

131 FERC ¶ 61,064  
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. ER10-119-000

ORDER ACCEPTING TARIFF SHEETS SUBJECT TO CONDITION

(Issued April 23, 2010)

1. On October 27, 2009, New York Independent System Operator, Inc. (NYISO) submitted a filing in accordance with section 205 of the Federal Power Act and Part 35 of the Commission's regulations to revise section 4.1.6 of its Market Administration and Control Area Services Tariff (Services Tariff)<sup>1</sup> to clarify, *inter alia*, that customers that violate the Commission's rules against electric energy market manipulation also violate the Services Tariff and to provide for notification of such market manipulation. NYISO proposes a December 27, 2009 effective date. We accept NYISO's filing effective December 27, 2009, subject to NYISO submitting a compliance filing within 30 days of the date of this order, as discussed below.

**I. Background**

2. On October 27, 2009, NYISO filed tariff sheets to revise section 4.1.6 of its Services Tariff. Public notice of NYISO's October 27, 2009 filing was issued on October 29, 2009, with comments due by November 17, 2009. Pursuant to Rule 214,<sup>2</sup> all timely filed motions to intervene and any motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late interventions at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

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<sup>1</sup> New York Independent System Operator, Inc., FERC Electric Tariff, Original Volume No. 2, Fifth Revised Sheet No. 87.01 and Original Sheet No. 87.01a.

<sup>2</sup> 18 C.F.R. § 385.214 (2009).

Motions to intervene and comments in support were filed by the New York Transmission Owners<sup>3</sup> and Multiple Intervenors.<sup>4</sup>

3. On December 23, 2009, the Acting Director of the Division of Electric Power Regulation – East, acting under delegated authority, issued a deficiency letter (Deficiency Letter) seeking additional information relating to NYISO’s October 27, 2009 filing. In the Deficiency Letter the Commission directed NYISO to provide additional information regarding the purpose and necessity of the revised language in sections 4.1.6a1., 4.1.6a2., and 4.1.6a3.

4. On February 22, 2010, NYISO filed its response to the Deficiency Letter. Public notice of NYISO’s response to the Deficiency Letter was issued on March 12, 2010, with interventions and protests due on or before March 22, 2010. No protests were filed.

## **II. Details of NYISO’s October 27, 2009 Filing**

5. In its October 27, 2009 filing, NYISO proposes to amend section 4.1.6 of its Services Tariff to create a new subsection 4.1.6a, “Customer Compliance with Laws, Regulations and Orders.” NYISO proposes to move what currently is the last sentence of section 4.1.6, which states: “All customers shall comply with all applicable federal, state and local laws, regulations and orders, including orders from the ISO.” to be the first sentence of the new subsection 4.1.6a. NYISO also proposes to add three explanatory provisions to the new subsection. Proposed section 4.1.6a1. provides that if the Commission or a court of competent jurisdiction determines there has been a violation of the Commission’s regulations related to electric energy market manipulation (18 C.F.R. section 1c.2 or any successor provision thereto), such violation is also a violation of the Services Tariff if the violation affects or is related to the ISO Administered Markets.<sup>5</sup>

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<sup>3</sup> The New York Transmission Owners include: 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 d/b/a National Grid; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation.

<sup>4</sup> Multiple Intervenors is an unincorporated association of approximately 45 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State that participates in NYISO’s stakeholder committees.

<sup>5</sup> The ISO Administered Markets are defined in section 2.81 of the Services Tariff as: “[t]he Day-Ahead Market and the Real-Time Market (collectively the “LBMP Markets”) and any other market or auction administered by the ISO.” New York Independent System Operator, Inc., FERC Electric Tariff Original, Volume No. 2, Fifth Revised Sheet No. 44.

NYISO states that this specifies the scope of the concern the new subsection is designed to address and singles out one particular aspect of the Customer compliance obligation (market manipulation).

6. Proposed section 4.1.6a2. states that if NYISO becomes aware that a Customer may be engaging in, or might have engaged in, electric energy market manipulation, it shall promptly inform its Market Monitoring Unit (MMU). NYISO states that the MMU's obligation to, in turn, inform the Commission is set forth in the Commission's Market Monitoring Policy Statement, Commission Order No. 719,<sup>6</sup> and/or in proposed section 4.5.3 of NYISO's Market Monitoring Plan.<sup>7</sup> Proposed section 4.1.6a2. further states that NYISO retains the discretion to inform the Commission of any potential electric energy market manipulation it identifies and that, if NYISO informs the Commission's Office of Enforcement (OE), NYISO shall request that the Commission determine whether a violation has occurred and, if so, that the Commission impose appropriate remedies. NYISO explains that this provision allows NYISO staff to present a concern directly to OE without being required to wait for action by the MMU when a violation appears clear and the facts warrant direct and immediate action.

