

132 FERC ¶ 61,271  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket Nos. ER10-1977-000  
ER10-1977-001  
ER10-1977-002

ORDER ACCEPTING AND SUSPENDING TARIFF REVISIONS  
SUBJECT TO CONDITIONS

(Issued September 29, 2010)

1. On July 26, 2010, as corrected on July 30, 2010 and on August 10, 2010, NYISO submitted, pursuant to section 205 of the Federal Power Act, proposed revisions to its Open Access Transmission Tariff (OATT) and its Market Administration and Control Area Services Tariff (Services Tariff) to allow generators to increase the price of energy already scheduled day-ahead for re-evaluation in the real-time market. NYISO requests that its proposed tariff revisions be made effective September 30, 2010. In this order, the Commission accepts and suspends NYISO's proposed revisions for a nominal period, to become effective September 30, 2010, subject to refund and the conditions of this order.

**I. Background**

2. NYISO states that market participants submit generator offers in the day-ahead market based on their expected marginal costs of operation; however, the costs associated with running at the day-ahead committed level may increase following the close of the day-ahead market due to such reasons as the need to switch to an alternate fuel due to fuel curtailment. NYISO states that, currently, generators are not permitted to increase their energy offer on capacity that received a day-ahead market schedule and no other NYISO mechanism exists for generators to manage or hedge these increases in costs. Thus, according to NYISO, generators must either run to their day-ahead schedule at their increased cost, or take a derate,<sup>1</sup> which will impact the generator's future unforced capacity calculation and may compromise real-time reliability. The instant filing

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<sup>1</sup> A "derate" is a reduction in the rated capacity attributed to a generating unit.

proposes to allow generators to increase their real-time market offers for day-ahead committed incremental energy and it proposes mitigation and penalties for misuse of the functionality.

3. NYISO has submitted filings concurrently in three dockets that are associated with successful deployment of the Reference Level Software (RLS) project. The RLS project allows NYISO to incorporate more accurate cost information into generator reference levels.<sup>2</sup> NYISO states that the revisions proposed in the instant docket are dependent upon the suite of RLS and market software improvements that support the tariff revisions proposed in the Docket No. ER10-2062-000 filing, since generators' reference levels may need to be updated when they experience cost increases which they want to incorporate into their real-time offers.

## **II. NYISO's Proposed Tariff Revisions to Increase Bid-Price of Incremental Energy**

4. In the instant filing, NYISO proposes tariff revisions to specify that generators may increase the bid-price, or the mitigated bid-price, as applicable, of day-ahead scheduled incremental energy unless otherwise prohibited from doing so by other provisions of the tariff.<sup>3</sup> NYISO adds that such bid increases allow the real-time commitment and dispatch software to dispatch such a generator below its day-ahead schedule if other facilities are available at a bid-cost less than the generator's increased

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<sup>2</sup> In Docket Nos. ER10-1866-000, *et al.*, NYISO addresses the impact of the new software on generators that start late in the dispatch day and that need to run on the following dispatch day to complete their minimum run time (Late Day Start generators). In Docket No. ER10-2062-000, NYISO proposes to amend its market mitigation measures to implement the RLS in calculating reference levels for purposes of mitigation and penalties. The filing in the instant docket, ER10-1977-000, *et al.*, contains certain tariff revisions proposed in the other two foregoing dockets, which will be addressed in those dockets.

<sup>3</sup> NYISO also proposes, for clarity purposes, to add the term "Real-Time Scheduling Window" to refer to the period of time within which NYISO accepts offers and bids to sell and purchase energy and ancillary services in the real-time market and for external transactions at the proxy generator buses associated with the Cross-Sound scheduled line, the Neptune scheduled line or the Linden Variable Frequency Transformer scheduled line.

real-time bid.<sup>4</sup> According to NYISO, this feature will improve the ability of generators to manage the risk of real-time cost increases after submission of their day-ahead offers but before the real-time dispatch hour.

