

126 FERC ¶ 61,214
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

New York Independent System Operator, Inc.

ER04-449-017

ORDER ON CLARIFICATION AND WAIVER REQUEST

(Issued March 10, 2009)

1. On February 5, 2009, the New York Independent System Operator, Inc. (NYISO) submitted a motion for clarification of the Commission's January 15, 2009 order conditionally accepting proposed tariff revisions implementing a second level of generator interconnection service.¹ The NYISO's motion also includes a request for waiver of certain revised tariff provisions. In this order, the Commission grants, in part, the NYISO's request for waiver of certain revised tariff provisions, and clarifies certain earlier directives.

I. Background

2. In the Order on Tariff Revisions, the Commission accepted tariff revisions implementing a second level of interconnection service with a deliverability component that was conceptually approved by the Commission in an earlier order.² Under the revised tariff, generators can choose a basic interconnection service, Energy Resource Interconnection Service, that allows them to participate only in the NYISO's energy and ancillary services market. Generators also can choose the new Capacity Resource Interconnection Service, which provides basic interconnection service and allows a

¹ *New York Independent System Operator, Inc.*, 126 FERC ¶ 61,046 (2009) (Order on Tariff Revisions).

² *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,267 (2008) (Guidance Order).

generator to participate in the NYISO's installed capacity market to the extent the generator's capacity is deliverable.³

3. The revised tariff includes revisions to section 5.12 of the NYISO Market Administration and Control Area Services Tariff (Services Tariff), which sets forth the requirements a supplier must satisfy to participate in the NYISO's installed capacity market. As revised, section 5.12.1 states that generators interconnecting with the New York State transmission system, i.e. internal resources, must be found deliverable pursuant to the terms of Attachments S, X and Z of the NYISO Open Access Transmission Tariff (NYISO OATT) in order to be an installed capacity supplier. Once these internal resources satisfy the deliverability test during the interconnection study process, the revised tariff does not require them to be retested on an annual basis. By contrast, section 5.12.2 states that the deliverability of external capacity resources will be determined by the NYISO through the annual process of setting import rights while honoring grandfathered import contract rights and emergency assistance. The revised tariff applies these requirements beginning with the 2009 summer capability period, which is the period from May 1, 2009 through October 31, 2009.

4. The Commission found that the revised tariff did not provide sufficient detail regarding the treatment of external resources to satisfy the independent entity standard for revisions presented by regional transmission organizations proposing variations from the *pro forma* tariff established in Order No. 2003.⁴ The Commission pointed out that the deliverability test conducted as part of the interconnection process does not appear to take into account existing external capacity resources. The Commission stated that a lack of specificity in the deliverability test methodology raises questions regarding the treatment of external resources that take Capacity Resource Interconnection Service. Among the

³ The NYISO defines deliverability broadly as the ability to deliver the aggregate of New York control area capacity to the aggregate of the New York control area load under summer peak load conditions. NYISO and New York Transmission Owners October 5, 2007 Consensus Deliverability Plan at 5.

⁴ See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 822-27 (2003); *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, at P 759 (2004). An RTO or ISO proposing a variation must demonstrate that the variation is just and reasonable and not unduly discriminatory, and would accomplish the purposes of Order No. 2003. See, e.g., *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025, at P 7 (2004) (“[W]hen an RTO is the filing entity, the Commission will review the proposed variations to ensure that they do not provide an unwarranted opportunity for undue discrimination or produce an interconnection process that is unjust and unreasonable.”), *order denying reh'g*, 110 FERC ¶ 61,099 (2005)

questions would be the differentiation in the deliverability priority between external resources with long-term contracts⁵ to supply capacity into the NYISO market versus short-term external capacity. Each year, an existing external capacity resource will be considered a new resource under the revised tariff, and will have to be subjected to a deliverability test. As such, the Commission found that it would appear that a new interconnection customer internal to NYISO may be able to use system headroom and be considered deliverable while an existing external capacity supplier would be required to pay for system upgrades in order to continue supplying capacity to the NYISO market. The Commission concluded that the tariff revisions should not create a situation that discourages the development or use of external resources to satisfy installed capacity requirements in the NYISO market. Accordingly, the Commission directed NYISO to clarify how the revised tariff sheets addressing deliverability tests for internal and external resources meet the independent entity variation standard for revising the terms of the *pro forma* Large Generator Interconnection Agreement and *pro forma* Large Generator Interconnection Procedures to accommodate regional needs. The Commission directed NYISO to submit the clarification in a compliance filing within 30 days. On February 17, 2009, the Commission issued a notice granting NYISO an extension of time until April 3, 2009 to comply with the directive in the Order on Tariff Revisions that the NYISO submit a compliance filing clarifying how the proposed treatment of external installed capacity satisfies the independent entity variation standard under Order No. 2003.

