

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New York Independent System Operator, Inc.)

**Docket No. ER04-230-006,
ER01-3155-006,
ER01-1385-015,
EL01-45-014**

**REQUEST FOR LEAVE TO RESPOND AND RESPONSE OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
TO PROTEST OF THE PSEG COMPANIES**

On October 10, 2006, PSEG Power LLC and PSEG Energy Resources & Trade LLC (“PSEG”) submitted a filing under the title “Protest of the PSEG Companies,” (“PSEG Filing”) in response to the filing on September 15, 2006 by the New York Independent System Operator, Inc. (“NYISO”) of an Eighth Quarterly Report (“Report”) in this docket.¹ The NYISO respectfully requests leave to respond and responds to the PSEG Filing.

The Commission should reject PSEG’s erroneous claim that the NYISO is ignoring Commission orders in this case, and dismiss as unfounded PSEG’s assertions that NYISO’s market rules impose uneconomic limitations on its Real-Time bidding strategies. Finally, the Commission should require PSEG to subject its market design alternative to the rigors of stakeholder and Board review before it presents its proposal to the Commission for action.

I. REQUEST FOR LEAVE TO SUBMIT RESPONSE

The NYISO recognizes that the Commission generally discourages responses to protests. The PSEG Filing, however, seeks affirmative relief from the Commission by

¹ *New York Independent System Operator, Inc.*, Eighth Quarterly Report, Docket No. ER04-230-006, ER01-3155-006, ER01-1385-015, EL01-45-014, ER06-185-000 (September 15, 2006).

requesting the Commission to “order NYISO to adopt an interim solution . . . [and] waive over- and under-generation penalties for combined cycle units that operate in the RTM.”² The Commission’s Rules of Practice and Procedure therefore permit the NYISO to respond to the PSEG Filing.³

To the extent that the NYISO’s response is not expressly permitted under Rule 213, the NYISO respectfully requests leave to submit this response. The Commission has allowed such responses when they help to clarify complex issues, provide additional information that will assist the Commission, correct inaccurate statements, or are otherwise helpful in developing the record in a proceeding.⁴ The NYISO’s response meets this standard. The NYISO’s response does not introduce new arguments, but instead is submitted for the limited purpose of clarifying certain factual matters and correcting inaccurate or misleading statements in the PSEG Filing, thereby assisting the Commission in its review and consideration of the issues presented in this proceeding. The NYISO therefore respectfully requests that the Commission exercise its discretion and accept the NYISO’s response.

² PSEG Filing at 7.

³ Rule 213(a)(3) of the Commission’s Rules of Practice and Procedure allows an answer to filings seeking affirmative relief from the Commission. 18 C.F.R. § 385.213(a)(3). To the extent that the Commission accepts this filing pursuant to Rule 213(a)(3), the NYISO also requests that it accept this filing two days out of time.

⁴ See, e.g., *New York Independent System Operator, Inc.*, 115 FERC 61,026 *mimeo* at P 44. (accepting an answer that “provided information that assisted . . . in our decision-making process”); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was “helpful in the development of the record . . .”); *New York Independent System Operator, Inc.*, 91 FERC ¶ 61,218 at 61,797 (2000) (allowing “the NYISO’s Answer of April 27, 2000, [because it was deemed] useful in addressing the issues arising in these proceedings”); *Central Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,138 at 61,381 (1999) (accepting prohibited pleadings because they helped to clarify the issues and because of the complex nature of the proceeding).

II. RESPONSE

A. Contrary to PSEG's Mischaracterizations, the NYISO Has Complied, and Will Continue to Comply, With the Commission's Orders in this Docket.

PSEG wrongly asserts that the NYISO has violated the Commission's orders in this docket and abandoned its efforts to correct problems associated with modeling combined cycle units.⁵ Contrary to PSEG's erroneous misrepresentation, NYISO has complied with the Commission's orders to improve the efficiency of combined cycle units in NYISO's markets. Moreover, NYISO intends to continue to look for market improvements to address stakeholder concerns on this issue.