5. NYISO also states that those generators able to update their real-time offers in the event of real-time cost increases may lower their risk premium in their day-ahead market offers, appropriately benefiting loads by moving the risk for real-time cost increases from day-ahead load to real-time load. NYISO argues that this functionality also improves real-time market efficiency by making up-to-date cost information available to the real-time market software, thereby allowing in-day energy production costs to be more accurately reflected in real-time Locational Based Marginal Prices (LBMP).

6. NYISO clarifies that generators will not be allowed to increase their minimum generation cost or minimum generation levels. According to NYISO, this ensures that NYISO's Security Constrained Unit Commitment ("SCUC")-scheduled day-ahead units will be online and available to provide energy above their minimum generation levels if the need for such dispatch materializes.<sup>5</sup> In addition, NYISO clarifies that units will remain unable to increase their start-up costs since the SCUC software reflected this cost in the generator's day-ahead market schedule and settlement.

7. NYISO states that, pursuant to the proposed tariff amendments related to the RLS project, market participants will be able to submit fuel type and fuel cost information with their updated real-time offers. RLS will use the market participant-submitted fuel data to adjust, subject to RLS rules, reference levels. For other cost increases, market participants will continue to contact Market Mitigation and Analysis (via the RLS application) with reference level adjustment requests.

8. NYISO also proposes to amend section 4.1.8 of its Services Tariff, entitled "Commitment for Reliability," to limit recovery of start-up and minimum generation costs not recovered in the dispatch day. Previously, generators required to operate in response to specific reliability-based requests from NYISO could recover start-up and

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<sup>4</sup> NYISO states that a generator dispatched lower than its day-ahead market schedule will face balancing market obligations but these obligations are likely to be less than the cost of operating to its day-ahead market schedule at its higher costs. NYISO also states that generators economically dispatched above their minimum generation levels will not be additionally compensated, for Energy previously scheduled Day-Ahead, at real-time LBMPs or otherwise.

<sup>5</sup> NYISO states that generators economically dispatched above their minimum generation levels will not be additionally compensated, for energy previously scheduled day-ahead, at real-time LBMPs or otherwise.

minimum generation costs not recovered in the dispatch day. Because these generators will now have the ability to include increased incremental energy costs in the units' real-time bid, NYISO proposes to limit application of this section to costs that were neither bid nor known prior to the close of the real-time scheduling window.

9. NYISO proposes a new section 5.2.2 that provides that this new functionality could be suspended market-wide if the use of this bidding opportunity creates a market aberration that impairs the functioning of the ISO-administered markets or substantially impairs the reliability of the electric system. NYISO states that the functionality allowing generators to increase bids on day-ahead scheduled energy in real-time is very new to this market design and NYISO believes that it is necessary, and prudent, to be able to discontinue this functionality if a reliability or market problem arises. Should such a suspension occur, NYISO proposes to notify the Commission and market participants on the same time frame and with as much detail as it currently uses to report a suspension of the submission of virtual transactions,<sup>6</sup> i.e., NYISO proposes to report as soon as practicable the reasons for the suspension, the actions necessary to restore the functionality and the time required to restore the functionality.

10. NYISO also proposes to exclude from eligibility for Day-Ahead Margin Assurance Payments (DAMAP), calculated pursuant to the Services Tariff Attachment J, those hours for which generators have increased their real-time bids on day-ahead scheduled energy.<sup>7</sup> NYISO states that in these cases, the reduced real-time dispatch is the result of the generator's increased real-time bid and a DAMAP is not warranted.

11. NYISO proposes new mitigation provisions intended to prevent unjustified interactions between a market party's virtual bidding and the submission of real-time incremental energy bids for capacity that was scheduled day-ahead. NYISO states that, as a general matter, its proposal allows it to revoke the ability for any market party to increase hourly real-time bid(s) on day-ahead scheduled capacity for a generator if NYISO makes the following determination:

1. A market party has submitted an increased energy offer for the generator for an hour that exceeds the unit's justifiable real-time reference level by the lower of \$100/MWH, \$300, or the in-city threshold for an in-city generator when an interface or facility into the area where the generator is located is constrained;

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<sup>6</sup> A virtual market transaction is one that is a financial-only transaction that is not intended to affect real-time physical consumption of energy.

