

122 FERC ¶ 61,119
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 8, 2008

In Reply Refer To:
New York Independent System Operator, Inc.
Docket No. ER08-321-000

Hunton & Williams LLP
Attn: William F. Young, Esq.
Counsel to New York Independent System Operator, Inc.
1900 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Young:

1. On December 10, 2007, the New York Independent System Operator, Inc. (NYISO) filed redacted¹ and unredacted versions of a report describing certain issues with the implementation of its Market Mitigation Measures (MMM) set forth in Attachment H to its Market Administration and Control Area Services Tariff (Tariff). The report summarizes the steps being taken to resolve those issues and requests that corrections be required only on an on-going basis when NYISO is able to implement appropriate revisions to its software or MMM. NYISO requests the Commission to grant Tariff waivers to the extent necessary to excuse its failure to satisfy certain requirements of the MMM and asks the Commission not to require retroactive revisions to market clearing prices or generator guarantee payments. NYISO also requests the Commission to order NYISO to temporarily switch all New York Control Area (NYCA) generators to cost-based start-up reference levels, so that the concerns can be discussed with all New York Market Participants and an acceptable solution can be developed within NYISO's governance process. The Commission grants NYISO's requests for Tariff waivers and to implement corrections on an ongoing, prospective basis, and instructs NYISO to switch all NYCA generators to cost-based start-up reference levels until December 1, 2008, and to distribute and file the redacted parts of its filing, as discussed below.

¹ NYISO requests temporary privileged treatment for the redacted parts of the report, and states that it will revoke its claim of privilege and will distribute the redacted parts when its request to address the underlying Tariff issues is granted.

2. According to NYISO, its report (1) identifies certain concerns related to NYISO's implementation of its MMM; (2) describes the steps being taken to address these concerns and prevent their recurrence; and (3) requests such waivers of its Tariff deemed necessary to (a) excuse its failure to fully satisfy certain requirements of its MMM, and (b) not require revisions to market clearing prices or guarantee payments.

3. NYISO states that, to respond to the instructions of the Commission in an order addressing a prior report on tariff implementation errors,² NYISO engaged Dr. David Patton as an Independent Market Advisor to identify potential compliance issues and assist in developing appropriate corrective actions and improving the Tariff procedures.³ As a result, Dr. Patton and NYISO identify the following Tariff compliance issues:

- (1) NYISO's calculation of Bid-based incremental energy and minimum generation levels uses reference levels calculated based on on-peak bids to test for conduct and impact during off-peak hours;
- (2) NYISO has not implemented Locational Based Marginal Price (LBMP) -based incremental energy or minimum generation reference levels;
- (3) Certain aspects of NYISO's implementation of bid-based start-up reference levels are not accurate and can be manipulated; and
- (4) NYISO's Automated Mitigation Procedures applicable to Minimum Generation Bid mitigation in the Day-Ahead Market (DAM) can mitigate for too many hours of the day for generators that submit Minimum Generation Bids with minimum run times of less than 24 hours.

4. In addition to the compliance issues outlined above, NYISO states that it has identified two concerns that probably do not involve Tariff violations:

- (1) NYISO does not exclude all Start-Up and Minimum Generation Bids submitted at times when a generator is committed via a Supplemental Resource Evaluation or is set out-of-merit from its calculation of bid-based real-time start-up and minimum generation reference levels; and
- (2) The MMM provision describing NYISO's method to tally real-time constrained hours for purposes of computing load pocket thresholds in the real-time market is susceptible to interpretation and could arguably be at odds with the method used by NYISO's mitigation software to perform the calculation.

² Citing *New York Indep. Sys. Operator, Inc.*, 115 FERC ¶ 61,026, at P 60-61 (2006) (April 7, 2006 Order) (instructing NYISO to "act proactively to identify any remaining or new problems, to devise effective solutions, and to report to the Commission realistically about the scope of its problems and its efforts to resolve them").

³ Dr. Patton's affidavit is included in the filing as Attachment I.

5. NYISO states that the concerns it has identified will have only minor, incremental impacts on LBMPs and Bid Production Cost Guarantee (Guarantee) payments. NYISO states that it would have to re-run its day-ahead and/or real-time markets for months or years to correct the LBMPs. NYISO asserts that this would be a near impossible task, requiring NYISO to divine what market participants would have done if market conditions were different from those actually experienced. NYISO states that similar concerns arise regarding the impact and difficulty in re-calculating Guarantee payments.