7. Finally, proposed section 4.1.6a3. provides that section 4.1.6a does not independently empower NYISO or its MMU to impose penalties for or provide a remedy for violations of the Commission's prohibition against electric energy market manipulation or for violations of NYISO's tariffs. NYISO states that this provision explains that the proposed provisions do not (and cannot) authorize NYISO to determine when a violation of the Commission's regulations prohibiting electric energy market manipulation has occurred. Further, NYISO states that the proposed revisions do not

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<sup>6</sup> *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 Fed. Reg. 64100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008) (Order No. 719).

<sup>7</sup> On May 15, 2009, NYISO submitted proposed revisions to its Market Monitoring Plan to the Commission in a compliance filing pursuant to Order No. 719 in Docket No. ER09-1142-000. On November 20, 2009, the Commission accepted NYISO's compliance filing in Docket No. ER09-1142-000, subject to a further compliance filing to be filed within 90 days. *New York Independent System Operator, Inc.*, 129 FERC ¶ 61,164 (2009) (November 20, 2009 Order). In the November 20, 2009 Order, the Commission required NYISO to modify section 4.5.3 of NYISO's Market Monitoring Plan, Statement O to its Services Tariff, which provides that the MMU will notify Commission staff of behavior that may require investigation including suspected Market Violations, to remove a proposed modification that would have exempted certain matters from referral to the Commission. 129 FERC ¶ 61,164 at P 98.

grant NYISO any additional authority to remedy such violations, and except to the extent specified in NYISO's tariffs, remedial authority rests with the Commission.

8. NYISO states that stakeholder comments and proposals were received, considered, discussed, and, where appropriate, incorporated into the proposed tariff revisions at Market Issues Working Group meetings held on November 3, 2008, February 6, 2009, and May 12, 2009. NYISO also states that the issue was presented and discussed at the Business Issues Committee meeting on August 12, 2009 and Management Committee meeting on August 26, 2009, after which the Management Committee voted in support of the proposed revisions. NYISO represents that its Board of Directors approved the proposed revisions on October 19, 2009. NYISO states that various compromises were made in formulating the final version of the proposed tariff language to satisfy the wide array of stakeholder concerns.

### **III. NYISO's Deficiency Letter Response**

9. NYISO states in its response to the Deficiency Letter that in general, its proposed amendments are intended to give current and future users of NYISO's Tariffs a clear understanding that violations of the Commission's regulations prohibiting electric energy market manipulation also violate NYISO's Tariffs. NYISO also states that its proposed amendments clarify the scope of the NYISO's authority to address market manipulation and the process NYISO will use to report potential electric energy market manipulation to the Commission.

10. More specifically, NYISO states that the purpose of proposed section 4.1.6a1. is to clarify an existing broadly worded provision of NYISO's Services Tariff. NYISO states that its revision clarifies that: (1) compliance with the Commission's rules prohibiting electric energy market manipulation falls within the phrase "[a]ll Customers shall comply with all federal, state and local laws, regulations and orders..."; (2) NYISO has an obligation to and will report potential electric energy market manipulation to NYISO's MMU; and (3) while NYISO is required to report possible market manipulation, it is up to the Commission to determine if and how to remedy a violation. NYISO states that clarification of NYISO's lack of legal authority to remedy violations of the Commission's regulations is necessary because some entities have expressed an inaccurate belief that NYISO is or should be responsible for remedying actions that constitute electric energy market manipulation under the Commission's regulations.

11. NYISO states that it singled out violations of market manipulation regulations in proposed section 4.1.6a1. because Market Participants were concerned that NYISO needed to specifically and explicitly address the relationship between the Commission's electric market manipulation rules and its Tariffs. NYISO states that the proposed revisions clarify that compliance with the Commission's regulations prohibiting electric energy market manipulation is, unequivocally, a condition of taking service under

NYISO's Tariffs. Finally, NYISO states that it would not be opposed to adding a separate statement that all customer violations of the Commission's orders, rules and regulations also violate section 4.1.6a of the Services Tariff.

12. NYISO states that the purpose of proposed section 4.1.6a2. is to explicitly state what NYISO will do if it identifies potential electric energy market manipulation. NYISO states that proposed section 4.1.6a2. singles out violations of market manipulation regulations because NYISO's market monitoring efforts are limited to the obligations set forth in its Tariffs and neither NYISO nor its MMU are equipped or have an obligation to monitor Customer compliance with all applicable Commission orders, rules and regulations. NYISO states that the purpose of the statement in proposed section 4.1.6a2. that NYISO retains the discretion to inform the Commission directly of any potential electric energy market manipulation is to clarify that when NYISO does not feel it is appropriate to wait for its MMU to act, NYISO may report a concern it has identified directly to OE. NYISO asserts that nothing prohibits it from reporting directly to the Commission, and that in general, NYISO will inform the Commission directly if the potential harm appears to be material and immediate Commission action appears necessary to prevent or limit the harm. NYISO states that it does not anticipate that it will detect violations before its MMU does, but that the potential exists for NYISO staff to identify market manipulation before the MMU where it impacts NYISO's discrete, independent tariff administration duties.

