

131 FERC ¶ 61,114
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

New York Independent System
Operator, Inc.

Docket No. ER09-1142-004

ORDER ON CLARIFICATION AND REHEARING

(Issued May 6, 2010)

1. New York Independent System Operator, Inc. (NYISO) requests clarification or, in the alternative, rehearing of the Commission's November 20, 2009 Order¹ accepting, subject to further compliance filing, NYISO's compliance filing, pursuant to Order No. 719,² that proposed revisions to its Market Administration and Control Area Services Tariff (Services Tariff) and Open Access Transmission Tariff (OATT). For the reasons discussed below, we grant in part and deny in part clarification and rehearing.

I. Background

2. In Order No. 719, the Commission established reforms to improve the operation of organized wholesale electric power markets³ and amended its regulations under the

¹ *New York Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,164 (2009) (November 20, 2009 Order).

² *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 Fed. Reg. 64,100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008) (Order No. 719 or Final Rule).

³ Organized market regions are areas of the country in which a regional transmission organization (RTO) or independent system operator (ISO) operates day-ahead and/or real-time energy markets. The following Commission-approved RTOs and ISOs have organized markets: PJM Interconnection, L.L.C. (PJM); New York Independent System Operator, Inc. (NYISO); Midwest Independent Transmission System Operator, Inc. (Midwest ISO); ISO New England, Inc. (ISO New England); California Independent System Operator Corp. (CAISO); and Southwest Power Pool, Inc. (SPP).

Federal Power Act (FPA) in the areas of: (1) demand response, including pricing during periods of operating reserve shortage; (2) long-term power contracting; (3) market-monitoring policies; and (4) the responsiveness of RTOs and ISOs to their customers and other stakeholders. The Commission stated that these reforms are intended to improve wholesale competition to protect consumers in several ways: by providing more supply options, encouraging new entry and innovation, spurring deployment of new technologies, removing barriers to demand response, improving operating performance, exerting downward pressure on costs, and shifting risk away from consumers.⁴

3. To improve market monitoring, the Commission required each RTO and ISO to provide its Market Monitoring Unit (MMU) with access to market data, resources and personnel sufficient to carry out its duties. The Commission further required that the MMU (or the external MMU in a hybrid structure and, in some cases, the internal MMU) report directly to the RTO or ISO board of directors.⁵ In addition, the Commission required that the MMU's functions include the core functions of: (1) identifying ineffective market rules and recommending proposed rules and tariff changes; (2) reviewing and reporting on the performance of the wholesale markets to the RTO or ISO, the Commission, and other interested entities; and (3) notifying appropriate Commission staff of instances in which a market participant's behavior may require investigation.

4. The Commission also took the following actions with regard to MMUs: (1) expanded the list of recipients of MMU recommendations regarding rule and tariff changes, and broadened the scope of behavior to be reported to the Commission; (2) modified MMU participation in tariff administration and market mitigation, required each RTO and ISO to include ethics standards for MMU employees in its tariff, and required each RTO and ISO to consolidate all its MMU provisions in one section of its tariff; and (3) expanded the dissemination of MMU market information to a broader constituency, with reports made on a more frequent basis than in the past, and reduced the time periods before energy market bid and offer data are released to the public.

II. Request for Clarification or Rehearing

5. NYISO requests clarification, or in the alternative, rehearing of the following Commission directive in the November 20, 2009 Order:

⁴ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 1.

⁵ The use of the phrase "board of directors" also includes the board of managers, board of governors, and similar entities.

