

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

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

New York Independent System
Operator, Inc.

Docket No. ER07-590-000

ORDER GRANTING WAIVER AND CONDITIONALLY GRANTING REQUEST TO
CONTINUE EXISTING METHODOLOGY

(Issued May 3, 2007)

1. In this order, we grant the February 23, 2007 request of the New York Independent System Operator, Inc. (NYISO) for waiver of certain provisions of its Market Administration and Control Area Services Tariff (Services Tariff) to the extent that the Services Tariff would require NYISO to correct the settlements for a small number of Bid Production Cost Guarantee (Guarantee) payments for certain generators. In addition, the Commission conditionally grants NYISO's request to continue to use its existing methodology to correct Guarantee payments, and clarifies what reports NYISO should file in the future.

Background

2. Under Attachment H to NYISO's Services Tariff, generators' bids into the Real-Time Market are used to commit units and determine whether they should receive Guarantee payments for a given operating day. On November 8, 2005, NYISO submitted a report to the Commission in Docket No. ER06-185-000 informing the Commission that it had discovered that it had made errors in computing Guarantees going back to June 1, 2002. These errors occurred while NYISO was implementing the new mitigation measures provisions in its Services Tariff.

3. In brief, certain aspects of mitigation implementation did not conform to the applicable tariff requirements as they were changed from time to time. According to NYISO, the implementation errors for the most part affected Guarantee compensation of certain units in the New York City zone, which has been designated as a Constrained Area for market mitigation purposes. NYISO proposed to correct certain specific

Guarantee errors consistent with its filed rate in effect at the time of the errors through the use of computer software programs that it was phasing in to fix the errors and to make the settlement corrections through the adjustment of outstanding bills. However, NYISO explained that while certain mitigation errors also affected locational-based marginal prices (LBMPs), the precise effects of such errors are difficult, if not impossible, to quantify. Therefore, NYISO did not propose to correct mitigation errors for LBMPs and asked for confirmation that section 4.2.2(d) of its tariff does not permit recomputation of LBMPs. Finally, NYISO requested waiver of any provisions of its tariff which could be interpreted as requiring the correction of LBMPs.

4. In an order issued on April 7, 2006,¹ the Commission granted NYISO a tariff waiver “to the extent necessary” to make the stated settlement corrections and billing adjustments to Guarantee calculations and compensation, but not LBMPs, for the period from June 1, 2002, through January 31, 2005. The Commission also granted NYISO authority to correct errors in its computation of Guarantees, but not LBMPs, for the period from February 1, 2005, through April 7, 2006, for which NYISO had not yet determined the net settlement charges for generation, subject to the condition that NYISO provide the Commission with details of the settlement corrections.

5. On November 3, 2006,² the Commission accepted NYISO’s September 5, 2006 filing to comply with the April 7, 2006 Order. The November 3, 2006 Order accepted NYISO’s February 2005 Guarantees and its description of the methodology approved in the April 7, 2006 Order for correcting the Guarantees from February 1, 2005, through April 7, 2006, along with a confidential summary of the bill corrections for each affected generator. Among other things, NYISO clarified that it would use what it styled as its Real-Time Guarantee Payment impact test (RTGP Test) program to evaluate and correct past Guarantee mitigation until its “going-forward RTGP Test” is in place.³ NYISO explained that it planned to implement its going-forward RTGP Test in two phases: first, a RTGP Test expected to mitigate appropriately so long as conduct tests are available in NYISO’s Market Information System (over 98.8 percent of the time), and second, to address the rare instances in which conduct tests are not accessible due to planned

¹ NYISO, 115 FERC ¶ 61,026 (2006) (April 7, 2006 Order).

² NYISO, 117 FERC ¶ 61,164 (2006) (November 3, 2006 Order).

