

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

**Independent Power Producers
of New York, Inc.,**)
)
)
 Complainant,)
)
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 v.)
)
 New York Independent System)
 Operator, Inc.,)
)
)
 Respondent.)

Docket No. EL13-62-002

RENEWED REQUEST FOR EXPEDITED ACTION

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”),¹ the Electric Power Supply Association (“EPSA”)² hereby renews its earlier requests for expedited action³ on the compliance filing submitted by the New York Independent System Operator, Inc. (the “NYISO”)⁴ on June 17, 2015,⁵ and amended in response to a Commission request for

¹ 18 C.F.R. § 385.212 (2017).

² Launched over 20 years ago, EPSA is the national trade association representing leading independent power producers and marketers. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. Power supplied on a competitive basis collectively accounts for 40 percent of the U.S. installed generating capacity. EPSA seeks to bring the benefits of competition to all power customers. This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

³ Request for Expedited Action, Docket No. EL13-62-002 (filed Jan. 9, 2017) (the “January 2017 Motion”); Motion to Lodge and Renewed Request for Expedited Action, Docket No. EL13-62-002 (filed Aug. 30, 2017).

⁴ Capitalized terms not otherwise defined herein have the meaning given them in in the NYISO’s Market Administration and Control Area Services Tariff (the “Services Tariff”) or, if not defined therein, in its open access transmission tariff.

⁵ See Compliance Report, Docket No. EL13-62-002 (filed June 17, 2016) (unreported).

additional information⁶ on December 16, 2015.⁷

It has been more than three years since the Commission acknowledged the threat to the NYISO-administered installed capacity (“ICAP”) market market from uneconomic retention, and, every month, thousands of megawatts of subsidized existing generation capacity is being offered into the ICAP market at prices substantially below its actual going forward costs.⁸ These market-crushing subsidies are in place **today**, and they are undoubtedly affecting the bidding behavior of owners of the subsidized resources.

Under the principles articulated in last month’s order in *ISO New England Inc.*,⁹ there is no justification for continued delay in the face of this ongoing price suppression. Any doubt as to the Commission’s duty to address this problem was removed by the *ISO New England* order. In that order, the Commission articulated “first principles” with respect to organized capacity markets and held that, “[w]here participation of resources receiving out-of-market state revenues undermines those principles, it is our duty under the [Federal Power Act (the “FPA”)] to take actions necessary to assure just and reasonable rates.”¹⁰ The Commission can, should, and in EPSA’s view, must act expeditiously to fulfill that duty.

As set forth in *ISO New England*, the Commission’s “first principles” for capacity markets are that:

⁶ See *New York Indep. Sys. Operator, Inc.*, Docket No. EL13-62-002 (Nov. 16, 2015) (unreported).

⁷ See Response to Information Request, Docket No. EL13-62-002 (filed Dec. 16, 2015) (the “NYISO Response”).

⁸ See *Independent Power Producers of N.Y., Inc., v. New York Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,214 at P 69 (2015) (the “March 2015 Order”).

⁹ 162 FERC ¶ 61,205 (2018) (“*ISO New England*”).

¹⁰ *Id.*

A capacity market should facilitate robust competition for capacity supply obligations, provide price signals that guide the orderly entry and exit of capacity resources, result in the selection of the least-cost set of resources that possess the attributes sought by the markets, provide price transparency, shift risk as appropriate from customers to private capital, and mitigate market power. Ultimately, the purpose of basing capacity market constructs on these principles is to produce a level of investor confidence that is sufficient to ensure resource adequacy at just and reasonable rates.¹¹

As noted, the Commission expressly recognized that, where state actions “undermine[] th[e]se principles,” the Commission is duty-bound under the FPA to act.¹²

There is ample evidence in this case that, without a minimum offer pricing rule (“MOPR”) or any other protective measure in place, the participation of existing resources receiving out-of-market state revenues in the NYISO-administered ICAP auctions undermines the “first principles” set forth in *ISO New England*. Indeed, the Commission initiated the compliance phase of this proceeding precisely because it was concerned about cost-based rate agreements, like a proposed repowering agreement for the Dunkirk Generating Station, that:

procure more capacity than is needed for short-term reliability, and for a much longer term. We are concerned that if the additional capacity created by the repowering agreement above the amount needed for short-term reliability is allowed to offer into the NYISO capacity market at prices below the cost of repowering, such capacity might deter new entry or displace less-costly existing capacity in

¹¹ *ISO New England*, 162 FERC ¶ 61,205 at P 21 (footnotes omitted).

¹² *Id.* To be clear, the Commission not only has a duty to ensure a level of investor confidence “sufficient to ensure resource adequacy at just and reasonable rates,” *id.*; it also has a duty under both the FPA and the U.S. Constitution to ensure that each existing supplier “is provided the opportunity to recover its costs.” *Bridgeport Energy, LLC*, 113 FERC ¶ 61,311 at P 29 (2005) (emphasis omitted), *on reh’g*, 114 FERC ¶ 61,265 (2006). See also, e.g., *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944). The fact that “out-of-market state support can . . . lower capacity market prices to levels that deprive non-state-supported resources of the opportunity to recover their investment costs,” *ISO New England*, 162 FERC ¶ 61,205 at P 21, thus compels Commission action, separate and apart from any concerns regarding “investor confidence.”

