORK
INDEPENDENT SYSTEM OPERATOR, INC**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),¹ the New York Independent System Operator, Inc. (“NYISO”) submits this request for leave to answer, and its answer to, the Independent Power Producers of New York, Inc.’s (“IPPNY”) *Request for Rehearing* of the Commission’s Order on Clarification, Rehearing and Compliance issued May 20, 2010 in these dockets², the similar requests filed by other Suppliers,³ as well as the *Request for Leave to Answer and Answer* of the New York Transmission Owners (“NYTOs”) to those requests.

The answer explains that IPPNY was wrong to claim that the Commission erred when it reduced the Offer Floor applicable to uneconomic entry by new Generators into the Installed Capacity (“ICAP”)⁴ market in the New York City Locality (“In-City”). The Net CONE (as defined in Attachment H to the NYISO’s Services Tariff, generally, the Cost of New Entry) price point that is used to establish the In-City Offer Floor need not be the same as the price point used to clear the In-City ICAP Demand Curve. IPPNY’s *Request for Rehearing* accurately describes

¹ 18 C.F.R. §§ 385.212 and 385.213 (2010).

² *New York Independent System Operator, Inc.*, 131 FERC ¶ 61,170 (2010) (“May 20 Order”).

³ Both the NRG Companies and TC Ravenswood, LLC sought rehearing on the same question as IPPNY. For convenience, throughout this pleading, references to IPPNY’s arguments should be understood to incorporate references to corresponding arguments advanced by NRG and TCR.

⁴ Capitalized Terms that are not otherwise defined herein shall have the meaning specified in Article II, or Attachment H, of the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”).

the manner in which the Demand Curves are established pursuant to Section 5.14.1.2 of the Services Tariff, and correctly states that the 100% minimum requirement point on the In-City Demand Curve is the point for defining the curve (reference price); however, the record in this proceeding establishes that appropriate mitigation measures can be based on a different value. Issues concerning the cost of new entry that the NYISO used to establish the currently effective In-City ICAP Demand Curve, and may use in its next triennial filing to update all of its ICAP Demand Curves, are outside the scope of these proceedings. To the extent that IPPNY or the NYTOs are contending that the Commission's May 20 Order with respect to the value of Net CONE used for capacity mitigation purposes should have binding effects on Demand Curve decisions, their arguments should be rejected.

To obviate any confusion created in the record by IPPNY's *Request for Rehearing* and the NYTOs' *Answer*, the NYISO's answer describes the different roles of the cost of new entry values for purposes of the Demand Curves and capacity mitigation purposes. If anything, IPPNY's arguments have highlighted the fact that the nomenclature in the Services Tariff could benefit from a revision to more clearly distinguish the similar terms used in the mitigation and Demand Curve setting contexts. As described below, the NYISO intends to address this issue in its upcoming compliance filing in response to the Commission's May 20 Order in these proceedings.

I. REQUEST FOR LEAVE TO ANSWER

The Commission has discretion⁵ to accept answers to rehearing requests and to responsive pleadings, and has done so when such answers help to clarify complex issues, provide

⁵ See 18 C.F.R. § 385.213(a)(2).

additional information, or are otherwise helpful in the Commission’s decision-making process.⁶

The Commission should follow its precedent and accept the NYISO’s answer in this instance.

The answer clarifies the relationship between two complex sets of questions, namely, the use of the net cost of new entry in both In-City capacity market mitigation and for Demand Curve purposes, from the unique perspective of an independent market administrator with no financial stake in how the questions are resolved. In addition, if the Commission were to deem any part of this answer untimely under Rule 213(d), the NYISO respectfully requests that the Commission exercise its discretion and accept that portion out of time.⁷

II. BACKGROUND

A. The May 20 Order

These proceedings concern the rules for mitigating potential exercises of market power in the In-City ICAP market that is administered by the NYISO. Those rules are set forth in Attachment H to the Services Tariff.

The May 20 Order addressed the NYISO’s October 2008 compliance filing in response to the Commission’s September 2008 Order on In-City ICAP market power mitigation,⁸ the requests for clarification or rehearing of the September 2008 Order, and various responsive pleadings. Of relevance here, the May 20 Order granted the NYTOs’ request for rehearing regarding the methodology used, to calculate the Offer Floor applicable to In-City ICAP

⁶ See *Black Oak Energy, L.L.C. v. PJM Interconnection, L.L.C.*, 125 FERC ¶ 61,042 at P 14 (2008) (accepting answer to rehearing request because the Commission determined that it has “assisted us in our decision-making process.”); *FPL Energy Marcus Hook, L.P. v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,289 at P 12 (2008) (accepting “PJM’s and FPL’s answers [to rehearing requests], because they have provided information that assisted us in our decision-making process”); *New York Independent System Operator, Inc.*, 123 FERC ¶ 61,044 at P 39 (2008) (accepting answers to answers because they provided information that aided the Commission’s decision-making process); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was “helpful in the development of the record. . .”).

⁷ See, e.g., *California Independent System Operator, Inc.*, 127 FERC ¶ 61,207 at P 11 (2009) (accepting a late filed answer because it aided the Commission in its decision-making).

⁸ *New York Independent System Operator, Inc.*, 124 FERC ¶ 61,301 (2008) (“September 2008 Order”).

Generators that enter the market uneconomically. The NYTOs' rehearing request pertained to a version of Attachment H's definition of "Offer Floor" that did not encompass Special Case Resources. The currently effective version of that definition applies a different rule to Special Case Resources that does not appear to be directly implicated by the May 20 Order's disposition of the NYTOs' October 2008 request for rehearing.⁹

The NYTOs argued in their 2008 request that the Commission erred when it accepted the NYISO's May 2008 compliance filing ("May 2008 Filing") setting the Offer Floor for generators entering the In-City ICAP market at 75 percent of Net CONE. They stated that the Commission's March 7, 2008 order ("March 2008 Order") in these proceedings¹⁰ had defined "CONE" as the cost of adding a LMS 100 peaking unit¹¹ to the In-City market and "Net CONE" as "CONE less energy and ancillary services revenues (seasonally adjusted)." The NYTOs noted that NYISO had proposed to comply with the March 2008 Order by setting the Offer Floor for In-City Generators at "a numerical value equal to 75 percent of the net CONE" which the NYISO had defined as the price on the In-City ICAP Demand Curve that corresponds to 100

⁹ Specifically, the definition of "Offer Floor" that was included in the NYISO's tariff leaves filed on October 30, 2008 and the July 1, 2010 "baseline" electronic tariff filing reads, "For purposes of Section 23.4.5 of this Attachment H, **"Offer Floor"** for an In-City Installed Capacity Supplier that is not a Special Case Resource shall mean the lesser of a numerical value equal to 75% of the Net CONE translated into a seasonally adjusted monthly UCAP value, or a numerical value determined as specified in Section 23.4.5.7.3, translated into a seasonally adjusted monthly UCAP value using an appropriate class outage rate, or for an In-City Installed Capacity Supplier that is a Special Case Resource shall mean a numerical value determined as specified in Section 23.4.5.7.5." By definition, and consistent with the Commission's March 2008 Order, the Offer Floor applies to UDRs, in addition to Generators. *See New York Independent System Operator, Inc.*, 122 FERC ¶ 61,211 at P 106 (2008) ("March 2008 Order").

¹⁰ March 2008 Order at n. 24 (2008); *citing New York Independent System Operator Inc.*, 122 FERC ¶ 61,064 (2008) at 23.

¹¹ Attachment H currently defines **"Net CONE"** as "the localized levelized embedded costs of a peaking unit in the New York City Locality, net of the likely projected annual Energy and Ancillary Services revenues of such unit, as determined in connection with establishing the Demand Curve for the New York City Locality pursuant to Section 5.14.1.2 of the Services Tariff" At the time of the March 2008 Order the LMS 100 was the peaking unit referenced in Attachment H. To the extent that a different type of unit was selected in future Demand Curve resets the tariff definition of Net CONE would be tied to the costs of the selected unit.