Waivers Requested

6. NYISO requests a Tariff waiver for section 3.1.4(a)(1) (Reference Levels) of the MMM to allow NYISO to use on-peak data to determine incremental energy and minimum generation reference levels for off-peak hours from December 23, 1999 to July 1, 2008.⁴ Section 3.1.4(a) of the MMM currently requires that each component of a generator's bid be calculated on the basis of one of the four methods listed in order of preference; the preferred method is based on the lower of the mean or the median of a generator's accepted bids or bid components in competitive periods over the previous 90 days *for similar hours or load levels*, adjusted for changes in fuel prices.⁵

7. NYISO states that it and its Independent Market Advisor have recommended to the relevant NYISO committees that section 3.1.4(a)(1) of the MMM be revised to require the use of on-peak reference levels in all hours of the day to determine incremental energy and minimum generation reference levels. NYISO and its Independent Market Advisor state that on-peak bid-based reference levels are generally more reliable and more representative of a generator's marginal cost of production than off-peak bid-based reference levels. NYISO states that it expects to complete the stakeholder process and file the resulting solution with the Commission by July 1, 2008.

8. NYISO requests a second Tariff waiver for section 3.1.4(a)(2) of the MMM, which requires it to implement LMBP-based incremental and minimum generation reference levels, from July 1, 2001 to July 1, 2008. Section 3.1.4(a)(2) presents the second most preferred method for calculating each component of a generator's bid, which is to use the mean of the LBMP at the generator's location during the lowest-priced 25 percent of the hours that the generator was dispatched over the previous 90 days for similar hours or load levels, adjusted for changes in fuel prices. The waiver would permit NYISO to use other options to calculate reference levels for incremental energy and minimum

⁴ NYISO states that this requested waiver period is extremely conservative, extending from the date that NYISO's MMM first became effective. NYISO states that it is not able to precisely determine the date when this issue began due to the use of largely manual screening and mitigation methods in its earliest years of operation.

⁵ See MMM section 3.1.4(a)(1).

generation, until July 1, 2008 at which time NYISO expects to be able to reactivate this option.

9. NYISO states that LBMP-based reference levels were designed to produce reasonable reference levels for generators that self-scheduled, but NYISO did not actually implement a self-scheduling option until February 2005. As a result, NYISO states that it assigned a low priority to automating the determination of LBMP-based reference levels and concentrated on implementing other provisions of its MMM that it considered to be of greater significance. NYISO states that it plans to activate software to calculate LBMP-based incremental energy reference levels once it has updated the LBMP-based reference level software to work with NYISO's existing systems and it has completed quality assurance testing. NYISO states that it will work through its stakeholder and governance process to develop and file proposed revisions to the MMM for Commission review, to be effective July 1, 2008.

10. The third request for Tariff waivers relates to section 3.1.4(d) of the MMM, which lists in order of preference methodologies to calculate start-up cost reference levels. NYISO requests Tariff waivers to permit it to resolve four Tariff implementation concerns under section 3.1.4(d). NYISO states that three of these concerns, described only in the confidential portions of the report, may present opportunities for generators to inflate their bid-based start-up cost reference levels, if the confidential details were known. To prevent generators from taking advantage of the Tariff implementation issues that are described in the report, NYISO requests the Commission to instruct it to temporarily switch all NYCA generators to cost-based start-up reference levels, instead of the other calculation methodologies provided for under section 3.1.4(d), and to waive that section from December 23, 1999 until December 1, 2008, when it states that it expects to have corrected software and/or Tariff revisions completed. It states that this measure will prevent NYCA generators from inflating start-up reference levels and permit open discussion of the Tariff implementation issues while corrections are made. NYISO states that it and its market participants will develop and implement appropriate solutions to Tariff implementation concerns through NYISO's stakeholder process. NYISO states that, after the Commission instructs NYISO to switch all NYCA generators to cost-based start-up reference levels, it will revoke its claim of privilege by publicly filing and distributing the redacted pages of its filing so that NYISO's concerns can be discussed with all market participants. NYISO expects to have appropriate software corrections in place by December 1, 2008.

11. NYISO requests a fourth Tariff waiver for section 4.2.2(e)(3) of the MMM,⁶ concerning limits to mitigation based on a generator's minimum run time, from June 1,

⁶ Section 4.2.2(e)(3) of the MMM states that Automated Mitigation Procedure LBMP mitigation shall be applied to Minimum Generation Bids "from the first hour in which the impact test is met to the last hour in which the impact test is met, or for the duration of the mitigated Generator's minimum run time, whichever is longer."