Further, as the entity responsible for reviewing and reporting on the wholesale markets, the MMU, not the MMA, must respond to information and data requests from the Commission. The tariff should reflect this as well.⁶

NYISO states that under this directive, its internal Market Mitigation and Analysis Department (MMA) is completely precluded from responding even if it is the most appropriate source of the information. NYISO states that the Commission can determine whether the MMU or MMA should respond to a data request by directing its inquiry to that entity. NYISO also states that the Commission's directive could be interpreted as requiring it to preclude its MMA staff from ever directly responding to an information request or data request from Commission staff. NYISO states that it expends significant resources responding to Commission data requests currently and that requiring the external MMU to respond to all data requests will be financially inefficient when NYISO staff could do it at less cost. Therefore, NYISO requests that the Commission either: (a) specifically identify a narrowly tailored subset of data requests that the MMU, alone, must respond to; or (b) eliminate the requirement that the NYISO add to its Market Monitoring Plan a statement that the MMU (not the MMA) must respond to information and data requests from the Commission, because this requirement is not necessary, may restrict the Commission's ability to readily access information, and will result in unnecessary costs to the NYISO and its stakeholders.⁷

III. Discussion

6. In Order No. 719, in the Market Monitoring Policies section, the two principal areas addressed were: (1) independence and functions of the MMU; and (2) information sharing.⁸ The Commission specifically stated in Order No. 719 that ISOs could choose among having in internal MMU, an external MMU, or a hybrid MMU structure.⁹ NYISO chose to implement an external MMU. When NYISO filed tariff provisions to comply with Order No. 719, NYISO defined the MMA as "an entity that is distinct from the NYISO's Market Monitoring Unit and that is responsible for participating in the NYISO's administration of its tariffs," and stated that the submitted tariff provisions

⁶ November 20, 2009 Order, 129 FERC ¶ 61,164 at P 140 (footnote omitted).

⁷ NYISO Filing at 3-4.

⁸ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 Fed. Reg. 64,100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 at P 310 (2008) (Order No. 719).

⁹ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 318, 326, 327.

“make clear that the MMA will not be responsible for carrying out any of the Core Functions ... [and] will not be an Order No. 719 MMU.”¹⁰ The Commission accepted these aspects of NYISO’s filing as compliant with Order No. 719.¹¹

7. However, Order No. 719 also made it clear that the MMU, not the ISO/MMA, is responsible for monitoring the wholesale markets and reporting to the Commission in performing its Core Function responsibilities.¹² Order No. 719 also required that the MMU be provided with sufficient information and resources to perform its functions as MMU.¹³ Responding to Commission requests for information concerning the wholesale markets, which the MMU is charged with monitoring on a daily basis, is the responsibility of the MMU, including requests for bid data and the like. Order No. 719 was clear in its instruction that all monitoring-related duties, as represented by the Core Functions, were to be performed independently by the MMU, who reports to the RTO/ISO Board, not to the RTO/ISO.¹⁴ Therefore, requiring that the MMU, not the MMA, respond to Commission information and data requests related to monitoring of the markets is appropriately the responsibility of the MMU. The MMA, as described by NYISO, is responsible for tariff administration-related matters, not performing the Core Functions, which would include monitoring the markets and providing information to the Commission concerning market operations and functions.

8. We agree with NYISO that if the Commission seeks information or data not related to the functions of the wholesale market, a request from the Commission could be directed to NYISO and not the MMU. For example, a request for information regarding billing and settlements may be directed to NYISO, not to the MMU. Therefore, NYISO is directed to amend its tariff to provide that the MMU must respond to information and data requests from the Commission unless the Commission otherwise directs the request for information and/or data requests to NYISO and/or the MMA.

¹⁰ NYISO’s May 15, 2009 filing, Docket No. ER09-1142-000, transmittal letter at 21 - 22.

¹¹ *New York Independent System Operator, Inc.*, 129 FERC ¶ 61,164 (2009).

¹² Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 319.

¹³ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 311, 315, 317, 328, 329.

¹⁴ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 339-341.

The Commission orders:

(A) NYISO's request for clarification or, alternatively, rehearing is hereby granted in part and denied in part, as discussed in the body of this order.

(B) NYISO must file a revised tariff provision as directed in the text above, within 30 days of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.