percent of the In-City ICAP Requirement.¹² The NYTOs asserted that this amount exceeded the estimated cost of adding an LMS 100 peaking unit to the In-City market after accounting for energy and ancillary services revenues.¹³

According to the NYTOs, the principal reason for the exceedance was an “adjustment” that the NYISO applied when calculating Net CONE during the previous triennial Demand Curve reset process. The claimed effect of this “adjustment” was to increase the NYISO’s measure of Net CONE so that the price on the In-City ICAP Demand Curve that corresponds to 100 percent of the In-City ICAP requirement no longer represented the net cost of adding In-City generation. The NYTOs argued that because the likelihood of the In-City ICAP requirement not being met was low, the “adjustment” increased the price on the currently effective In-City ICAP Demand Curve that corresponds to 100 percent of the In-City ICAP requirement to a level designed to ensure that a greater percentage of the In-City ICAP requirement would be provided, on average (the “Adjusted Percentage”).¹⁴ They further contended that if a greater percentage of the In-City ICAP requirement is provided on average, then the average price of In-City ICAP must be the price on the In-City ICAP Demand Curve that corresponds to the Adjusted Percentage of the In-City ICAP requirement, not the price which corresponds to 100 percent of that requirement. The Commission agreed with the NYTOs and directed the NYISO to set the Offer Floor for Installed Capacity Suppliers (other than SCRs) using a Net CONE which equates

¹² See May 20 Order at P 26.

¹³ See May 20 Order at PP 27-29.

¹⁴ For purpose of the currently effective In-City ICAP Demand Curve the Adjusted Percentage was set at 104 percent of the In-City ICAP Requirement. The NYISO may propose a lower Adjusted Percentage (103 percent) in its upcoming ICAP Demand Curve reset filing.

to the price on the adjusted ICAP Demand Curve corresponding to the Adjusted Percentage of the ICAP requirement (“Net CONE ruling”).¹⁵

IPPNY filed a request for rehearing of the May 20 Order, contending that the Commission should direct the NYISO to reinstate the Offer Floor “measured at the actual net CONE price point on the Demand Curve.”¹⁶ On July 6, 2010, the NYTOs filed an answer urging the Commission to reject IPPNY’s rehearing request. The NYTOs asserted that setting the Offer Floor as requested by IPPNY “overstates the amount of installed capacity ... revenue that would be required to support the development of new capacity in New York City.”¹⁷

B. The NYISO’s ICAP Demand Curves and the Reset Process

The NYISO’s ICAP Demand Curves define the amount of ICAP that each load serving entity must obtain for the following month and are used in the monthly ICAP Spot Market Auctions. They are intended to improve system and resource reliability by valuing ICAP resources available above the system’s required levels, and providing more effective economic signals for new investment. There are currently three separate ICAP Demand Curves, one each for New York City, Long Island, and for the New York Control Area as a whole.

Section 5.14.1(b) of the Services Tariff requires the NYISO to perform a triennial review to determine adjustments to the parameters of the ICAP Demand Curves. The NYISO most recently filed to revise the ICAP Demand Curves in late 2007.¹⁸ It is currently nearing the end of a two-year stakeholder process in which it is developing the next triennial “reset,” with proposed tariff revisions to be filed with the Commission by November 30, 2010.

¹⁵ May 2010 Order at P 31.

¹⁶ IPNNY Request for Rehearing at 1.

¹⁷ NYTO Answer at 1.

¹⁸ See, e.g., *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,064 (2008).

Establishing the ICAP Demand Curves is a complex process that involves a multitude of interrelated economic, financial, and technical considerations. The issues are of interest to an even broader range of NYISO stakeholders than have a stake in In-City ICAP market power mitigation matters. Issues related to the establishment of both the currently effective Demand Curves, and the new curves that will be implemented in 2011, are outside the scope of these proceedings. Instead they have been, or will be, the subject of separate Section 205 filings. Similarly, the rules governing the ICAP Demand Curves are specified in Article 5 of the Services Tariff, not Attachment H.