<sup>7</sup> DAMAP payments reimburse a generator for lost day-ahead margin when the NYISO has scheduled a generator in such a way that reduces its day-ahead margin.

2. The market party also has a scheduled virtual load transaction for the same hour;
3. A virtual market penalty<sup>8</sup> calculated for the market party (whether or not imposed) would not be zero; and
4. The market party has not been able to demonstrate that its increased real-time bid was consistent with competitive behavior.

12. NYISO also states that its proposal allows that, should it revoke the opportunity for any market party to use the increased real-time bid functionality when bidding a particular generator, NYISO has the ability to impose a penalty on the market party that used the increased real-time bid functionality in conjunction with the scheduling of virtual load. NYISO states that the penalty will recover the difference between real-time LBMPs and day-ahead LBMPs at the locations where the market party scheduled virtual load.<sup>9</sup>

13. NYISO states that, consistent with the market mitigation measures, the mitigation of the authority to use the increased real-time bid functionality on a particular generator will be an ongoing mitigation measure that can be imposed for up to six months. NYISO further states that the application of the virtual market penalty would be a one-time penalty (although potentially a multi-hour penalty) related to the circumstances pursuant to which the increased real-time bid functionality on that generator was revoked. NYISO avers that the proposed mitigation measure and associated penalty should deter market participants from unjustifiably increasing their real-time bids to manipulate the settlement of virtual load transactions.

14. NYISO states that it proposes to amend Attachment H to add a virtual market penalty which could be imposed on a market party if such market party used the increased real-time bid functionality for a generator and NYISO has, as a result of the

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<sup>8</sup> NYISO states that the virtual market penalty is calculated by multiplying the virtual load MW by the amount by which the integrated real-time LBMP exceeds the day-ahead LBMP applicable to the virtual load MW. Virtual load MW are defined by NYISO as the scheduled MW of virtual load bid by the market party for the same hour in which the market party submitted the incremental energy real-time bid.

<sup>9</sup> NYISO adds that, although it does not propose to add a “penalty multiplier,” losses on scheduled virtual load transactions in an hour will not offset profits on scheduled virtual load transactions in the same hour for purposes of calculating the proposed penalty.

market party's actions and pursuant to Attachment H, revoked the opportunity for the market party to use the increased real-time bid functionality for that generator.

15. NYISO proposes a new section<sup>10</sup> that describes its monitoring and mitigation implementation approach for those market parties that use the increased real-time bid functionality and have also scheduled a virtual load bid(s) for the same hour(s). NYISO states that the parameters in this section provide for NYISO to ask the market party to demonstrate that its real-time bid was consistent with competitive behavior. If the market party is unable to demonstrate to the satisfaction of the NYISO that its real-time bid was consistent with competitive behavior, NYISO states that it shall revoke the use, by any market party, of the increased real-time bid functionality on that generator, pursuant to section 23.4.7.3, and impose a penalty.

16. On July 30, 2010, in its second filing in this docket, NYISO submitted proposed revisions to correct several inadvertent errors in its July 26, 2010 filing. The revisions allow generators or demand side resources that are selected to provide Operating Reserves in the Day-Ahead Market to increase their real-time Incremental Energy Bids so long as they are not otherwise prohibited from doing so by other tariff provisions.

17. NYISO also indicates that the July 26, 2010 filing omitted changes to two inputs to the formula for determining Real-Time Bid Production Cost Guarantee for generators in Real Time Dispatch intervals other than supplemental event intervals; the Services Tariff should have been modified to reflect that such inputs may include costs authorized for recovery under section 4.1.8 of the Services Tariff.

18. Additionally, NYISO proposes corrections to several typographical errors in proposed revisions to the Services Tariff, Attachment C of the Services Tariff, and Attachment H of the Services Tariff.

19. NYISO states that, although no changes were proposed in its third filing in this docket on August 10, 2010, it made the supplemental filing to reflect changes to section 18 of the Services Tariff submitted in Docket No. ER10-1866-001, which was submitted concurrently on August 10, 2010.

