121 FERC ¶ 61,112
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 30, 2007

In Reply Refer To:
New York Independent System
Operator, Inc.
Docket No. ER07-1334-000

New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144

Attention: Alex M. Schnell
Counsel for the New York Independent System Operator, Inc.

Reference: Informational Report and Tariff Revisions

Dear Mr. Schnell:

1. On August 31, 2007, the New York Independent System Operator, Inc. (NYISO) filed an informational report and revised tariff sheets[1] to Attachment H of its Market Administration and Control Area Services Tariff (Services Tariff) to clarify and revise the procedures for implementing NYISO's real-time mitigation test for Bid Production Cost guarantee (BPCG) payments on a going-forward basis. Your informational report is accepted for filing and the tariff revisions are accepted effective October 31, 2007, as proposed.

2. Under the Services Tariff, generators must submit three-part Bids into the Real-Time Market: (i) Incremental Energy Bids, (ii) Minimum Generation Bids, and (iii) Start-Up Bids. The three bids are collectively used to determine whether a generator is eligible to receive a BPCG payment for a given 24 hour operating day.[2] In addition,

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[1] *See* Appendix for list of tariff sheets.

[2] Absent mitigation, a BPCG payment is made if a generator's total as-Bid costs exceed its Locational Based Marginal Pricing (LBMP) plus Ancillary Services revenues for the operating day.

competitive reference levels are established for each Bid, and Bids that exceed the relevant reference level by the conduct thresholds, fail the conduct test and are eligible for guarantee payment mitigation under certain conditions (Real Time Guarantee Payment (RTGP) Impact Test).[3] In previous filings, NYISO reported that it had discovered errors in its computation of guarantee payments and failed to accurately perform the RTGP Impact Test and apply guarantee payment mitigation. In a series of orders,[4] the Commission accepted NYISO's corrections of BPCG payments to reflect appropriate guarantee payment mitigation so that final bills conformed to NYISO's filed rates. In a November 3, 2006 order, the Commission directed NYISO to work with its stakeholders to clarify the details of future RTGP Impact Tests and to provide an informational report on its progress or lack of progress in reaching a consensus.[5]

3. Notice of NYISO's filing was published in the *Federal Register*, 72 Fed. Reg. 54,251 (2007), with interventions, comments, and protests due on or before September 21, 2007. The Independent Power Producers of New York, Inc. (IPPNY) filed a timely motion to intervene and comments. The New York Public Service Commission filed a notice of intervention. NRG Companies, KeySpan-Ravenswood, LLC, and the New York Transmission Owners filed timely motions to intervene. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

4. On October 9, 2007, NYISO filed an answer to IPPNY's comments. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits answers to protests unless otherwise ordered by the decisional authority. We will accept NYISO's answer because it has provided information that assisted us in our decision-making process.

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[3] If the generator fails the Impact Test, all of its conduct-failing bids are mitigated for the day and a revised BPCG payment is calculated.

[4] *See New York Independent System Operator, Inc., Order Granting Tariff Waiver,* 115 FERC ¶ 61,026 (2006); *New York Independent System Operator, Inc., Order Granting Waiver and Conditionally Granting Request to Continue Existing Methodology,* 119 FERC ¶ 61,114 (2007).

[5] *New York Independent System Operator, Inc., Order Accepting Compliance Filing and Directing Further Filing,* 117 FERC ¶ 61,164 (2006) (November 2006 Order).

5. In its informational report, NYISO states that its proposed tariff revisions are a result of months of discussions. NYISO also maintains in its informational report that the proposed revisions are not necessary to implement its going-forward RTGP Impact Test, but it agreed to file the revisions as an accommodation to its stakeholders. In its informational report, NYISO acknowledges that it made substantial progress with its stakeholders and reached agreement on such issues as authority for applying mitigation after the conclusion of the operating day, the need for notification of potential mitigation, the creation of a firm timeline for initiating and completing the consultation process and additional rules governing the consultation process, and a clarification of reference price adjustments.