NYCA. As a result, capacity market prices could be artificially suppressed.¹³

The NYISO has since agreed that “there may be concerns surrounding the ability and incentive to exercise market power through uneconomic retention and repowering,”¹⁴ while its Market Monitoring Unit (the “MMU”) has been even more emphatic, warning that “[i]t would be difficult to ensure that the market will perform competitively and that market power will be deterred effectively without clear rules to mitigate buyer-side market power, which includes uneconomic retention.”¹⁵ The Independent Power Producers of New York, Inc. (“IPPNY”) and others also expressed concerns similar to those of the MMU about the need for clear buyer-side market power mitigation rules applicable to uneconomic retention and, among other things, submitted expert testimony demonstrating the price-suppressive effect of such uneconomic retention.¹⁶

In the January 2017 Motion, EPSA explained that the threat of uneconomic retention had grown substantially since the issuance of the March 2015 Order and urged the Commission to take action on the NYISO’s pending compliance filing. Specifically, EPSA pointed to subsidies in the form of payments by the New York State Energy Research and Development Authority for zero-emissions credits from qualifying nuclear facilities and to the anticipated resumption of the subsidized repowering of the

¹³ March 2015 Order, 150 FERC ¶ 61,214 at P 69.

¹⁴ Response to Information Request, Attachment II at 1, docket No. EL13-62-002 (filed Dec. 16, 2015).

¹⁵ Comments of the New York ISO’s Market Monitoring Unit at 5, Docket No. EL13-62-002 (filed Jan. 11, 2016).

¹⁶ See, e.g., Protest of the Independent Power Producers of New York, Inc., Docket No. EL16-32-002 (filed July 17, 2015) (including affidavit from Mark D. Younger); Protest of Entergy Nuclear Power Marketing, LLC to NYISO’s Compliance Report, Docket No. EL13-62-002 (filed July 17, 2015) (including affidavit from Michael M. Schnitzer); Protest of the Independent Power Producers of New York, Inc., Docket No. EL16-32-002 (filed Jan. 19, 2016) (“IPPNY’s January 2016 Protest”) (including affidavit from Mark D. Younger).

Dunkirk Generating Station.¹⁷ EPSA warned that these actions would suppress clearing prices in the ICAP auctions, “thereby ‘deter[ring] new entry or displac[ing] less-costly existing capacity’”¹⁸

The damage from continuing to allow subsidized existing resources to submit unmitigated offers into the ICAP auctions is serious. In the same way that a functional capacity market will “provide price signals that guide the orderly entry and exit of capacity resources,”¹⁹ a dysfunctional capacity market provides price signals that result in inefficient and disorderly entry and exit. It is vital that the Commission act promptly to prevent continued distortion of those price signals by offers from subsidized existing resources.

Fortunately, the record in this proceeding contains a just and reasonable measure that could be put in place in relatively short order. Specifically, the Commission could order the NYISO to revise the Services Tariff to incorporate the remedy proposed in IPPNY’s January 2016 Protest,²⁰ as EPSA urged the Commission to do in its January 2017 Motion.²¹ This proposed remedy is a MOPR mechanism under which offers from screened existing resources would be subject to offer floor mitigation.²² Adoption of this remedy would thus be consistent with the Commission’s statement in *ISO New England* that, “[a]bsent a showing that a different method would

¹⁷ See January 2017 Motion at 7-9.

¹⁸ *Id.* at 10 (quoting March 2015 Order, 150 FERC ¶ 61,214 at P 69).

¹⁹ *ISO New England*, 162 FERC ¶ 61,205 at P 21.

²⁰ See IPPNY’s January 2016 Protest at 15-20; *id.*, Attachment, Affidavit of Mark D. Younger at ¶¶ 46-58.

²¹ See January 2017 Motion at 15-16.

²² See IPPNY’s January 2016 Protest at 20.

appropriately address particular state policies, we intend to use the MOPR to address the impacts of state policies on the capacity markets.”²³

The Commission should take immediate action to address this ongoing problem. In addition to its monthly ICAP Spot Market Auctions, the NYISO also conducts Capability Period Auctions (or “strip” auctions) through which ICAP may be purchased and sold for six-month strips for the Summer and Winter Capability Periods. These Capability Period Auctions are an important tool for reducing revenue volatility and thus help support investment in existing and new resources. Action now will ensure that the necessary mitigation rules are in place in time for the Capability Period Auction for the 2018-2019 Winter Capability Period, which is scheduled to open on September 27, 2018.²⁴

²³ *ISO New England*, 162 FERC ¶ 61,205 at P 22. Commissioners Glick and LaFleur took issue with the cited paragraph in their separate statements, and Commissioner Powelson dissented to the majority order in *ISO New England* in its entirety. Commissioner Glick is, therefore, correct in observing that this paragraph “did not receive the votes of a majority of the Commission.” Dissenting and Concurring Statement of Commissioner Glick at 1, Docket No. ER18-619-000 (Mar. 9, 2018). At the same time, one could reasonably infer from Commissioner Powelson’s dissent that he would have voted for this paragraph had it been put to a separate vote. See Dissenting Statement of Commissioner Powelson at 2 (referring to “market rules such as the [MOPR]” and to the foreseeable “‘double-counting’ problem” that arises when states “support resources outside the market” and stating that “unless the states are willing to reassume complete responsibility for resource adequacy, they must accept that the Commission is required to take action to ensure the viability of the capacity markets”).

²⁴ See NYISO, *Installed Capacity Event Calendar*, http://icap.nyiso.com/ucap/public/evt_calendar_display.do.

CONCLUSION

WHEREFORE, for the foregoing reasons, EPSA requests that the Commission direct the NYISO to file tariff revisions to address artificial price suppression by uneconomic retention as set forth in IPPNY's January 2016 Protest without further delay.

Respectfully submitted,

ELECTRIC POWER SUPPLY ASSOCIATION

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On behalf of the
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Dated: April 5, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington DC, this 5th day of April, 2018.

/s/ Stephanie S. Lim
Stephanie S. Lim