### **III. Notice of Filing and Responsive Pleadings**

20. Notice of NYISO's July 26, 2010 was published in the *Federal Register*, 75 Fed. Reg. 45,617 (2010), with comments due on August 16, 2010. NYISO made two additional filings with respect to this docket on July 30, 2010, and August 10, 2010, with

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<sup>10</sup> Section 23.4.7.2

comments for both due on August 20, 2010. The New York Transmission Owners<sup>11</sup> and Dynegy Power Marketing, Inc. filed motions to intervene. No protests or adverse comments were received.

#### **IV. Commission Determination**

##### **I. Procedural Matters**

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

##### **II. Substantive Matters**

22. We accept NYISO's filing, suspend it, and permit it to become effective September 30, 2010, as proposed, subject to refund and to the conditions of this order as discussed below. The proposed revisions will increase the ability of generators to manage the risk of real-time cost increases and will permit bids to more accurately reflect in-day energy production costs, thus improving market efficiency and benefitting ratepayers. However, we find that the tariff revisions identified below contain provisions that lack specificity in their application or leave assessment of penalties up to NYISO's discretion, and, therefore, we direct NYISO to refile to modify these provisions as discussed below. We also condition acceptance of the tariff filing in this docket on the outcome of the proceedings in Docket Nos. ER 10-2062-000 and ER10-1866-000, *et al.*

23. Proposed section 23.4.7.2 provides that, if certain conditions described in that section are shown to be met, NYISO "shall" impose mitigation set forth in section 23.4.7.3 by revoking the Market Party's opportunity to increase its bid in the Real-Time Market<sup>12</sup> and "may" impose penalties in accordance with section 23.4.3.3.4.<sup>13</sup> As discussed below, we find that these provisions are unjust and unreasonable and should be revised.

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<sup>11</sup> In this proceeding, New York Transmission Owners consists of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

<sup>12</sup> Proposed section 23.4.7.3.1.

<sup>13</sup> Proposed section 23.4.7.3.2.

24. As described earlier herein, proposed section 23.4.7.2 provides that the mitigation provisions of proposed section 23.4.7.3 will apply if certain criteria are met, including that “the market party is unable to show to the satisfaction of the ISO (with review and comment by the Market Monitoring Unit) that the submitted real-time Incremental Energy Bid(s) were consistent with competitive behavior.” The provision does not indicate what information or criteria NYISO will rely upon to determine whether a market party’s behavior is “consistent with competitive behavior.” Accordingly, we find proposed section 23.4.7.2 to be unjust and unreasonable. To apply this provision, NYISO must file within 45 days of this order to provide in its tariff the criteria or information that it will use to make such a mitigation determination. The criteria or information types listed need not be exhaustive or exclusive, but must provide market parties notice of the types of criteria or information upon which NYISO will rely. Further, section 23.4.7.3.2 should be deleted as it is repetitive of the language in 23.4.7.2.

25. Section 30.4.6.2.7 also relies upon an assessment of competitive behavior that uses the language “to the satisfaction of the ISO” as mitigation criteria. For the same reasons expressed above regarding sections 23.4.7.2 and 23.4.7.3, section 30.4.6.2.7 is not just and reasonable. Within 45 days of the order, NYISO must file to include the criteria or information that it will use to make the mitigation determination.

26. In addition, proposed sections 23.4.7.2, 23.4.7.3, and 23.4.3.3.4 are inconsistent with both Commission policy<sup>14</sup> and the Commission’s recent NYISO orders<sup>15</sup> to the extent that they grant NYISO the unlimited discretion to choose to impose or not impose a penalty when the conditions of section 23.4.7.2 have been met and it has revoked a market participant’s right to submit increased bids in the real-time market. These proposed sections provide that a virtual market penalty “may” be imposed in the event of a revocation. The Commission has made clear that in order for an ISO to impose a penalty, the penalty may only be applied to “objectively identifiable behavior.”<sup>16</sup> More specifically, the Commission previously rejected NYISO’s proposed use of the discretionary term “may” in implementing penalties for certain violations.<sup>17</sup> Accordingly, we find proposed sections 23.4.7.2, 23.4.7.3, and 23.4.3.3.4 to be unjust and unreasonable in the foregoing respect. To impose a penalty under these provisions,

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<sup>14</sup> *Market Monitoring Units in Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶61,267, at P 5 (2005).