6. NYISO also details two issues in its informational report that were not resolved by the stakeholder process. The first is a proposal by IPPNY and other generation-sector Market Participants to impose hard deadlines by which NYISO would be required to identify guarantee payment impact. NYISO asserts that if it were unable to meet the deadlines, it would be precluded from applying guarantee payment mitigation to generators that exercised market power. Therefore, NYISO states that its Management Committee and Board of Directors rejected this proposal.[6] In addition, in its informational report NYISO states that during the stakeholder process it proposed revisions to clarify its existing authority to manually apply guarantee payment mitigation to Day-Ahead Bids after the Day-Ahead Market (DAM) is posted in areas outside of New York City. These provisions would also place limitations on NYISO's authority to manually apply DAM guarantee payment mitigation. However, NYISO states that its Management Committee required it to take this proposal back through the committee process for additional review. NYISO expects to make a separate filing after such review is complete.

7. In its filing, NYISO proposes several tariff provisions. First, NYISO proposes a revision to explicitly authorize it to apply real-time guarantee payment mitigation after the conclusion of an operating day.[7] NYISO also proposes to ordinarily electronically

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[6] *See* NYISO Board of Directors Decision Ruling on IPPNY's Appeal of the Management Committee's April 30, 2007 Vote on Revisions to the Market Mitigation Measures Addressing Real-Time Bid Production Cost Guarantee Mitigation, Attachment I, August 31, 2007 filing (Board of Directors Decision).

[7] New York Independent System Operator, Inc., FERC Electric Tariff, Original Volume No. 2, proposed section 4.1 and 4.2.2(d), proposed Original Sheet No. 473.05 and Ninth Revised Sheet No. 474.

post initial results of the RTGP Impact Test within two days of the operating day as well as promptly notify Market Participants that elect to receive email notification of any determination of RTGP impact.[8] Further, NYISO proposes to require Market Participants to initiate the consultation process no later than 15 business days after the initial posting of a determination of guarantee payment impact on the NYISO website. NYISO explains that the consultation process will also include a requirement that the process be completed no later than 50 days after the initial posting of a determination.[9] In addition, NYISO proposes a revision that distinguishes guarantee payment consultation requests from billing disputes.[10] Finally, NYISO proposes a revision that allows a generator to inform NYISO when it has incurred verifiable costs in responding to a Supplemental Resource Evaluation (SRE) or Out-of-Merit (OOM) commitment. After verification of such costs, NYISO will repeat the RTGP Impact Test using revised reference levels and make any corrections necessary.[11] NYISO requests an effective date of October 31, 2007 for the proposed tariff revisions. NYISO also requests waiver of the Commission's regulations, 18 C.F.R. § 35.2 (d) (2007), to permit service on more than two persons.

8. IPPNY fundamentally disagrees with the amount of time in which NYISO may evaluate a generator's actual bid to determine whether mitigation must be applied and then to apply such mitigation to reduce the payment to generators for services rendered. IPPNY states that under the proposed revisions, the prices paid to generators selected out-of-merit to provide services needed primarily to preserve the reliability of the electric system would not be finalized until ten months after the services are provided. IPPNY explains that NYISO has final locational-based marginal price and generator metering data to determine whether mitigation thresholds have been reached 60 days after the initial invoice for services is rendered. Therefore, IPPNY believes there is no reason to delay the performance of the mitigation test to a later point in time or to hold open the opportunity to mitigate generators' bids on a price basis. IPPNY states the proposed tariff revisions would allow NYISO to perform the mitigation test for an additional eight

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[8] *Id.*, proposed section 3.3.3.1(a) and 3.3.3.1(b), proposed Sixth Revised Sheet No. 473 and Original Sheet No. 473.01.

[9] *Id.*, proposed section 3.3.3.1(c) and 3.3.3.1(f), proposed Original Sheet Nos. 473.01, 473.02, and 473.03.

[10] *Id.*, proposed section 3.3.3.1(g), proposed Original Sheet No. 473.03.