III. ANSWER

Contrary to IPPNY's assertions, the May 20 Order's Net CONE ruling was not unreasonable and is adequately supported by record evidence.¹⁹ As the attached affidavit of Dr. Nicole Bouchez recounts, it is reasonable to set the In-City Offer Floor (for ICAP Suppliers other than SCRs) at a level equal to 75 percent of Net CONE, defined as the price on the In-City ICAP Demand Curve that corresponds to the Adjusted Percentage of the In-City ICAP Requirement. Dr. Bouchez explains that using the Adjusted Percentage for mitigation purposes would reasonably reflect the level of capacity excess that is to be expected, after allowing for a reasonable margin for error. Defining the Offer Floor in the manner directed by the May 20 Order would result in a lower floor than the NYISO's May 2008 Filing would have established. The 75 percent level provides a reasonable amount of leeway given the potential scale of new economic entry.

The NYISO also disagrees with IPPNY and the NYTOs to the extent that their pleadings suggest that the May 20 Order's Net CONE ruling should set a precedent for the NYISO's

¹⁹ See Bouchez Affidavit at PP 8-10, *citing*, March 2008 Order at P 100 (finding that the proposed Offer Floor "deters uneconomic entry but is not so high as to deter economic entry.").

establishment of future ICAP Demand Curves, or require a change in the implementation of the existing curves. Neither IPPNY nor the NYTOs appear to expressly make such an argument and the May 20 Order does not appear to adopt it. IPPNY's and the NYTOs' pleadings do appear, however, to assume that a change to the definition of Net CONE for Demand Curve purposes would necessarily have an equivalent impact on the definition used for mitigation purposes, and vice versa. Further, the NYTOs' characterization of the setting of the Demand Curves is not accurate and, therefore, the record should be clarified so that the May 20 Order is not misconstrued as supporting such characterizations in future Demand Curve proceedings.

Any assumption or argument that a change made in the definition of Net CONE for mitigation purposes must impact the Demand Curve reset process is inaccurate. The attached affidavit of Mr. Eugene Meehan specifies how the net cost of new entry is used in setting (and resetting) the ICAP Demand Curves. Mr. Meehan's affidavit, along with the affidavit of Dr. Bouchez, establishes that the manner in which the similar terms may reasonably differ when they are applied in the two different contexts. The NYISO intends to add clarity to the Services Tariff by adding to Attachment H the term "Mitigation Net CONE" to have the meaning specified in the May 20 Order in its upcoming compliance filing in these proceedings, and to utilize that revised term in Attachment H in lieu of Net CONE. These clarifying changes should avoid confusion when the concept of the net cost of new entry is use in relation to Services Tariff Article 5 and discussed in the context of the setting the ICAP Demand Curves.

Finally, it would be procedurally improper for these proceedings to address future ICAP Demand Curves or to make revisions to those that are in effect today. The currently effective ICAP Demand Curves were the product of a lengthy stakeholder process and a complete record before the Commission. They were accepted after a contested proceeding in which all interested

parties had a full opportunity to participate and after the Commission found that there was substantial evidence supporting them. The same will be true of whatever ICAP Demand Curves go into effect for 2011.

By contrast, the scope of these proceedings is confined to questions surrounding the design of In-City ICAP market power mitigation measures under Attachment H.²⁰ Stakeholders that would have an interest in ICAP Demand Curve issues, but not in In-City ICAP market mitigation, were never put on notice that the former might be addressed here. They have therefore not had an opportunity to be heard. There is no record regarding the calculation of the Offer Floor in these proceedings that would call the NYISO's definition of Net CONE for purposes of setting Demand Curves into question.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission grant it leave to answer, reject IPPNY's request for rehearing with respect to the May 20 Order's Net CONE ruling, and reject the NYTOs' characterization of the Demand Curve reset process.

Respectfully Submitted,

/s/Ted J. Murphy
Ted J. Murphy
Counsel to the
New York Independent System Operator, Inc.

July 21, 2010

²⁰ The March 2008 Order accepted the NYISO's proposal to retain the existing In-City ICAP market design, including the use of Demand Curves. March 2008 Order at P 17.

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, this 21st day of July, 2010.

/s/ _____
Hunton & Williams LLP
1900 K Street, NW
Washington, DC 20426
(202) 955-1500