³ In its September 5, 2006 filing, at 10, NYISO explained that the going-forward RTGP Test differs from the RTGP Test being applied to the historical period in two ways: (1) when data is provided to the going-forward RTGP Test for processing (hour-by-hour for the entire market day for processing at the close of each market day), and (2) the going-forward test will be applied to all generators in New York State, not just in-City units.

maintenance or unplanned outages. The November 3, 2006 Order clarified that the April 7, 2006 Order did not authorize any revisions to Guarantees for transactions after the date of issuance of the April 6, 2006 Order.⁴ The November 3, 2006 Order also granted NYISO's request for "waiver" to forego mitigation measures applicable to a very small number of bids that were not conduct-tested by the RTGP Test because data from NYISO's Market Information System was not available due to planned maintenance or unplanned outages and such data would have to be reconstructed from original or potentially imperfect sources at significant burden and expense.⁵

6. On December 28, 2006,⁶ the Commission denied requests for clarification or rehearing of the November 3, 2006 Order, but granted NYISO's request for additional time to complete corrections to its Guarantees, conditioned on NYISO filing an informational report with the Commission on or before February 1, 2007, setting forth a specific timetable for completing all tasks associated with completing the computation and implementing the billing corrections. NYISO filed the required informational report on February 1, 2007. On March 15, 2007, the Commission accepted various compliance filings and denied a protest that the Guarantees should not be revised, reasoning that the protest was not challenging the correctness of the revised Guarantees.⁷

NYISO's February 23, 2007 Filing

7. On February 23, 2007, NYISO filed a request for limited waiver and what it states is for Commission guidance. Although it does not identify which tariff provisions it is referring to, NYISO states that it requests a limited waiver of its tariff provisions that would require it to correct Guarantee payments of a small number of In-City⁸ generators when certain hourly conduct test results necessary to accurately perform the RTGP Test cannot be retrieved without unwarranted difficulty. NYISO states that it is requesting this limited tariff waiver on the same grounds as in its September 5, 2006 filing, which the Commission granted in its November 3, 2006 Order. NYISO requests this waiver for the period from April 8, 2006, to not later than October 31, 2007, when NYISO expects the software necessary to retrieve the needed data will be implemented.

⁴ *Id.*, at P 7, note 7.

⁵ *Id.* at P 5.

⁶ *NYISO*, 117 FERC ¶ 61,349 (2006) (December 28, 2006 Order).

⁷ *NYISO*, 118 FERC ¶ 61,201 (March 2007 Order). Docket Nos. ER06-185-003, ER06-185-004 and ER06-185-006.

⁸ "In-City" refers to generators located electrically within New York City.

8. NYISO also requests Commission guidance regarding implementation of Guarantee mitigation mandated by the Commission in the November 3, 2006 Order. NYISO states that certain generators' re-hashing of old, and defeated, arguments threatens to delay the stakeholder process, and could result in unnecessary proceedings at the Commission as NYISO goes forward with bringing Guarantee payments into compliance with the Services Tariff. NYISO therefore requests that the Commission provide guidance for the stakeholder process by confirming NYISO's approach to Guarantee mitigation, and specifically confirming that it is appropriate, and consistent with the Commission's holdings, for NYISO to: (1) continue to correct Guarantee payments from April 8, 2006 to the date NYISO implements its going-forward RTGP Test; and (2) use the correction methodology previously approved by the Commission for the period from February 1, 2005 to April 7, 2006, subject to Commission approval of NYISO's limited tariff waiver request in this filing. Finally, NYISO requests Commission guidance on whether the Commission wishes NYISO to continue to file reports on the details of the corrections as was done in the Privileged and Confidential Attachment B to NYISO's September 5, 2006 filing in Docket No. ER06-185-002 (September 5, 2006 Filing).

Notice of Filing and Responsive Pleadings

9. Notice of the filing was issued March 6, 2007, with interventions and protests due on or before March 16, 2007. Astoria Generating Company, L.P. (Astoria) filed a motion to intervene and protest. On April 19, 2007, NYISO filed an answer to Astoria's protest. KeySpan-Ravenswood, LLC filed a motion to intervene out-of-time.

Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notice of intervention and timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, we will grant the late-filed motion to intervene, given the party's interest in this proceeding and the absence of any undue prejudice and delay.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept NYISO's answer, because it has provided information that assisted us in our decision-making process.

B. NYISO's Waiver Request

12. In its filing, NYISO states that a very small number of bids were not conducted by the RTGP Test because NYISO's Market Information System (MIS) was not available due to planned maintenance or an unplanned outage. NYISO seeks a limited tariff waiver, covering the period from April 8, 2006 to not later than October 31, 2007, to avoid the burden and expense of correcting the settlement data. NYISO states that it is in the final stages of designing, and intends to undertake an effort to code and deploy, a software fix to address hours in which conduct test results are missing from its MIS prior to the peak summer 2007 period. While NYISO states that it is unable to guarantee that it will be able to deploy the necessary software fix prior to October 2007, NYISO notes that it is possible that NYISO will be able to successfully deploy the fix prior to the peak summer season, and NYISO commits to informing the Commission as soon as the necessary software is deployed.