[11] *Id.*, proposed section 3.3.3.2, proposed Original Sheet Nos. 473.03 and 473.04.

months. IPPNY goes on to explain that the Commission reduced the period of time that NYISO could make Locational Based Marginal Pricing (LBMP) corrections to three days,[12] and IPPNY contrasted that situation with the proposed changes to the treatment of BPCG payments. Further, IPPNY states that generators that are asked to provide reliability services require certainty in the prices they will be paid and waiting ten months to finalize payment for such services is unreasonable. IPPNY urges the Commission to tighten the BPCG payment mitigation deadline to no more than the period for receiving final data plus a reasonable amount of time to process that data, perform the mitigation test, and finalize the BPCG payments. IPPNY suggests that a reasonable deadline would be 70 days after the initial invoice is rendered.

9. In its answer, NYISO states that IPPNY did not address any of the significant problems with IPPNY's appeal that were identified in the June 12, 2007 Board of Directors Decision to reject the appeal. For example, NYISO argues that IPPNY did not suggest how the Commission should address inputs to the calculation of guarantee payments that are not available until after IPPNY's proposed RTGP impact testing deadline has expired, such as the resolution of a billing or other dispute or the correction of an identified error that affects the settlement process.

10. NYISO states that IPPNY also does not explain why finality should trump accuracy with regard to impact testing and mitigation of RTGP, and notes that NYISO's Management Committee chose accuracy over finality for several reasons. First, NYISO explains that RTGP mitigation does not affect market clearing prices that are relied on by all Market Participants, but rather only affects an individual generator's BPCG payments, which significantly is dependent on the bids a generator chooses to submit. Next, NYISO states that RTGP mitigation is only applied to bids that fail the conduct and RTGP impact tests and are not shown to be consistent with competitive conduct. NYISO explains that generators are given an opportunity to explain why their bids are competitive; therefore, NYISO only expects to be mitigating generators that are not able to adequately explain why their bids are consistent with competitive conduct. Further, NYISO states that according to its billing settlement rules, generators may wait six months or more to first challenge NYISO's determination that a generator was not eligible to receive a BPCG,[13] but under IPPNY's proposal, a successful settlement challenge that is not concluded

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[12] *New York Independent System Operator, Inc.*, 116 FERC ¶ 61,037 (2006).

[13] *See* NYISO, FERC Electric Tariff, Original Volume No. 2, section 7.4.2.A, Seventh Revised Sheet No. 191. A generator is a Customer. *See Id.*, Attachment A, section 5.0, Original Sheet No. 323.

within IPPNY's proposed RTGP impact testing period of 70 days will never be tested for guarantee payment impact. Finally, NYISO argues that IPPNY's proposal to limit NYISO's authority to apply RTGP mitigation to 70 days after the initial invoice is issued at the end of the operating month would be extremely inefficient because it would require NYISO to re-spin settlement results for the entire market before it has accurate load metering data available. Further, NYISO's settlement software would require modifications to even permit the re-spin to occur. Therefore, NYISO requests that the Commission reject the changes that IPPNY proposes.

11. The Commission finds that NYISO complied with the requirements of the November 2006 Order by submitting the informational report in the instant filing. As directed, NYISO met with its stakeholders for discussions. The Commission appreciates the fact that NYISO and its stakeholders were able to reach a consensus on many issues. In addition, the Commission finds NYISO's proposed tariff revisions just and reasonable for the reasons given by NYISO and therefore accepts them.

12. The Commission rejects IPPNY's proposal for setting a time limit for determining and conducting the RTGP Impact Test. As NYISO acknowledged, IPPNY is correct that NYISO has the final locational-based marginal price and generator metering data 60 days after the initial invoice for services is rendered, and that NYISO has up to an additional eight months to perform the RTGP Impact Test.[14] However, ten months is the period that NYISO can make specified corrections or adjustments to the initial settlement invoice, and sometimes longer under specific circumstances.[15] Therefore, because the settlement

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[14] NYISO's Market Power Mitigation Measures (Attachment H of the Services Tariff) do not provide a time limit for the application of RTGP impact testing and mitigation. Instead, a time limit is provided by NYISO's billing procedures. These procedures provide for a period of at least ten months after the initial invoice in which invoices can be challenged and revised. The period ends with a final Close-Out Settlement, which is issued in the next regular monthly billing invoice following the ten-month challenge and review period. The Close-Out Settlement may be issued later if there are extraordinary circumstances such as initiation of dispute resolution pursuant to Article 11 of the Services Tariff or Article 12 of the OATT or if further corrections or adjustments are identified during the final twenty-five day customer comment period. NYISO, FERC Electric Tariff, Original Volume No. 2, sections 7.4.2.A and 7.4.2.B, Seventh Revised Sheet No. 191, Original Sheet Nos. 191.01, 191.01A, 191.01B, and 191.01C.

[15] For example, NYISO has 150 days from the date of the initial invoice to post updated advisory settlement information, customers can challenge a settlement up to

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invoices may change, mitigation may or may not be necessary depending on changes that may occur. Additionally, BPCG payment mitigation will not be applied if the generators adequately explain why their bids are consistent with competitive conduct. Further, RTGP mitigation does not correct or change market clearing prices.

13. IPPNY also asserts that the time for determining BPCG payments should be shortened, just as the time for determining prices or LBMPs was shortened, and for the same reason, price certainty.[16] However, the Commission finds that the two situations are different and that our prior holding does not require that the period of time for determining BPCG payments be shortened to 70 days as IPPNY suggests. LBMPs are the market prices that all generators are paid and affect the prices paid by all Load Serving Entities; in other words, they affect all market participants and they do so on an hourly basis. Consequently, there must be price certainty for LBMPs within a relatively short period of time for the energy and ancillary services markets to operate effectively. In contrast, the BPCG payments at issue here affect only a small number of generators, only those whose bids exceed the LBMP, and fail both the conduct and Impact Tests, and cannot explain why their bids are competitive. Thus, with respect to BPCG payments, the urgency of the need for having price finality, while important, is not the same as for LBMPs. Therefore, the Commission finds it unreasonable to prevent NYISO from performing the RTGP Impact Test if settlement inputs change by imposing a deadline that would exclude relevant changes or challenges to settlement data from being considered in performing the RTGP Impact Test. In addition, the imposition of such a deadline could result in loads being held financially responsible for guarantee payments to generators that would not have been subject to market power mitigation. Therefore, the Commission rejects imposing IPPNY's deadline for conducting the RTGP Impact Test.

14. The Commission accepts NYISO's revised tariff sheets effective October 31, 2007, as requested. The Commission also grants NYISO's request to waive section

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seven months from the date of the initial invoice, and NYISO has two months to evaluate a challenge following the end of the challenge period. As indicated above, under extraordinary circumstances or if customers identify errors in the final customer comment period, the challenge and review period may be longer than ten months. *Id.*, sections 7.4.2.A, 7.4.2(v) and 7.4.2.B.

[16] IPPNY cites *New York Independent System Operator, Inc.*, 116 FERC ¶ 61,037 (2006). *See also, New York Independent System Operator, Inc.*, 111 FERC ¶ 61,200 (2005); NYISO, FERC Electric Tariff, Original Volume No. 2, Attachment E; NYISO, FERC Electric Tariff, Original Volume No. 1, Attachment Q.

203(b)(3) of its regulations so that more than two persons representing NYISO will be served in this proceeding since all persons receiving service currently have email addresses on the service list for this docket and there is no increase for the Commission in the burden of service.[17]

By direction of the Commission.

Kimberly D. Bose,
Secretary.

[17] 18 C.F.R. § 385.203(b)(3) (2007).

APPENDIX

New York Independent System Operator, Inc.
FERC Electric Tariff
Original Volume No. 2
Attachment H

Tariff Sheets Accepted Effective October 31, 2007

Sixth Revised Sheet No. 473
Original Sheet No. 473.01
Original Sheet No. 473.02
Original Sheet No. 473.03
Original Sheet No. 473.04
Original Sheet No. 473.05
Ninth Revised Sheet No. 474