

its Market Administration and Control Area Services Tariff (Services Tariff). NYISO's tariff filing requested that the expiration date provided in Rate Schedule 2 of April 4, 2006 be deleted and replaced with language stating that the VSS rate would remain in effect "until the Commission determines the just and reasonable rate following the submission by the NYISO of a study conducted by an independent consultant."³

4. The April 2006 Order found, under section 206 of the FPA, that NYISO's sunset provision in Rate Schedule 2 was unjust, unreasonable, unduly discriminatory or preferential, and contrary to the public interest because it exposed suppliers to a requirement to provide VSS to NYISO without compensation. Consistent with this finding, the April 2006 Order eliminated the sunset provision in Rate Schedule 2 and extended the existing rate as the rate that is just, reasonable, not unduly discriminatory or preferential and in the public interest. In addition, the Commission found that the issue of refunds was moot as a result of the existing VSS rate being extended, and thus denied rehearing on this issue.

5. On April 18, 2006, NYISO submitted a compliance filing revising its tariff to delete the sunset provision in Rate Schedule 2, as directed by the Commission in the April 2006 Order.

6. On May 3, 2006, NYSEG-RGE filed a timely request for rehearing asking the Commission to direct NYISO to file a VSS rate with proper cost justification and asking the Commission to refrain from making a determination of whether the rate is just and reasonable until after the supporting information is analyzed.

Discussion

7. NYSEG-RGE raises three main arguments challenging the April 2006 Order.⁴ First, NYSEG-RGE argues that it was improper for the Commission to order NYISO to delete the sunset provision in Rate Schedule 2 and find the current rate just and reasonable because the Commission reached this decision without reviewing any cost support for the rate. In this regard, NYSEG-RGE further argues that this rate cannot be supported by current costs and that the rate, as an average statewide rate, is not supported by cost causation principles.

³ April 2006 Order at P 11.

⁴ In its Rehearing Request, NYSEG-RGE divides these issues into 6 separate questions. However, all of these concerns are addressed in our discussion.

8. Second, NYSEG-RGE argues that the April 2006 Order disregarded the NYISO stakeholder process by establishing a permanent VSS rate without first ordering NYISO to develop such a rate through its stakeholder process.

9. Third, NYSEG-RGE argues that the Commission erred by establishing a permanent VSS rate without first providing affected parties with notice and an opportunity for comment. NYSEG-RGE argues that this violates its due process rights.

Commission Conclusion

10. First, NYSEG-RGE's argument, that the Commission reached its decision deleting the sunset provision in Rate Schedule 2 without reviewing any cost support for the rate, is untrue. It is true that NYISO's March 3, 2006 rate filing -- asking the Commission to delete the sunset provision in the VSS rate and to replace it with a revised sunset provision -- did not include cost support. However, when NYISO filed the VSS rate with the Commission for approval in 2002, its application was accompanied by full cost support. The Commission's decision in 2002 to accept NYISO's rate methodology and allow this rate to go into effect relied on this cost support.⁵ Moreover, the Commission relied on this previously provided cost support when it found in the April 2006 Order that the VSS rate, absent the sunset provision, is just, reasonable, not unduly discriminatory or preferential and in the public interest.⁶

11. The Commission clarifies that it did not establish the VSS rate in the April 2006 Order. The current rate has been in place since 2002 and, when established in 2002, was based on full cost support that fully justified the Commission's accepting NYISO's proposed rate. The mere passage of time does not, by itself, invalidate the rate established in 2002. Over the years, numerous rates for various public utilities have been approved by the Commission and found to be just and reasonable, which have remained in effect for more than four years. The April 2006 Order did not tamper with NYISO's pre-existing VSS rate. Instead, it granted NYISO's request to remove the sunset provision that each year created a serious recurring problem when the rate was due to expire.

⁵See unpublished letter order dated February 5, 2002, in Docket No. ER02-617-000.

⁶See NYISO application for tariff amendments (and supporting exhibits 1-4), submitted at Docket No. ER02-617-000 on December 27, 2001.

12. Second, NYSEG-RGE's argument, that the April 2006 Order disregarded the NYISO stakeholder process, is also untrue. For the past four years, the NYISO stakeholders were content to renew this rate, but year after year were unable to agree on a replacement rate. For NYSEG-RGE to now argue that the NYISO stakeholder process would resolve this problem, if left to its own devices, simply ignores the reality that the stakeholders have been unable to reach consensus on this issue for the past four years.

13. Additionally, the NYSEG-RGE rehearing request suggests that there may be other problems with the VSS rate, noting that it is based on average costs. However, the mere mention by NYSEG-RGE of these concerns does not, by itself, invalidate the existing rate. Nor has the Commission left NYSEG-RGE without a remedy. If NYSEG-RGE has reason to believe that circumstances have changed since 2002, and the VSS rate no longer accurately reflects costs, then it may file a complaint, under section 206 of the FPA, challenging the rate. Moreover, although the Commission did not accept NYISO's proposal tying the expiration of the VSS rate to the preparation of a study and report from a consultant and for NYISO to file this report in lieu of making a section 205 rate filing, NYISO and its stakeholders may hire a consultant to prepare a study of the VSS rate and file an application with the Commission, under section 205 of the FPA, for a revised VSS rate with full cost support, based on the results of such study.

14. Third, as to NYSEG-RGE's argument, that due process required the Commission to provide affected parties with notice and an opportunity to comment before issuing the April 2006 Order, we find that this argument overlooks the fact that the Commission provided notice of NYISO's March 3, 2006 rate filing and gave interested persons an opportunity to be heard on this filing.⁷ NYISO's filing specifically asked the Commission to delete the current sunset provision for the VSS rate and to replace that sunset provision with a revised sunset provision. The Commission responded to this proposal by granting NYISO's request to remove the existing sunset provision, but denied NYISO's request to replace it with a modified sunset provision. The Commission was presented with a proposal to delete NYISO's existing VSS sunset provision, gave public notice of that filing, and took action granting the request, after consideration of the intervenors' comments.⁸ We find that these actions satisfied due process requirements,

⁷ Notice of NYISO's March 3, 2006 rate filing was published in the *Federal Register*, 71 *Fed. Reg.* 12,349 (2006), and informed interested parties about NYISO's proposal, and the fact that they could file interventions or protests addressing that filing on or before March 13, 2006.

⁸ April 2006 Order at P 22-28.

and we reject NYSEG-RGE's argument that the Commission was required to provide an additional notice and opportunity to comment before acting on NYISO's application or that the Commission's action violated due process.

15. Additionally, the revised tariff sheet submitted by NYISO in its compliance filing eliminates: 1) the reference to a study to have been conducted by an independent consultant; 2) the reference to retroactive adjustments to payments made under Rate Schedule 2 in the event that the revised rate methodology was made retroactive to January 1, 2006; and 3) the sunset provision from Rate Schedule 2. The revised tariff sheet submitted by NYISO in its compliance filing is accepted for filing, effective April 5, 2006.

The Commission orders:

(A) NYSEG-RGE's request for rehearing of the April 2006 Order is hereby denied, as discussed in the body of this order.

(B) NYISO's April 18, 2006 compliance filing is hereby accepted for filing, as discussed in the body of this order.

By the Commission.

Magalie R. Salas,
Secretary.