

122 FERC ¶ 61,282  
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. ER08-695-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS  
SUBJECT TO CONDITIONS AND GRANTING WAIVERS

(Issued March 26, 2008)

1. On March 20, 2008, the New York Independent System Operator, Inc. (NYISO) filed revisions to its Market Administration and Control Area Services Tariff (Services Tariff) to implement market power mitigation of suppliers of Installed Capacity (ICAP) in the New York City (NYC) ICAP market. NYISO also requests certain waivers of its Services Tariff. For the reasons discussed below, we will grant the requested waivers, grant waiver of the 60 day prior notice requirement for good cause, and accept NYISO's filing, suspend it for a nominal period and permit it to become effective, as requested, on March 27, 2008, subject to refund and conditions and subject to the issuance of further orders. We will defer action on the merits of NYISO's filing until the issuance of those further orders.

**I. Background**

2. On October 4, 2007, in response to the Commission's July 6, 2007 order in Docket No. EL07-39-000, *et al.*,<sup>1</sup> NYISO submitted its proposal for the mitigation of supplier and buyer market power in the NYC ICAP market (October 4, 2007 Filing). On March 7, 2008,<sup>2</sup> following comments on the October 4, 2007 Filing, the Commission issued an order in that docket which conditionally accepted NYISO's mitigation proposal and directed the filing of tariff sheets containing revised market rules reflecting the approved mitigation measures within 60 days of the date of the order, or May 6, 2008.

3. In the instant filing, NYISO states that, in order to have supplier market power mitigation measures in place for the coming 2008 Summer Capability Period, it is not feasible to take the full 60 days provided by the March 7, 2008 Order to fashion a

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<sup>1</sup> *New York Indep. Sys. Operator, Inc.*, 120 FERC ¶ 61,024 (2007).

<sup>2</sup> *New York Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,211 (2008) (March 7, 2008 Order).

compliance filing. NYISO states that tariff revisions for supplier mitigation must be in place immediately prior to the start of the series of ICAP auctions for the coming summer, which begin with the Capability Period or “Strip” auction<sup>3</sup> on March 28, 2008. NYISO states that the preexisting mitigation measures need to be deactivated as of March 27, 2008, for the Capability Period Auction for this summer, and the software to implement the new supplier measures needs to be in place by April 21, 2008 in order to mitigate the ICAP Spot Market Auction for May 2008. NYISO states that it therefore requests an effective date of March 27, 2008, for its revised tariff sheets. NYISO states that, if an effective date of March 27, 2008 is not granted, implementing the new rules and software code in the middle of a Capability Period may be problematic and lead to ineffective application of the new measures.

4. NYISO states that its filing is limited to supplier mitigation measures because it is not necessary to implement buyer mitigation measures at this time. According to NYISO, since the March 7, 2008 Order did not apply buyer mitigation measures to existing generation, the buyer measures will not affect the NYC ICAP market until new in-City generation comes on line, which is not expected to occur this summer. NYISO states that it intends to address the buyer mitigation portions of its proposal in a future compliance filing.

5. NYISO also requests two waivers: (1) waiver of the default timeline in proposed section 4.5(c) of its Services Tariff as it would not be possible to approve any alternate offer caps in time for the ICAP Spot Market Auctions for this coming May (scheduled for April 23, 2008) and June (scheduled for May 23, 2008); and (2) a 90-day waiver of the new requirement in proposed section 4.5(e) of its Services Tariff to use a control-only test for determining Pivotal Suppliers, to allow NYISO to implement this change in its computer software.

## **II. Notice of Filing**

6. Notice of NYISO’s March 20, 2008 Filing was issued on March 24, 2008, with protests and interventions due on or before April 10, 2008. As of the date of issuance of this order, no protests or interventions have been filed.

## **III. Discussion**

### **A. Procedural Matters**

7. At this stage of the proceeding, due to the need for expedited action on the instant filing, we will act here before any interventions or protests are received in this Docket

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<sup>3</sup> NYISO states that the Strip auction provides an opportunity for Load-Serving Entities (LSEs) and ICAP suppliers to buy and sell Unforced Capacity for the strip of six months of the Summer Capability Period.

No. ER08-695-000. We defer consideration of any interventions or protests received in this docket to further orders.

**B. Commission Determination**

8. We will grant the requested waivers to allow NYISO to implement the Spot Market Auctions for May and June and to ensure the necessary software changes are made to implement the proposed Pivotal Supplier test.

9. Because the revised tariff sheets are requested to be made effective, and are being made effective, on an expedited basis, without opportunity for comment prior to our action on the filing, we will not address the merits of NYISO's filing at this time, but will defer consideration of any issues raised by the filing to subsequent orders following receipt and review of any comments or protests.

10. Our preliminary analysis indicates that NYISO's proposed revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. In order to allow the revised tariff sheets to be implemented as soon as possible, however, we will accept NYISO's proposed revisions for filing, suspend them for a nominal period, and make them effective March 27, 2008, as requested by NYISO, subject to refund and to the issuance of further orders. We also grant waiver of the 60 day prior notice requirement for good cause. Further, acceptance is subject to the outcome of the proceeding in Docket No. EL07-39-000, *et al.*

The Commission orders:

(A) NYISO's proposed revisions to its Services Tariff are hereby accepted for filing and suspended for a nominal period, to become effective March 27, 2008, subject to refund and the other conditions of this order, and subject to the issuance of further orders.

(B) Waivers of NYISO's Services Tariff are granted as discussed above.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.