13. We will grant NYISO's request to for waiver to the extent necessary to permit it to forego correcting the specified settlement data when it corrects the Guarantee payments from April 8, 2006, to the earlier of October 31, 2007, or the date it implements a going-forward RTGP Test.⁹ We agree with NYISO that the burden associated with replicating the missing data for the small number of bids involved would be excessive.

C. NYISO's Request for Guidance

14. NYISO states that as of January 17, 2007 it has had the capability of implementing a going-forward RTGP Test that would determine Guarantee impact in the Real-Time market after the close of the market day (because Guarantee payments are paid over 24 hours) but prior to the posting of advisory bills in Decision Support System (DSS). NYISO states that preliminary mitigation results would usually be posted at the same time that advisory bills are made available to affected generators who could consult with NYISOs' Market Monitoring and Performance Unit regarding the mitigation. NYISO believes that the RTGP Test that is available for immediate implementation is tariff compliant, but for the missing conduct test results which are the subject of the waiver request. However, NYISO states that it has not implemented the going-forward RTGP Test because of concerns raised by its Market Participants, who cite Ordering Paragraph (C) of the November 3, 2006 Order, which states:

⁹ In the November 3, 2006 Order the Commission imposed an April 7, 2006 deadline for Guarantee corrections because NYISO had sought a "limited waiver" but had provided no information as to how long that "limited waiver" was to remain in effect. In this filing, NYISO has asked for an extension of that same "limited" waiver, and given a deadline of October 31, 2007, for the extension of the waiver. Additionally, NYISO has stated that it will deploy the necessary software as soon as possible, and inform the Commission as to the implementation.

NYISO is hereby directed to engage in further discussions with its stakeholders, commencing no later than sixty days from the date of issuance of this order [November 3, 2006 Order], to refine the RTGP Test and consider the issues raised by the protesters in this proceeding. When these discussions are complete, NYISO shall provide an informational report to the Commission on its progress or lack of progress in reaching a consensus on these issues.

15. NYISO states that its going-forward RTGP Test is presently the subject of ongoing discussions with its Market Participants, and the completion of the stakeholder process and submission of the requisite informational filing with the Commission may be possible late in the first quarter or early second quarter of 2007. However, NYISO asserts that certain Market Participants have argued that the November 3, 2006 Order precludes NYISO from applying the mitigation methodology it used to correct Guarantee payments from February 1, 2005, to April 7, 2006, to correct Guarantee payments from April 8, 2006, to the date it implements its going-forward RTGP mitigation methodology. NYISO states that it believes that the Commission already determined that its methodology is appropriate and necessary to comply with NYISO's filed rate. NYISO states that it proposes to use the same method to correct Guarantee payments from April 8, 2006, to the date that the going-forward RTGP Test is implemented, and NYISO goes on to state that it is unable to conceive of an alternate method for correcting past Guarantee payments to reflect tariff required mitigation that would satisfy the generators' concerns.

16. NYISO states that this re-plowing of old ground threatens to delay the stakeholder process mandated by the Commission, and could engender unnecessary proceedings at the Commission. Therefore, NYISO requests the Commission provide its guidance for the ongoing stakeholder process by confirming the NYISO's approach to Guarantee mitigation, and specifically confirming that it is appropriate, and consistent with the Commission's holdings, for NYISO to: (1) continue to correct Guarantee payments from April 8, 2006, to the date NYISO implements its going-forward RTGP Test, and (2) use the correction methodology previously approved by the Commission for the period from February 1, 2005, to April 7, 2006, subject to Commission approval of the limited tariff waiver requested in the subject filing.

17. Finally, NYISO requests guidance on whether the Commission wishes NYISO to continue to file reports on the details of the corrections as was done in the privileged and confidential Attachment B to the September 5 filing in Docket No. ER06-185-002.

18. Astoria protests NYISO's proposal to extend its use of the RTGP Test until it can implement its going-forward RTGP Test. Astoria observes that in the November 3, 2006 Order, the Commission allowed NYISO to use the RTGP Test to revise Guarantees for the period February 2005 through April 7, 2006. Astoria states that, despite the concerns of the Market Participants that bids must not continue to be subject to mitigation for an

extended period of time, NYISO proposes to continue to expose suppliers to mitigation risk for the full period of time until settlements become final, at least nine months.

