

144 FERC ¶ 61,147
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 22, 2013

In Reply Refer To:
New York Independent System
Operator, Inc.
Docket No. ER13-2016-000

Mollie Lampi
Alex M. Schnell
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144

Dear Ms. Lampi and Mr. Schnell:

1. On July 23, 2013, New York Independent System Operator, Inc. (NYISO) requested a limited waiver of sections 23.3.3.3.1.1 and 23.3.3.3.1.2 of its Market Administration and Control Area Services Tariff (Services Tariff).¹ NYISO requests that the Commission waive the subject tariff requirements from June 26, 2013 to October 23, 2013, and permit NYISO to substitute alternative procedures for incorporating regulation capacity and regulation movement bids into its guarantee payment consultation and mitigation process during the waiver period. As discussed below, we grant the requested waiver for the time period requested.

2. NYISO states that the subject tariff sections require it to (a) determine whether the application of real-time guarantee payment (RTGP) is appropriate, (b) post settlement results that reflect the application of RTGP mitigation, and (c) provide notice to market parties of the effect that RTGP mitigation has on a market party's real-time Bid Production Cost Guarantee, within very tight time deadlines. Also, NYISO states that it relies on the RTGP mitigation software that it has developed to achieve these tariff-specified deadlines.

¹ Section 23 (Attachment H) of the Services Tariff sets forth the NYISO's Market Power Mitigation Measures.

3. In a May 31, 2013 order, the Commission conditionally accepted a NYISO filing that included, *inter alia*, market power mitigation measures addressing Regulation Movement and Regulation Capacity bids, to be effective no later than June 26, 2013.² NYISO states that it planned to manually implement RTGP mitigation of Regulation Movement and Regulation Capacity bids outside of its existing guarantee payment mitigation software until it was able to incorporate those bids and reference levels into its existing software. According to NYISO, it failed to recognize that the existing RTGP notification deadlines also apply to the new mitigation of Regulation Capacity and Regulation Movement bids. NYISO states that until these bids and reference levels are included and tested in the RTGP mitigation software, it is not possible for NYISO to determine the effect that conduct-failing Regulation Movement or Regulation Capacity bids have on guarantee payments, or reflect the application of RTGP mitigation of these bids in posted settlement results, or inform affected market parties within the timelines specified in the relevant tariff sections.

4. During the requested waiver period, NYISO proposes to employ an extended timeline to incorporate Regulation Capacity and Regulation Movement bids into its review of RGTP, and temporary, alternative screening and consultation measures: (a) to permit NYISO to manually screen real-time Regulation Capacity and Regulation Movement bids for the exercise of market power until the necessary software upgrades are completed; and (b) to provide market parties adequate time and opportunity to consult and explain the basis for conduct-failing real-time Regulation Capacity and/or Regulation Movement bids. Following an informal consultation process, if necessary, NYISO will manually perform the RTGP impact test, replacing all conduct-failing bids with reference levels to determine if an RTGP impact that exceeds the impact threshold specified in section 23.3.2.1(2) of the Services Tariff occurred. NYISO states that, if such impact is determined, it will manually adjust the market party's bill to reflect the change, inform the market party via e-mail of the mitigation and its impact on the market party's guarantee payment, and invite the market party to initiate a formal consultation. NYISO further states that following the application of mitigation, it will follow all of the consultation rules and requirements set forth in section 23.3.3.3 of its Services Tariff.³

² *New York Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,194 (2013).

³ NYISO states that it will treat the date that it informed the market party via e-mail of the RTGP mitigation and its impact on the market party's guarantee payment as the date on which electronic settlement results are posted. According to NYISO, this e-mail will also satisfy the notice obligation set forth in section 23.3.3.3.1.2 of the Services Tariff.

5. NYISO asserts that it acted in good faith to develop tariff rules and software to implement RTGP mitigation but neither NYISO, nor its Market Monitoring Unit, understood that the supplemental, manual review of Regulation Capacity and Regulation Movement bids for possible RTGP mitigation remains subject to the same deadlines that apply, more generally, to the application of RTGP mitigation. NYISO also asserts that the requested waiver is limited in scope because it applies to the finite period of June 26, 2013 to October 23, 2013, and it only applies to entities that are selected to provide regulation, that submit conduct-failing Regulation Capacity or Regulation Movement Bids, and that receive a Bid Production Cost Guarantee for the relevant Real-Time Market day. NYISO states that granting the waiver will remedy a concrete problem because, until NYISO is able to improve its RTGP software to incorporate Regulation Capacity and Regulation Movement Bids and reference levels into the conduct and RTGP impact tests, it will not be able to comply with the testing and notice deadlines set forth in sections 23.3.3.3.1.1 and 23.3.3.3.1.2 of its Services Tariff. Finally, NYISO states that the requested waiver will not have undesirable consequences, such as harming third parties. To the contrary, NYISO contends that granting the waiver will protect loads from possibly overpaying for Regulation Service, while ensuring that regulation providers have the opportunity to recover their costs of providing Regulation Service.

6. NYISO also states that it will implement the software improvements as soon as they are completed, tested, and deployed to production. NYISO will provide notice to the Commission and to its Market Participants at least one week prior to implementing the software improvements that are necessary to incorporate Regulation Capacity and Regulation Movement Bids and reference levels into the NYISO's RTGP mitigation software.

7. Notice of NYISO's filing was published in the *Federal Register*, 78 Fed. Reg. 46,934 (2013), with interventions and protests due on or before August 2, 2013. Beacon Power, LLC and the New York Transmission Owners⁴ (NYTOs) filed motions to intervene. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the unopposed motions to intervene serve to make the entities that filed them party to this proceeding. The NYTOs stated their support of NYISO's request.

8. The Commission has previously granted one-time waivers of tariffs in situations where: (1) the underlying error was made in good faith; (2) the waiver is of limited

⁴ Central Hudson Gas & Electric Corporation, Consolidated Energy 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.

scope; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.⁵

9. We find that NYISO has demonstrated good cause to grant the request for a tariff waiver because NYISO's requested waiver satisfies the aforementioned conditions. NYISO explains that its error in planning the implementation of RTGP mitigation of Regulation Movement and Capacity bids was made in good faith. NYISO's requested waiver is limited to the period of June 26, 2013 to October 23, 2013, and only applies to entities that are selected to provide regulation, that submit conduct-failing Regulation Capacity or Regulation Movement Bids, and that receive a Bid Production Cost Guarantee for the relevant Real-Time Market day. Further, NYISO cannot timely perform the RTGP tests and meet the tariff-specified deadlines with respect to the new RTGP mitigation without software improvements, thus the waiver, which adjusts the timeline and allows for manually performing the RTGP impact test, remedies a concrete problem. Moreover, as NYISO explains, this remedy prevents harm to loads in New York that might otherwise be required to pay Bid Production Cost Guarantee compensation that significantly exceed the costs of providing these services, while ensuring that regulation providers have the opportunity to recover their costs of providing regulation service. Thus, we conclude the requested waiver will not have undesirable consequences.

10. Accordingly, we grant NYISO's request for a limited tariff waiver effective June 26, 2013.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵ *New York Independent System Operator, Inc.*, 139 FERC ¶ 61,108, at P 14 (2012). See also, e.g., *PJM Interconnection, LLC*, 137 FERC ¶ 61,184, at P 13 (2011); *ISO-New England, Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *California Independent System Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010); *ISO New England Inc. - EnerNOC*, 122 FERC ¶ 61,297 (2008); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008).