The Commission directed the NYISO to implement 15 minute scheduling and incorporate improvements in combined cycle modeling when it approved the NYISO's new Real-Time System ("RTS") in 2003.⁶ The NYISO implemented 15 minute scheduling on October 11, 2005. Later that year, and early in 2006, NYISO improved combined cycle modeling by introducing the 'pseudo-unit' model and penalty forgiveness during startup and shutdown periods.⁷

The NYISO, and its Market Participants, also investigated whether incremental modeling efforts could provide further benefits. As the NYISO has discussed in its last three Quarterly Reports, it now appears that incremental modeling improvements can not be made without an overhaul of NYISO's market rules, a redesign of the optimization

⁵ PSEG Filing at p. 4

⁶ The Commission requested the NYISO to incorporate a Market Participant suggestion to pursue 15-minute scheduling and to improve overall modeling of combined-cycle units. 106 FERC 61,111, *et seq.*; *See also*: Motion To Intervene And Comments Of Sithe Energy Marketing, L.P. And Indeck Energy Services, Inc., (November 26, 2003) at p. 7.

⁷ *See*: NYISO's Fourth and Seventh Quarterly Reports in this Docket (August 8, 2005 and May 9, 2006) for a discussion of these efforts.

software used in the Real-Time and Day-Ahead scheduling and new bidding requirements for unit owners.⁸ Market rules and bidding requirements can be redesigned but there is, currently, no demonstrated technical approach that would better reflect the characteristics of combined cycle units in scheduling and dispatch software than the NYISO is currently using.⁹ All potential methodologies carry with them very high technical risk, potentially unacceptable performance impacts, and significant new bidding requirements.

NYISO's work with its vendor ABB to develop a Concept of Operations revealed that further modeling improvements would be more in the nature of a research and development effort than a software enhancement.¹⁰ There are no known implementations of such technology.

NYISO believes that the market enhancements it has introduced together with the modeling modifications it has already made meet the Commission's direction to improve combined cycle modeling in New York.¹¹ In support of that conclusion, NYISO intends to present to the Commission a comprehensive review of its work to date with an

⁸ NYISO did not reach this conclusion without significant research and market participant discussion. A NYISO created White Paper, released in April, 2005, documented the difficulties of revising commitment and dispatch software to recognize multiple characteristics for combined cycle units and concluded that optimizing a combined cycle unit in real time would require the NYISO to make individual unit operating decisions that are currently managed by unit owners themselves. *See*: http://www.nyiso.com/public/webdocs/committees/bic_mswg/meeting_materials/2006-02-15/3103_Commitment_Techniques_for_CCGUs.pdf. *See also*: NYISO and ISO-NE co-sponsored evaluation of available alternative combined cycle unit commitment solutions that confirmed there are no off-the-shelf technologies, or techniques, with which to incorporate combined cycle units into the NYISO software. Conducted by Kinetrics Inc. of Toronto, Ontario and managed by CEA Technologies of Montreal, Quebec, this evaluation is available on NYISO's website.

⁹ PJM's multi-state model to represent combined cycle units resembles the NYISO's pseudo-unit model and ISO-NE is adopting a similar approach.

¹⁰ *See* Seventh Quarterly Report at p. 2

¹¹ 108 FERC ¶61,188.

explanation of how its efforts have resolved the issues presented in this case. The NYISO will also explain its intention to continue to search for additional market solutions to problems combined cycle owners may identify. The Commission should reject PSEG's request that it reach conclusions on the sufficiency of NYISO's efforts to comply with its directions in this case in advance of NYISO's comprehensive filing.

B. PSEG's Claims of Real-Time Bidding Constraints are Mistaken and Should be Rejected

PSEG complains that it is unable to accurately reflect, in NYISO's Real-Time Market, the lower operating costs it experiences as more of its turbines are started, and that it suffers from the unwarranted application of over- and under-generation penalties.¹²

Contrary to PSEG's claim, Real-Time Energy offers, made at least 75 minutes before the hour, can reflect cost reductions realized from configuration alternations such as adding an additional unit. Any unit owner may reduce its Energy offer in real-time below those it used for the Day-Ahead Market whether its unit was scheduled Day-Ahead or not.¹³ Moreover, through the NYISO's start-up, shut-down penalty forgiveness tariff provisions, PSEG is eligible for penalty relief during all configuration changes.

Thus, not only is PSEG able to offer Energy in the Real-Time Market at costs that more accurately reflect its true costs, it also suffers no penalties for being off its Real-Time schedule during those periods it cannot control its plants' output. PSEG's

¹² PSEG Filing at pp. 6, 7.

