

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

New York Independent System Operator, Inc. Docket Nos. ER04-230-006,
ER01-3155-006
ER01-1385-015
EL01-45-014

ORDER ON REHEARING

(Issued June 24, 2005)

1. On August 10, 2004, the Commission issued an order on rehearing and compliance filings in this proceeding.¹ The August 10 Order addressed requests for rehearing/clarification of the Commission's February 11, 2004 Order,² accepting the New York Independent System Operator, Inc.'s (NYISO) filing to implement new real-time scheduling (RTS) and complementary new market rules, subject to modification, and accepting the NYISO's March 12, 2004 filing in compliance with the February 11 Order. This order addresses requests for rehearing of the August 10 Order.

I. Background

2. On November 26, 2003, as amended on December 1, 2003, NYISO submitted revisions to its Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff) to implement new RTS software and related new market rules. The new RTS software and the related new market rules: (1) permit the adoption of co-optimized two-settlement markets for regulation service and

¹ *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 (2004) (August 10 Order).

² *New York Independent System Operator, Inc.*, 106 FERC ¶ 61,111 (2004) (February 11 Order).

operating reserves; (2) support greater market participation by demand side resources; (3) facilitate the resolution of seams; and (4) serve as the foundation for future improvements. They also enhance NYISO's market power mitigation measures and related software.

3. On February 11, 2004, the Commission issued an order accepting NYISO's November 26, 2003 filing, as amended, subject to modification. Specifically, the Commission: (1) required NYISO to submit revised tariff sheets indicating that the default availability bid for Operating Reserves applies only to Installed Capacity (ICAP) suppliers; (2) rejected NYISO's proposal to extend Automated Mitigation Procedures (AMP) into the Real-Time Market outside New York City; and (3) required NYISO to incorporate one of the three options suggested by Sithe Energy Marketing, L.P. (Sithe) as an alternative to the RTS proposal to remove the ability of off-dispatch suppliers to receive payments for uninstructed over-generation.

4. On March 5, 2004, NYISO filed a request for rehearing of the February 11 Order with respect to the Commission's ruling denying the application of a default availability bid to non-ICAP suppliers. On May 7, 2004,³ the Commission granted rehearing and accepted NYISO's proposal to implement the automatic bid rejection rule and directed NYISO to submit a compliance filing implementing the automatic bid rejection rule.⁴ On June 7, 2004, the NYISO submitted its filing to comply with the May 7, 2004 Order.

5. On March 12, 2004, the NYISO and the New York Transmission Owners⁵ filed requests for rehearing of the February 11 Order. On March 12, 2004, the NYISO also submitted a filing to comply with the February 11 Order. NYISO's compliance filing was protested.

6. On August 10, 2004 the Commission issued an order on rehearing and compliance filings. The August 10 Order accepted the March 12, 2004 compliance filing with respect to the mitigation provisions, effective May 1, 2004, and the rest of the revisions were accepted as of the effective date of RTS implementation. As relevant here, the

³ *New York Independent System Operator, Inc.*, 107 FERC ¶ 61,134 (2004).

⁴ The automatic bid rejection rule would allow NYISO to reject any day-ahead market offers that do not include an operating reserves availability bid.

⁵ The New York Transmission Owners is comprised of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and Niagara Mohawk Power Corporation.

August 10 Order granted rehearing and accepted implementation of Real Time Market AMP (RTM-AMP) outside New York City and directed NYISO to file, within 150 days after the effective date of RTS, to implement its 15-minute scheduling in combination with improved modeling of combined cycle units. (The August 10 Order also accepted a June 7, 2004 compliance filing implementing the automatic bid rejection rule.⁶)

7. On September 9, 2004, NYISO and Edison Mission Energy, Inc. and Edison Mission Marketing & Trading, Inc. (jointly, Edison Mission) filed requests for rehearing of the August 10 Order. On September 24, 2004, Sithe Energy Marketing, L.P., Dynegy Power Marketing, Inc., PSEG Power LLC, and PSEG Energy Resources & Trade LLC filed a joint answer to NYISO's request for rehearing (Sithe Answer).⁷

II. Discussion

A. Edison Mission's Request for Rehearing

8. The August 10 Order granted rehearing and accepted implementation of RTM-AMP outside New York City. On rehearing, Edison Mission asserts that NYISO should be required to show a well-defined structural problem that would allow the exercise of market power to justify the implementation of automated mitigation outside New York City. Edison Mission argues that expanding mitigation measures in unconstrained areas outside New York City is the wrong message to send to investors in this market and will result in additional barriers to entry in markets that are currently incapable of producing enough revenue to attract new generation under the present mitigation scheme.⁸ Edison Mission contends that AMP-like devices are either unnecessary or suppress prices in competitive markets. Edison Mission objects to NYISO's earlier statement that a generator's breach of the thresholds to identify economic withholding "establishes that an

⁶ On January 28, 2005, as amended on February 8, 2005, NYISO made a filing to comply with the February 11 Order and provide official notice that the RTS markets enhancements would go into effect on February 1, 2005. The compliance filing was conditionally accepted on March 29, 2005, in an unpublished, delegated letter order in Docket Nos. ER04-230-007 and ER04-230-008.

⁷ Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits answers to requests for rehearing. Accordingly, we will reject Sithe's Answer.

⁸ Edison Mission cites, 2003 State of the Market Report: NYISO Electric Markets 22, David B Patton, (2004).

abuse of market power has in fact occurred.”⁹ Rather, Edison Mission contends that high market prices in a workably competitive electric market are more than likely due to episodes of scarcity as market prices should rise in such circumstances.¹⁰

9. Edison Mission also submits that the Commission’s August 10 Order is inconsistent with the Commission’s rejection of automation of mitigation measures in the ISO-New England, Inc. (ISO-New England)¹¹ and Midwest Independent Transmission System Operator, Inc. (MISO)¹² markets.

10. Edison Mission concludes that the Commission should vacate the provision of the August 11 Order that authorize the implementation of the RTM-AMP.

11. On January 14, 2005, as clarified on March 24, 2005, the United States Court of Appeals for the District of Columbia Circuit¹³ vacated two earlier Commission orders to the extent they permitted NYISO to apply AMP in the Day-Ahead Market outside New York City.¹⁴ In light of the court ruling vacating the Commission’s orders, in a recent order in Docket No. ER01-3155-007, *et al.*, the Commission directed NYISO to file revised tariff sheets removing provisions permitting the application of AMP outside New

⁹ NYISO’s March 12, 2004 Request for Rehearing at 3.

¹⁰ *Citing, New York Independent System Operator, Inc.*, 103 FERC ¶ 61,339 at P 18 (2003) and *ISO New England, Inc.*, 104 FERC ¶ 61,130 (2003).

¹¹ *New England Power Pool, Inc.*, 100 FERC ¶ 61,287 at P 42, *order on reh’g*, 101 FERC ¶ 61,344 at P 28 (2002).

¹² *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,280 at P 55 (2003), *reh’g dismissed*, 105 FERC ¶ 61,147 at P 14 (2003).

¹³ *Edison Mission Energy, Inc. v. FERC*, 394 F.3d 964 (D.C. Cir. 2005) (Remand Order), *clarified*, No. 03-1228 (D.C. Cir. March 25, 2005) (unpublished).

¹⁴ *New York Independent System Operator, Inc.*, 99 FERC ¶ 61,246 (2002), *order on reh’g*, 103 FERC ¶ 61,291 (2003).

York City.¹⁵ Consistent with the court's Remand Order and the Commission's recent order in response to the Remand Order, the Commission grants Edison Mission's request for rehearing of the August 10 Order as it applies to the application of RTM-AMP outside New York City. Accordingly, the Commission directs the NYISO to file revised tariff sheets removing provisions permitting the application of AMP in the RTM outside New York City within 15 days of the date of issuance of this order.