13. NYISO states that the purpose of the statement in proposed section 4.1.6a2. that if NYISO informs OE of a potential violation, it shall request that the Commission determine whether a violation has occurred and if so, that the Commission impose appropriate remedies, is to codify NYISO's intent to request a definitive decision from the Commission or its staff and, where appropriate, to seek relief from the Commission. NYISO states that its stakeholders requested this language to ensure that NYISO would include a clear request for action when it provides OE with information.

14. Finally, NYISO states that the purpose of proposed section 4.1.6a3. is to clearly state that the scope of NYISO's authority to remedy electric energy market manipulation is strictly limited to the authority that the Commission has granted NYISO in its Tariffs, and that determining whether electric energy manipulation has occurred and providing appropriate remedies are solely the Commission's responsibility as a matter of law.

#### **IV. Discussion**

15. We find NYISO's proposed section 4.1.6a to be reasonable, with the following exceptions, and therefore we will accept the filing subject to condition.

16. In its response to the Deficiency Letter regarding proposed section 4.1.6a1., NYISO offered to add a sentence clarifying that all customer violations of the

Commission's orders, rules and regulations also violate section 4.1.6a of the Services Tariff. We find that this statement clarifies the proposed tariff revisions, and we therefore direct NYISO to include it.

17. The first sentence of proposed section 4.1.6a2. states that if the NYISO becomes aware that a Customer may be engaging in, or might have engaged in, electric energy market manipulation it shall promptly inform its MMU. Although this provision is acceptable, we reject the second sentence of proposed section 4.1.6a2., which states "The ISO retains the discretion, as it deems appropriate, to inform FERC of any potential electric energy market manipulation it identifies." The proposed second sentence, as written, appears to leave open the possibility of the MMU or NYISO staff deciding not to inform the Commission of potential electric energy market manipulation that NYISO has identified. Such discretion is not allowed. While some activities may, with Commission approval, be sanctioned by NYISO without referral to the Commission, market manipulation does not fall within that category. Furthermore, in the November 20, 2009 Order, the Commission stressed the importance of NYISO's tariff provision providing that the MMU will notify staff of suspected Market Violations in assuring that the Commission is aware of potential Market Violations<sup>8</sup> in a timely fashion.<sup>9</sup> Therefore, if NYISO observes suspected market manipulation, it should inform its MMU of the activity for referral to OE. If, however, NYISO believes the MMU has failed to refer activity which in its opinion should have been referred, NYISO should bring the matter to OE's attention. Moreover, as NYISO observes, nothing prohibits it from reporting potential electric energy market manipulation directly to the Commission. NYISO does not need a specific tariff provision to directly report to the Commission any potential electric energy market manipulation it identifies. NYISO also must comply with the first sentence of this provision and promptly inform its MMU as well.

18. In addition, we reject the third sentence of proposed section 4.1.6a2., which states "If the ISO informs the FERC's Office of Enforcement, it shall request that FERC determine whether a violation has occurred and, if so, that FERC impose appropriate remedies." While the NYISO can request that FERC make determinations and impose

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<sup>8</sup> NYISO's Market Monitoring Plan defines "Market Violation" as:

(i) a tariff violation, (ii) violation of a Commission-accepted or approved order, rule or regulation including, but not limited to, violations of FERC's Market Behavior Rules, 18 C.F.R. Section 35.41, or any successor provisions thereto, (iii) market manipulation (see 18 C.F.R. Section 1c.2, or any successor provision thereto), or (iv) inappropriate dispatch that creates substantial concerns regarding unnecessary market inefficiencies. NYISO Services Tariff, Attachment O, § 2.9.

<sup>9</sup> *New York Independent System Operator, Inc.*, 129 FERC ¶ 61,164 (2009), at P 98.

appropriate penalties, the NYISO cannot expect the FERC to release to the NYISO (or to any other member of the public) any information about its investigations, including whether an investigation is ongoing, except under certain circumstances. In the absence of a settlement, show cause order, notice of violation, or other appropriate Commission action, OE cannot without authorization or direction from the Commission provide the public (including the NYISO) a determination of whether or not a violation has occurred or an investigation has been initiated because its investigations are non-public under 18 C.F.R. § 1b (2009), unless the Commission orders otherwise. Nevertheless, as noted above, we clarify that nothing prevents NYISO from directly reporting potential electric energy market manipulation to the Commission. NYISO also must comply with the first sentence of this provision and promptly inform its MMU as well; however, it is up to the Commission on how to proceed, for instance, to determine whether to conduct an investigation, whether a violation has occurred, and how to remedy a violation.

19. Accordingly, we accept NYISO's filing effective December 27, 2009, conditioned upon NYISO filing, within 30 days of the date of this order, revised tariff sheets reflecting the addition to proposed section 4.1.6.a1. of the sentence discussed above and removal of the last two sentences of proposed section 4.1.6a2.

The Commission orders:

The revised tariff sheets are accepted effective December 27, 2009 subject to NYISO making a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.