

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

New York Independent System Operator,)	
Inc.)	
Central Hudson Gas & Electric)	
Corporation)	Docket No. ER97-1523-020
Consolidated Edison Company)	ER97-1523-021
of New York, Inc.)	ER97-4324-017
New York State Electric and Gas)	ER97-4234-018
Corporation)	OA97-470-019
Niagara Mohawk Power Corporation)	and OA97-470-020
Orange and Rockland Utilities, Inc.)	
Rochester Gas and Electric Corporation)	
New York Power Pool)	

**MOTION OF NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
FOR CLARIFICATION, OR, ALTERNATIVELY,
LIMITED REQUEST FOR REHEARING**

Pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”), seeks clarification of one of the Commission’s holdings in its March 29, 2000 *Order on Rehearing and on Compliance Filing* (“Order”) in the above dockets.² Specifically, in the Order, the Commission stated that it agreed “with Sithe that it should have access to the same models as the ISO to independently verify the ISO’s market findings.” Order at 8. The NYISO respectfully requests clarification of two aspects of this holding.

¹ 18 C.F.R. § 385.212 (2000).

² *New York Independent System Operator, Inc., et. al.*, 90 FERC ¶ 61,317 (2000). The NYISO is concurrently submitting a separate compliance filing in response to the requirements imposed by the Order.

Alternatively, if the Commission refuses to grant the requested clarifications, the NYISO respectfully requests limited rehearing of the Commission's holding pursuant to Rule 713 of the Commission's Rules of Practice and Procedure.³

I. Motion for Clarification

First, the NYISO requests that the Commission clarify that access to the NYISO's models does not entitle a Market Party⁴ to have access to confidential bid information, or to Protected Information,⁵ or to other competitively or commercially confidential information, except as, and to the extent appropriate, in accordance with the Commission's requirements for the disclosure of bid information, or in accordance with the protections for Protected Information specified in the Market Monitoring Plan or other NYISO agreements or tariffs. Access to the NYISO's models used to assess market performance should not be a vehicle for market participants to gain access to current or nearly current bid information from their competitors. As the Commission noted in its order conditionally approving the NYISO's tariffs, market rules and market-based rates,⁶ bid information is very competitively sensitive, and should not be disclosed by the NYISO for six months after a bid has been submitted in order to prevent collusive behavior.⁷ Indeed, exchanges

³ 18 C.F.R. § 385.713 (2000).

⁴ As used in the Market Monitoring Plan, the term "Market Party" means "any person or entity that is a buyer or a seller in, or that makes bids or offers to buy or sell in, or that schedules or seeks to schedule transactions with the NY ISO in or affecting, any of the New York Electric Markets, or any combination of the foregoing." Market Monitoring Plan § 2.4.

⁵ As used in the Market Monitoring Plan, the term "Protected Information" means "information that is confidential, proprietary, commercially valuable or competitively sensitive or is a trade secret, and that has been designated as such in writing by the party supplying the information to the NY ISO or by the NY ISO." Market Monitoring Plan § 2.8.

⁶ *Central Hudson Gas & Elec. Corp., et. al.*, 86 FERC ¶ 61,062 (1999); *order on reh'g*, 88 FERC ¶ 61,138 (1999).

⁷ *See* 86 FERC at 61,224; 88 FERC at 61,396-97.

of current or nearly current bid information among competitors would at best be highly problematic under the antitrust laws. Other information provided to the NYISO for use in its models may also be very commercially or competitively sensitive. Any right of access to the models should not be a means to evade the protections otherwise afforded confidential information.

Second, the NYISO requests that the Commission clarify that access to the NYISO's models shall not be in derogation of any copyright or other intellectual property rights of third parties or the NYISO in such models.⁸ Specifically, market participants seeking access to the models would be expected to comply with applicable licensing fees or requirements of persons holding copyright, patent or other intellectual property or proprietary rights in the models.

II. Alternative Motion for Limited Rehearing

Alternatively, if the Commission intended that: (i) access to the NYISO's models would entitle Market Parties to have unfettered access to confidential bid information, or to Protected Information,⁹ or to other competitively or commercially confidential information; or (ii) access to the NYISO's models would not be subject to the copyright or other intellectual property rights of third parties or the NYISO in such models, then the NYISO respectfully requests rehearing on those issues.

⁸ The Commission has previously recognized the importance of protecting such proprietary rights. *See, e.g., Automated Power Exchange, Inc.*, 84 FERC ¶61,020 at 61,090 (requiring APX to make various clarifications but emphasizing that it was not necessary “for APX to divulge proprietary computer programs or algorithms”).

⁹ As used in the Market Monitoring Plan, the term “Protected Information” means “information that is confidential, proprietary, commercially valuable or competitively sensitive or is a trade secret, and that has been designated as such in writing by the party supplying the information to the NY ISO or by the NY ISO.” Market Monitoring Plan § 2.8.

III. Conclusion

WHEREFORE, for the foregoing reasons the New York Independent System Operator, Inc., respectfully asks that the Commission grant the clarifications it has requested or, in the alternative, grant limited rehearing of the issues addressed above.

Respectfully submitted,

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April 18, 2000

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 Commission's Rules of Practice and Procedure 18 C.F.R. § 2010 (1999).

Dated at Washington, D.C. this 18th day of April, 2000.

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