<sup>15</sup> *New York Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,164, at P 98 (2010); and *New York Indep. Sys. Operator, Inc.*, 131 FERC ¶ 61,225, at P 17-26 (2010).

<sup>16</sup> *New York Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,164 at P 98.

<sup>17</sup> *New York Indep. Sys. Operator, Inc.*, 131 FERC ¶ 61,225 at P 19.

NYISO must file within 45 days of this order to amend these provisions by specifying the objective criteria under which NYISO would or would not impose the penalty even though the conditions for imposing a penalty in the first place have been met, i.e., the conditions set forth in section 23.4.7.2 to revoke the market party's right to increase bids in the real-time market have been met and that right has been revoked. NYISO must also clarify whether the virtual market penalty will be a "traffic ticket" offense, which is exempt from referral to the Commission provided it meets certain specific criteria<sup>18</sup> or will be referred for the Commission's review and approval. If NYISO clarifies that it wants the penalty to be a "traffic ticket," it must file to add to the tariff the conditions for imposing the penalty that meet the criteria set forth in footnote 19 *supra* and to change "may be imposed" to "shall be imposed." On the other hand, if NYISO chooses not to provide the "traffic ticket" type criteria, then it must file to revise the tariff to provide that it will refer the alleged tariff violation to the Commission (OE Staff).

27. Further, several of NYISO's tariff sections submitted to the Commission's eTariff program in this docket contain implementation priority designations that duplicate those contained in NYISO's related filings in Docket Nos. ER10-1866-000, *et al.*, and/or ER10-2062-000. Because the eTariff program will use the tariff record with the highest Record Effective Priority Order<sup>19</sup> to supersede any other tariff records with the same

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<sup>18</sup> The Commission identified so-called "traffic ticket" offenses, which are exempt from referral to the Commission, as those which meet the following criteria:

- (i) the activity must be expressly set forth in the tariff,
- (ii) the activity must involve objectively identifiable behavior, and
- (iii) the activity does not subject the actor to sanctions or consequences other than those expressly approved by the Commission and set forth in the tariff, with the right of appeal to the Commission.

The Commission stated that examples of such activities would include late payments, failure to notify NYISO of an outage, failure to respond to an operational directive, and the like. *New York Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,164 at P 98. *See also New York Indep. Sys. Operator, Inc.*, 131 FERC ¶ 61,225 at P 19. If, in its compliance filing, NYISO clarifies that the virtual market penalty should be treated as a "traffic ticket" penalty, in addition to filing the foregoing revisions, NYISO should also file in the compliance filing above to revise section 4.5.3.2 to include a reference to this provision in the list of its "traffic ticket" penalties.

<sup>19</sup> The eTariff documentation (available at <http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf>, *see* pages 10-11, 22) refers to Record Effective Priority Order identifiers, which are the means that the eTariff program uses to determine the implementation order of tariff sections or sheets that have been submitted to the eTariff program.

effective date, the implementation priority designation must be unique across tariff records with the same tariff record identifier and proposed effective date. At such time that NYISO files revisions in response to this order, NYISO shall refile unique, chronologically correct implementation priority designations for all those tariff sections that had the same proposed effective date and implementation priority designations that were duplicative of those filed in Docket Nos. ER10-1866-000, *et al.*, and/or ER10-2062-000.

28. Based upon a review of the filing, the Commission finds that the proposed tariff sections identified above have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept such tariff sections for filing and suspend them for a nominal period to become effective September 30, 2010, subject to the conditions set forth in this order.

The Commission orders:

(A) NYISO's proposed tariff sections are accepted and suspended for a nominal period to become effective September 30, 2010, subject to refund and the conditions of this order, as discussed in the body of this order.

(B) NYISO is directed to file the tariff revisions, as discussed in the body of this order, within 45 days of the date of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.