II. NYISO's Motion for Clarification and Waiver

5. The NYISO seeks clarification that the Commission did not intend that the NYISO apply the new tariff language in section 5.12.2 of the Services Tariff until after the NYISO satisfies the compliance directive established in the Order on Tariff Revisions. The NYISO states that the Commission's directive that the NYISO clarify how the proposed treatment of external installed capacity satisfies the independent entity variation standard under Order No. 2003 appears to require that the NYISO delay applying the deliverability test to import calculations until the NYISO submits the additional information. The NYISO explains that this is an urgent issue because, pursuant to section 5.1 of the NYISO installed capacity manual, the calculations of total available import capacity at each of the NYISO's external interfaces for the 2009 capability year (May 1, 2009 through April 30, 2010) are scheduled to be posted on the NYISO website

⁵ By this the Commission was referring to long-term contracts that are not grandfathered by the Deliverability Plan because they were not in effect at the time of the creation of the NYISO.

by February 13, 2009.⁶ Pending Commission clarification, the NYISO states that it intends to follow section 5.12.2 as it existed prior to the proposed amendment, and therefore to forego applying the deliverability test to import limit calculations for the 2009 capability year.

6. In the alternative, if the Commission denies the motion for clarification, the NYISO requests waiver of the new language in section 5.12.2 for the 2009 capability year. The NYISO contends that the Order on Tariff Revisions was issued so close to the time that the NYISO is required to post the import limits for the 2009 capability year that implementation of the new section 5.12.2 by the February 13 deadline is not practicable. In addition, the NYISO states, the deliverability filing and the Order on Tariff Revisions did not resolve all issues necessary to apply the deliverability requirement to the process of setting import limits. The NYISO points out that the issue of the treatment of emergency assistance in that process remains open and subject to a subsequent compliance filing due in May 2009.

7. The NYISO argues that the waiver also is warranted because of the scheduled frequency of the NYISO's import limit calculations. The NYISO explains that, under the NYISO Installed Capacity Manual, the NYISO calculates import limits for the installed capacity markets only once per year, before the summer capability period. Before each capability period, the NYISO states that it allocates import rights on a first-come, first-served basis, for periods of up to six months. The NYISO contends that implementing the deliverability test for external resources during a capability year could eliminate an existing import right. This is particularly true, the NYISO contends, if the NYISO must implement the deliverability test during a capability period. Further, the NYISO contends that the waiver is warranted because the NYISO has acted in good faith and the waiver is of limited scope – that is, only for the 2009 capability year – and will not adversely affect any supplier of external installed capacity.

8. The NYISO also requests waiver of the new language in section 5.12.1 of the Services Tariff for the 2009 capability year. As discussed above, section 5.12.1 states that generators interconnecting with the New York State transmission system (i.e., internal resources) must be found to be deliverable pursuant to the terms of Attachments S, X and Z of the NYISO OATT in order to be installed capacity suppliers. The NYISO states that granting the requested waiver will allow the NYISO to implement the deliverability requirement for internal resources at the same time it is implemented for external installed capacity. However, NYISO states that if it receives approval from the Commission for section 5.12.2 and the modeling of emergency assistance by July 1,

⁶ *Citing* section 5.1 of the NYISO Manual 4 (Installed Capacity Manual) and Installed Capacity calendar, available at: http://icap.nyiso.com/ucap/public/evt_calendar_display.do.

2009, it commits to implementing sections 5.12.1 and 5.12.2 for the 2009 winter capability period (November 1, 2009 through April 30, 2010).

III. Notice of Filing and Responsive Pleadings

9. Notice of the NYISO's filing was published in the *Federal Register*, 74 Fed. Reg. 8,081 (2009), with interventions, comments and protests due on or before February 23, 2009.

10. H.Q. Energy Services Inc. and Brookfield Energy Marketing Inc. filed a joint answer in support of NYISO's motion as it pertains to provisions governing external resources contained in section 5.12.2. The parties state that NYISO's interpretation of the Order on Tariff Revisions to not implement section 5.12.2 is correct. They contend that these provisions cannot go into effect until the Commission resolves the issue of whether external resources are discriminated against by the tariff revisions.

IV. Discussion

11. For the reasons discussed below, we deny the NYISO's request for clarification but grant the NYISO's request for waiver regarding the implementation of section 5.12.2 of the Services Tariff until November 1, 2009. However, we deny the request for waiver of section 5.12.1 of the Services Tariff and again direct the NYISO to implement the deliverability requirements pertaining to internal capacity resources for the 2009 capability year.

