

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket Nos. ER05-941-001
ER05-941-002

ORDER ON COMPLIANCE FILINGS

(Issued December 27, 2005)

1. On July 22, 2005, the New York Independent System Operator, Inc. (NYISO) submitted revised tariff sheets adopting a two-day Virtual Transactions collateral requirement to comply with the Commission's directive in its July 1, 2005 Order.¹ On August 16, 2005, also in response to the Commission's July 1, 2005 Order, NYISO submitted a compliance filing discussing the appropriateness of using a reference price based on a 97th percentile in calculating collateral requirements for the Virtual Transactions market.² In this order, the Commission accepts NYISO's revised tariff sheets, to become effective July 5, 2005. The Commission also accepts NYISO's compliance filing submitted on August 16, 2005.

Background

2. On May 5, 2005, NYISO filed to revise its Open Access Transmission Tariff (OATT) and its Market Administration and Control Area Services Tariff (Services Tariff) to reduce the amount of collateral required to participate in its Virtual Transactions market. NYISO proposed to reduce the basis for calculating collateral to four days from the seven days then required. EPIC Merchant Energy LP (EPIC) protested that four days

¹ *New York Independent System Operator, Inc.*, 112 FERC ¶ 61,004 at P 11-14 (2005).

² *Id.* at P 16-17.

of collateral was still excessive and that the use of the 97th percentile reference price³ as the assumed market-clearing price from financial trading as unreasonable and resulted in an excessive collateral requirement.

3. On July 1, 2005, the Commission issued an order directing NYISO to use two days rather than four days in calculating the Virtual Transactions collateral requirement. In addition, the July 1, 2005 Order directed NYISO to submit a compliance filing justifying the appropriateness of using a reference price based on a 97th percentile in calculating collateral requirements for the Virtual Transactions market.⁴

4. On July 22, 2005, NYISO revised its OATT and Services Tariff to reflect a two-day Virtual Transactions collateral requirement by replacing the number “four” originally proposed in its May 5, 2005 filing with the number “two” in the relevant tariff language.

5. On August 16, 2005, NYISO submitted a compliance filing discussing the appropriateness of using a reference price based on a 97th percentile in calculating collateral requirements for the Virtual Transactions market.

Notice of Filing, Interventions, and Protests

6. Notice of NYISO’s July 22, 2005 compliance filing was published in the *Federal Register*, 70 Fed Reg. 44,350 (2005), with interventions and protests due on or before August 10, 2005. Notice of NYISO’s August 16, 2005 compliance filing was published in the *Federal Register*, 70 Fed Reg. 50,314 (2005), with interventions and protests due on or before August 30, 2005. DC Energy, LLC filed a timely motion to intervene. On August 30, 2005, EPIC filed a protest of NYISO’s August 16, 2005 compliance filing regarding the 97th percentile credit requirement for Virtual Transactions.

³ *I.e.*, the 97th percentile of the highest actual price experienced in the market over a three-month period.

⁴ The Commission also directed NYISO to study, with stakeholder involvement, the feasibility of moving to a one-day Virtual Transactions collateral window and report the results of this analysis to the Commission within 180 days. *Id.* at P 15. NYISO has stated that it is currently working on this analysis and expects to submit the results to the Commission by December 28, 2005.

Discussion

Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motion to intervene serves to make DC Energy, LLC a party to this proceeding.

Substantive Matters

8. We find that the July 22, 2005 compliance filing complies with the Commission's directives, and we will accept that filing. We will accept the August 16, 2005 compliance filing for the reasons discussed below.

9. In the Commission's July 1, 2005 Order, the Commission directed NYISO to justify the use of an assumed market clearing price of 97 percent of the highest actual price experienced in the market for Virtual Transactions over a three month period, consistent with our directions to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO).⁵ In *Midwest ISO*, the issue was the use of differing standards for creditworthiness between the Virtual Transactions market (set at the 97th percentile) and the market for financial transmission rights (set at the 50th percentile).

10. In its compliance filing, NYISO explains that the credit provisions of NYISO's OATT and Services Tariff currently require collateral equal to the product of: (i) the Mwh the customer has applied to be authorized to bid per day; (ii) a multiplier of a certain number of days (currently two); and (iii) the highest differential between the Day-Ahead and Real-Time Energy prices in the New York Control Area at the 97th percentile over the previous ninety days.

11. In its compliance filing, NYISO set out, as its objective, to identify the number of occurrences where a single-day loss would have exhausted all of the market participant's collateral posted in the Virtual Transactions market if the required collateral amounts had been determined using the 50th percentile. The analysis calculated the amount in excess of that collateral that could have resulted in a "bad debt".

12. NYISO analyzed data based upon 12 months, *i.e.*, calendar year 2004, of actual bidding and clearing prices in the Virtual Transactions market to determine the amount of

⁵ *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,285 at P 377 (2004) (*Midwest ISO*) (requiring justification of a 97th percentile calculation).

financial exposure that would have resulted if collateral requirements were based upon the 50th percentile.

13. NYISO found that, over the calendar year 2004 study period, the analysis flagged 36 occurrences where a one-day loss exhausted all of a market participant's collateral. NYISO concludes that a reduction to the 50th percentile thus would create a significant risk to the market as a whole.

14. EPIC protests NYISO's compliance filing, stating that the reference price in its example, derived from the highest price differential experienced in the market over the past three months, produces an unrealistically high "bad debt" figure. While we agree with EPIC that the example given appears to be a "worst case scenario", even a more realistic example would still produce the same end result, a "bad debt" that must be made up by remaining market participants. Indeed, EPIC does not dispute this result, *i.e.*, a "bad debt" to be absorbed by other market participants. Rather, EPIC states that the use of the 50th percentile will only expose market participants to insignificant losses. NYISO's analysis shows the contrary, however.

15. We find that EPIC has not made a convincing case that the use of the 97th percentile price differential in calculation of the creditworthiness posting for Virtual Transactions is significantly different than collateral posting requirements for other transactions in NYISO. Simply put, NYISO's creditworthiness requirements provide that all market participants fully collateralize their transactions in all NYISO markets. Thus, consistent with *Midwest ISO*,⁶ the requirement for transacting business in different NYISO markets is essentially the same, *i.e.*, full collateralization. We find that the 97th percentile price for Virtual Transactions will assure market participants of protection from bad debts in the virtual trading market.

16. EPIC also protests that, in practice, NYISO uses uncorrected pricing data and excludes off-peak pricing from the data set used to determine the 97th percentile bid/clearing price differential.⁷ We expect that NYISO will calculate the bid/clearing price differential based on all hours, consistent with its tariff.

⁶ *Midwest ISO*, 109 FERC ¶ 61,285 at P 377.

⁷ See EPIC's Protest at 12-13 (stating that NYISO's tariff (Third Revised Sheet 505, Section VI, Financial Assurance for Virtual Transactions, Subsection A) does not state that it may calculate the 97th percentile calculation based only on the price differential for On Peak hours).

The Commission orders:

NYISO's revised tariff sheets are hereby accepted, to become effective July 5, 2005, and NYISO's compliance filing submitted on August 16, 2005 is also hereby accepted for filing.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.