¹³ Market Administration and Control Area Services Tariff ("Services Tariff"), Section 4.4.2 (B) (1).

complaints that the NYISO has not corrected identified inefficiencies in the Real-Time Market are mistaken and should be rejected.¹⁴

C. PSEG's Interim Solution Invites Unintended Consequences, Ignores NYISO's Stakeholder Process, and Should be Denied.

PSEG's request that the Commission require the NYISO to exempt combined cycle unit owners from all penalties for generating above or below their Real-Time schedules should be denied to avoid undermining the NYISO's stakeholder process and to preclude the unnecessary introduction of unintended, adverse consequences.

Pursuant to the NYISO's *ISO Agreement*, the Management Committee and the NYISO Board of Directors jointly approve tariff revisions to be filed with the Commission pursuant to Section 205 of the Federal Power Act.¹⁵ PSEG's proposal unwisely circumvents this process.

Moreover, authorizing penalty forgiveness for a combined cycle unit's entire output could impact the market dramatically by, among other things, increasing uplift on Loads, and creating uncompensated lost opportunity costs for non-combined cycle, dispatchable units as they are dispatched above or below their economic operating point to compensate for combined cycle units' unscheduled output changes.¹⁶ Unscheduled

¹⁴ Improvements in Day-Ahead modeling involve the research and development effort the NYISO discussed *supra* at pages 3-4.

¹⁵ The NYISO notes that there are some exceptions to this process as outlined in Article 19 of the *ISO Agreement*.

¹⁶ As PSEG points out, Market Participants have recently agreed to excuse 1000 MWs of new wind and small hydro facilities from over- and under-penalties because the output levels from those facilities is a result of their intermittent fuel source rather than their cost of operation. The NYISO intends to avoid the adverse market outcomes identified above for wind generation by establishing their Real-Time schedules based on Real-Time actual production and an intelligent forecast of what the unit will be generating over the commitment horizon. This dispatch logic is not a reasonable option for resources such as combined cycle units whose output depends on their cost to operate at various output levels. *See:*

combined cycle unit operations would increase New York's reliance on regulating units while, at the same time, eliminating any contribution from combined cycle unit owners toward the cost of that service.¹⁷ To ensure all market impacts are identified and understood prior to approval, this proposal should be vetted first with NYISO's Market Participants and its Board.

Indeed, the NYISO has begun a process to review, with its stakeholders, the practice of imposing penalties to encourage beneficial market behavior. Known as the Market Rules Assessment process, this regular recurring discussion with Market Participants at monthly Market Structures Working Group meetings will identify and prioritize market improvements in areas such as persistent undergeneration penalties.¹⁸ This process has already identified further exemptions from undergeneration penalties that will benefit combined cycle owners, and others, engaged in testing new or recently maintained equipment.¹⁹

The Commission should follow its precedent on requests such as PSEG's and direct PSEG to submit its proposal to the stakeholder working groups for action.²⁰

http://www.nyiso.com/public/webdocs/committees/mc/meeting_materials/2006-09-29/final_motions_092906_mc.pdf

¹⁷ Penalties imposed for operating below a Real-Time schedule contribute to the NYISO's cost of Regulation Service. *See* Services Tariff, Schedule 3-A.

¹⁸ *See* the most recently posted outline of this effort at:
http://www.nyiso.com/public/webdocs/committees/bic_mswg/meeting_materials/2006-06-29/6292006_MSWG_Rules_Issue_structure.pdf

¹⁹ The Market Participants recently approved adding this exemption to the Services Tariff; *See* Management Committee action at:
http://www.nyiso.com/public/webdocs/committees/mc/meeting_materials/2006-09-29/final_motions_092906_mc.pdf

²⁰ 99 FERC ¶61,252.

The Commission should not allow an impatient Market Participant to circumvent the rigors of stakeholder and Board review of its proposal before presenting it for Commission action.

III. CONCLUSION

Accordingly, for the reasons set forth above, the NYISO respectfully requests the Commission to: (1) accept the NYISO's Response, (2) deny PSEG's request for affirmative relief, and (3) accept the NYISO's September 15, 2006 Eighth Quarterly Report.

Respectfully submitted,

/s/ Mollie Lampi
Mollie Lampi
Assistant General Counsel
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2006).

Dated at Washington, DC this 27th day of October, 2006.

By: /s/ Catherine A. Karimi
Catherine A. Karimi
Sr. Professional Assistant
Hunton & Williams LLP
1900 K Street, NW
Washington, DC 20006-1109
(202) 955-1500

cc: Shelton Cannon
Larry Gasteiger
Michael Bardee
Connie Caldwell
Kathleen Nieman
Dean Wight
Lance Hinrichs