12. It appears from the motion for clarification and waiver that the NYISO did not prepare a deliverability evaluation for external resources under section 5.12.2 of the Services Tariff so that results could be posted on February 13, 2009 as required by the NYISO Installed Capacity Manual. The NYISO does not state whether this decision was made while the Order on Tariff Revisions was pending before the Commission; however, the NYISO has indicated that it will not apply the deliverability test to import calculations pursuant to section 5.12.2 until it submits, and the Commission accepts, the additional clarification mandated in the Order on Tariff Revisions. This was not the Commission's intent. The Commission accepted the revised tariff sheets effective October 5, 2008 subject to certain modifications and clarifications to be provided by the NYISO.⁷ Such conditions should not have precluded the NYISO from implementing the deliverability requirements.

13. Although we expected the NYISO to apply the deliverability requirement to external resources in the 2009 capability year, we acknowledge that this may no longer

⁷ Order on Tariff Revisions, 126 FERC ¶ 61,046 at Ordering Paragraph (B).

be possible. February 13, 2009 was a significant date for the NYISO because it was the deadline for posting calculations of total available import capacity at each of the NYISO's external interfaces for the 2009 capability year. Market participants relied upon this posting to prepare requests for import rights. Requiring the NYISO to apply the deliverability test to import calculations pursuant to 5.12.2 for the 2009 capability year likely would require the NYISO and market participants to redo their previous analyses and alter market positions. Accordingly, we will grant waiver of section 5.12.2 of the services tariff for the 2009 summer capability period.⁸

14. As for the application of the deliverability test to internal resources, the Commission denies the NYISO's requested waiver of section 5.12.1 of the services tariff. As noted in the Order on Tariff Revisions, it has taken nearly five years for the NYISO to submit these tariff revisions, which had broad consensus among the NYISO's stakeholders.⁹ Thus, the NYISO and its stakeholders have had ample opportunity to prepare for the implementation of the subject deliverability requirements. The Deliverability Plan approved by the Commission in the Order on Tariff Revisions specifically stated that the revised tariff provisions would become effective commencing with the 2009 Summer Capability Period.¹⁰ The NYISO has not explained why it cannot meet this deadline with respect to internal resources. Furthermore, the Order on Tariff Revisions, with the exception of the issue of external resources and emergency assistance, accepted the proposed tariff revisions requiring only minor tariff modifications—most of which were agreed to by the NYISO in its pleadings. The NYISO does not demonstrate why the existing treatment of external resources would adversely affect the implementation of the deliverability requirements for internal resources, in accordance with section 5.12.1, or why such implementation must wait until section 5.12.2 is implemented. Furthermore, if the NYISO were to delay implementation

⁸ The NYISO Motion appears to provide contradictory evidence as to whether NYISO is able to implement the provisions governing external resources during a capability year. On the one hand, the NYISO states that it allocates import rights for a period of up to six months (NYISO Motion at 6) and that it could implement section 5.12.2 for the 2009 winter capability period that begins on November 1, 2009 (NYISO Motion at 6 n. 10). However, the NYISO also implies that the waiver should be granted for the entire 2009 capability year because the application of the deliverability test during the year could potentially eliminate an import right that was already allocated to an external resource (NYISO Motion at 6). Therefore, we grant the NYISO's waiver request only for the 2009 summer capability period and expect NYISO to implement the provisions of section 5.12.2 on November 1, 2009 for the winter capability period.

⁹ Order on Tariff Revisions, 126 FERC ¶ 61,046 at P 4-10.

¹⁰ Services Tariff § 5.12.1, Eighth Revised Sheet No. 128.

of section 5.12.1, it is unclear how new interconnection resources beginning with Class Year 2007 will be able to take Capacity Resource Interconnection Service.

15. The NYISO mentions that the motion for clarification and waiver does not address the application of deliverability standards to new interconnections beginning with Class Year 2007.¹¹ In this regard, the Commission reiterates, and clarifies if necessary, its decisions in the Guidance Order that the deliverability test is to be applied to new resources beginning with Class Year 2007¹² and in the Order on Tariff Revisions that the tariff revisions are effective on October 5, 2008.¹³ The Commission expects the NYISO to implement its tariff with regard to the deliverability requirements as proposed by the NYISO in its August 5, 2008 filing and discussed in the Order on Tariff Revisions.¹⁴ For these reasons, we require that the NYISO implement section 5.12.1 as proposed and accepted in the Order on Tariff Revisions.

The Commission orders:

The NYISO's request for waiver is hereby granted in part and denied in part, as discussed in the body of this order.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

¹¹ NYISO Motion at 7 n.11.

¹² The Commission notes that this issue is fully resolved and has not been subject to any requests for rehearing; and therefore, expects that the NYISO is at or near completion of its Class Year 2007 deliverability studies.

¹³ Order on Tariff Revisions, 126 FERC ¶ 61,046 at P 120.

¹⁴ *Id.* P 119.