

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. ER06-185-005

ORDER DENYING REHEARING, GRANTING EXTENSION OF TIME,
AND DIRECTING FURTHER FILING

(Issued December 28, 2006)

1. In this order, we deny the separate requests for clarification or rehearing filed by the NRG Companies¹ and by the New York Independent System Operator, Inc. (NYISO) in response to the Commission's order issued in this proceeding on November 3, 2006.² However, we also will grant NYISO's request for additional time to complete corrections to its Bid Production Cost Guarantee (BPCG) payments, 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.³

Background

2. On November 8, 2005, NYISO reported to the Commission, in Docket No. ER06-185-000, that it had discovered that it had made errors in computing Bid Production Cost Guarantees (Guarantees) going back to June 1, 2002. These errors occurred while NYISO was implementing the new mitigation measures provisions in its Market Administration and Control Area Services Tariff (Services Tariff).

¹ Comprised of NRG Power Marketing, Inc., Arthur Kill Power, LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Owego Harbor Power LLC.

² *New York Independent System Operator, Inc.*, 117 FERC ¶ 61,164 (2006) (November 2006 Order).

³ The November 2006 Order required NYISO to complete the BPCG corrections to customer bills by January 1, 2007.

3. On April 7, 2006, the Commission issued an order allowing NYISO to make settlement corrections and billing adjustments for the period from June 1, 2002 through January 31, 2005. For the period from February 2005 through April 7, 2006, for which NYISO had not yet determined the net settlement charges for generation, the Commission granted NYISO's request to: (1) correct errors in its computation of Guarantees; (2) implement the mitigation measures in its Services Tariff; and (3) not to recompute locational-based marginal prices (LBMPs).

4. In response to a subsequent NYISO filing outlining the method it proposed to use to correct the errors it made in its computation of Guarantee payments from February 2005 through April 7, 2006, and separate protests by Independent Power Producers of New York, Inc. and NRG Companies, the Commission issued the November 2006 Order: (1) allowing NYISO to use the real-time guarantee payment test (RTGP Test) to revise the Guarantees for February 2005 through April 2006 (to be completed by January 1, 2007) and (2) directing NYISO to work with its stakeholders to clarify the details of future RTGP Tests consistent with NYISO's Services Tariff.

5. NYISO's request for rehearing objects to the January 1, 2007 deadline for correcting the Guarantees, citing the need to consult with its stakeholders and enumerating the tasks it must complete before it can finally settle its bills. NYISO does not otherwise object to the Commission's findings. Thus, in substance, NYISO's request for rehearing is actually a request for a time extension.

6. NRG Companies filed a request for rehearing that supports NYISO's request for an extension and reiterating its argument, rejected in the April 2006 Order⁴ and in the November 2006 Order, objecting to NYISO correcting its billing and arguing (1) that any such payments properly should be characterized as refunds, rather than corrections, and (2) thus, would constitute retroactive ratemaking.

Discussion

A. NYISO's Request for a Time Extension

7. We are persuaded by NYISO's arguments, supported by NRG Companies, about the need for it to consult with stakeholders and thus find that an extension from the January 1, 2007 deadline is warranted. However, we will condition this extension on NYISO submitting an informational report, 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.

⁴ *New York Independent System Operator, Inc.*, 115 FERC ¶ 61,026 at P 45-48 (2006).

B. NRG's Request for Rehearing

8. NRG Companies' claim that NYISO's correction of billing errors would constitute retroactive mitigation was considered and rejected in both the April 2006 Order and the November 2006 Order.⁵ The request for rehearing adds nothing that warrants further discussion and we will not revisit this issue here.

The Commission orders:

(A) NYISO's request for an extension of time is hereby granted, conditioned on NYISO filing an informational report with the Commission on or before February 1, 2007, setting forth a specific timetable, as discussed in the body of this order.

(B) NRG Companies' request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁵ See 115 FERC ¶ 61,026 at P 45-48, 117 FERC ¶ 61,164 at P 14.