B. NYISO's Request for Rehearing

12. The August 10 Order directed NYISO to submit a compliance filing to implement an option for generators to be scheduled on a 15 minute basis, together with improved combined cycle modeling, within 150 days after the effective date of RTS (July 1, 2005). The August 10 Order explained that NYISO's current software does not adequately model the costs or the bids of combined cycle units.¹⁶ On rehearing, NYISO requests that it be permitted to implement 15-minute scheduling before implementing combined cycle modeling. NYISO states that improved combined cycle modeling will be a major software project, and will take substantial time to develop, test, integrate, and implement. NYISO adds that the Commission has previously recognized that developing complex market software the right way takes time.¹⁷ NYISO also commits that NYISO and its software vendor will establish a specific timetable and implement enhanced combined-cycle modeling as quickly as possible.

13. NYISO contends that it will need time to continue to seek stakeholder input to help NYISO and its software vendor to anticipate the issues that are likely to arise, to avoid unnecessary disputes, and to more precisely define the software's design specifications. NYISO estimates that it will take a number of months to move from preliminary discussions, to agreement on a Concept of Operations, to a final Functional Requirements Specification. NYISO asserts that its independent market advisor and stakeholders will also have to evaluate the software. NYISO maintains that extensive testing of the new software enhancements will be needed to ensure that they can perform satisfactorily and

¹⁵ *New York Independent System Operator, Inc.*, 111 FERC ¶ 61,399 (2005).

¹⁶ On June 16, 2005, the Commission granted NYISO an extension of time to implement 15-minute scheduling until September 1, 2005.

¹⁷ *Citing New England Power Pool*, 105 FERC ¶ 61,204 (2004); *Midwest Independent Transmission System Operator, Inc.*, 103 FERC ¶ 61,210 at P 34 (2003); *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,196 at P 38-43 (2003); and *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 at P 33-40 (2004).

will not have unanticipated effects on other systems. NYISO estimates that it can have combined-cycle modeling within nine to twelve months after the 15-minute scheduling option takes effect. NYISO proposes filing reports on its progress on implementing combined-cycle modeling every three months; NYISO filed its most recent report on May 6, 2005.

14. NYISO states that NYISO and its software vendor have planned to begin work on a 15-minute scheduling option immediately after successful implementation of RTS. NYISO contends it has never planned to include combined-cycle modeling features in this enhancement but always expected that it would develop this more complex project on a separate track. NYISO insists that it would be most efficient to proceed with the 15-minute scheduling option first. NYISO states the 15-minute scheduling option will allow it to economically schedule combined-cycle units, which currently operate off-dispatch, at fifteen minute intervals, rather than on an hourly basis. NYISO claims that this is a feature that has been requested by combined-cycle unit owners and will make it easier to operate units efficiently. NYISO claims that consolidating 15-minute scheduling with the development of combined-cycle modeling will only delay the benefits of the former, without materially advancing the effective date of the latter.

15. We grant NYISO's request for rehearing and will permit NYISO to implement 15-minute scheduling prior to implementing combined-cycle modeling. NYISO has persuaded us that it is more efficient to proceed with a 15-minute scheduling option prior to including combined-cycle modeling features, as the latter is more complex and more time is needed to implement it and combining the two features will not materially advance the effective date of combined-cycle modeling. However, as proposed by NYISO, NYISO will be required to file reports every three months to apprise the Commission and all interested parties of its progress. (The NYISO's most recent progress report was filed May 6, 2005.) The quarterly reports will allow the Commission to monitor NYISO's progress in implementing combined-cycle modeling. The Commission may take further action in the future if it finds it necessary.

The Commission orders:

(A) Edison Mission's request for rehearing is hereby granted as discussed in the body of this order. Accordingly, NYISO shall file revised tariff sheets removing provisions permitting the application of AMP in the RTM outside New York City within 15 days of the date of issuance of this order.

(B) NYISO's request for rehearing is hereby granted as discussed in the body of this order.

(C) NYISO shall continue to file quarterly reports regarding its progress in implementing combined-cycle modeling.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Deputy Secretary.