19. Astoria requests that the Commission require NYISO to adopt the following interim process: (1) NYISO must notify a Market Participant within two business days after the DSS results are issued that its bids are subject to potential mitigation; (2) NYISO must provide the Market Participant with thirty days to provide additional information concerning its bids; and (3) upon receipt of information from the Market Participant, NYISO must notify the Market Participant within thirty days whether mitigation has been applied to its bids, and, if so, the basis for such mitigation.

20. In its answer, NYISO states that it interprets Astoria's proposal as asking the Commission to instruct NYISO to implement its proposed going-forward RTGP Test using a modified timeline, on an interim basis. NYISO explains that although it supports and agrees with Astoria's proposal, it is not yet able to comply with Astoria's specific timeline. NYISO states that it expects to file tariff revisions later this year to clarify areas that are of concern to the generation sector market participants. NYISO states that it has incorporated many of the generation sector's suggestions into the proposed tariff revisions that will be voted on at the Business Issues Committee on April 20, 2007.

21. The Commission finds that neither Astoria, nor any Market Participant, has made any attempt to challenge whether the methodology NYISO employed for the period February 1, 2005, to April 6, 2006, was incorrect in calculating the appropriate Guarantee payments for that period. The Commission reaffirms its decision in the previous orders discussed in the background section of this order, where we found that NYISO failed to compute Guarantee compensation in accordance with the filed rate schedule's rates, terms, and conditions due to software implementation errors. Thus, rates are not being changed retroactively, but rather NYISO is attempting to ensure that final bills, as far as possible, conform to its filed rate schedules.

22. The Commission finds nothing in NYISO's tariff that states that mitigations must be finalized within a certain time frame prior to the end of the final billing cycle. NYISO has not attempted to mitigate Guarantees to a standard that was not in effect at the time the bids were submitted. Neither does Astoria make any attempt to claim that its bids have been mitigated in any manner inconsistent with NYISO's Services Tariff, or NYISO's Market Mitigation Measures contained therein. The Commission notes that since the beginning of the proceedings in Docket No. ER06-185-000, *et al.*, NYISO appears to be improving its mitigation process as it has reduced its billing cycle for issuing final bills from 19 months to 10 months.

23. Finally, the Commission will not require NYISO to implement Astoria's proposed timeline, as NYISO's response indicates that NYISO cannot at this time comply with the proposed timeline. Additionally, we find Astoria's proposal to be beyond the scope of

this proceeding, which merely allows the continuation of a correction process for Guarantees while encouraging NYISO and its market participants to continue their stakeholder process to resolve any issues regarding the implementation of the going-forward RTGP test.

24. Accordingly, the Commission grants NYISO's request for guidance, with modification, and will allow NYISO to continue to correct its Guarantee payments from April 8, 2007 to October 31, 2007, or the date NYISO implements its going-forward RTGP Test, whichever comes first (so that the process is not open-ended), and use the correction methodology previously approved by the Commission for the period from February 1, 2005 to April 7, 2006. As to NYISO's request about filing reports on the details of the corrections, as reflected in the privileged and confidential attachment B to the September 5, 2006 Filing, the Commission will continue to require NYISO to file the information required by the April 7, 2006 Order. As noted in the March 2007 Order, NYISO is already required by its Services Tariff to make this information public, absent the names of the bidders, six months after the bids are submitted. If the six months has elapsed before NYISO makes its filing with the Commission, there is no basis for it to request confidential treatment for any of the information required to be publicly disclosed by its tariff. We trust that NYISO will comply with its tariff and make this information available to the public. The Commission has not required NYISO to file the names of the bidders, and in future filings the Commission will not require the names of bidders, so that, if NYISO files the information six months after the bids, protective status will be unnecessary.

25. The Commission urges the Market Participants to work with NYISO to develop solutions to the problems they have with NYISO's going-forward RTGP Test. If NYISO and its Market Participants find themselves at a standstill, NYISO should file its going-forward RTGP Test with the Commission.

The Commission orders:

- (A) NYISO's waiver request is granted, as discussed in the body of this order.
- (B) The Commission will allow NYISO to continue to use the correction methodology of its RTGP Test to correct the guarantee payments from April 8, 2006,

until October 31, 2007, or the implementation of NYISO's going-forward RTGP Test, whichever is first.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.