2002 to July 1, 2008. By July 2008, NYISO expects new software to be in effect to accurately implement this section. According to NYISO, for the period the waiver is in effect, certain generators may be over-mitigated. NYISO states that a small number of generating facilities have minimum run times of less than 24 hours. However, its day-ahead automated mitigation procedures were designed based on the assumption that all generators that submit minimum generation bids into the day-ahead market have minimum run times of 24 hours or longer. As a result, NYISO states that it mitigated some minimum generation bids for more hours of the day than the MMM permits, and on rare occasions this resulted in the commitment of the mitigated generator for more hours than would otherwise have been the case. NYISO estimates that the impact of this over-mitigation was small and states that commencing with the September 2005 billing it has been correcting inappropriately applied AMP mitigation and will continue to do so until its software is accurately applying AMP LBMP mitigation to Minimum Generation Bids.⁷

12. For each of the requested Tariff waivers, NYISO requests that, for the duration of the Tariff waiver periods, the Commission waive any obligation that the NYISO may have under its Tariff to calculate or re-determine LBMPs or Guarantee payments.⁸ NYISO requests that corrections only be required on a going-forward basis, commencing at the time that NYISO is able to implement appropriate revisions to its software or MMM. NYISO anticipates that the necessary changes will be completed by the conclusion of the requested Tariff waiver periods.

Notice and Responsive Pleadings

13. Notice of NYISO's filing was published in the *Federal Register*, 72 FR 73,016 (December 26, 2007), with Interventions and protests due on or before December 31, 2007. The New York Transmission Owners (NY Transmission Owners) filed a timely intervention and comments. Timely interventions were filed by Astoria Generating Company, L.P.; Constellation New Energy, Inc.; and the NRG Companies, consisting of NRG Power Marketing Inc. ("NRG PMI"), Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Oswego Harbor Power LLC. Finally, the Public Service Commission of New York filed a notice of intervention.

14. The NY Transmission Owners state that they support NYISO's request that the Commission approve NYISO's request for temporary cost-based reference levels. With

⁷ See NYISO December 10, 2007 Filing at 7 n.15 and 63 & n.74.

⁸ We believe that NYISO intends that its request to not be required to correct for past errors is subject to the exception, noted above, of NYISO's continued correction of certain Guarantee payments calculated without regard to minimum run times under section 4.2.2(e)(3) of the MMM, commencing with the September 2005 billing. See NYISO December 10, 2007 Filing at 7 n.15.

respect to the other identified Tariff waivers, they state that they believe that the waivers are required if NYISO is to avoid re-running the markets for the days in question, but state that they have not had adequate time to review the request or discuss it with NYISO. Accordingly, they state that they reserve the right to supplement this pleading with further comments and/or protests after meetings of the Market Mitigation Task Force.

Discussion

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

16. The Commission grants NYISO's request to direct NYISO to temporarily switch all of its NYCA generators to cost-based reference start-up levels under the NYISO MMM, as requested by NYISO and supported by the NY Transmission Owners, and grants any waivers of NYISO's Tariff necessary to accomplish the switch. This switch and accompanying waivers are to be in effect until December 1, 2008, while NYISO and its Market Participants develop a mutually acceptable solution through NYISO's stakeholder process. The Commission believes that NYISO's stakeholder process is the most appropriate vehicle to resolve the problems identified by the NYISO that could enable generators to inappropriately inflate their start-up reference levels.

17. The Commission grants NYISO's other requested Tariff waivers, described above, as necessary to relieve NYISO of any obligation that NYISO may otherwise have under its Tariff to re-determine LBMP's or Guarantee payments to generators. The Commission agrees with NYISO that the expense in time and capital to perform such re-determinations will be greater than any potential benefits the exercise may produce.

18. The duration of the waivers granted in this order is limited to the time frames specified above, during which, we are told, NYISO will be working to correct the underlying problems. Should the facts supporting the NYISO's requests for waivers change, the Commission directs NYISO to file a report describing the change of circumstance, including a proposed response. Consistent with NYISO's proposal as stated in its filing, the Commission directs NYISO to distribute unredacted pages containing the privileged portions of the report to the parties to this proceeding and directs NYISO to file such pages in this proceeding within 15 days from the date of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary