

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

Niagara Mohawk Power Corporation)	
)	
v.)	
)	Docket No. EL00-57-000
New York Independent System Operator,)	
Inc.)	
)	
)	
New York Independent System Operator,)	Docket No. ER00-1969-000
Inc.)	
)	

**ANSWER OF NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
TO COMPLAINT OF
NIAGARA MOHAWK POWER CORPORATION
AND CONDITIONAL MOTION OF
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC. TO CONSOLIDATE**

Pursuant to Rules 206(f) and 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) hereby answers the complaint filed by Niagara Mohawk Power Corporation (“NIMO”) in this proceeding on March 24, 2000 (“Complaint”). In addition, pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure,² in the event that the Commission does not dismiss the Complaint, the NYISO respectfully asks that the Commission consolidate this proceeding with Docket ER00-1969-000.

¹ 18 C.F.R. §§ 385.206(f) and 213 (2000).

² 18 C.F.R. § 385.212 (2000).

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I. Introduction

NIMO's Complaint was precipitated by the failure of the NYISO's 10-minute reserve markets, which recently prompted the NYISO to ask the Commission, in Docket No. ER00-1969-000,³ to suspend the use of market-based pricing in those markets, and to convene a multilateral settlement process. In an attempt to limit its exposure to the high 10-minute reserve prices that resulted from the markets' breakdown, NIMO decided to self-supply operating reserves. However, instead of following the NYISO's self-supply procedure, which is set forth in Section 3 of Schedule 5 of the NYISO's Commission-approved Open-Access Transmission Tariff ("OATT"), NIMO sent the NYISO an e-mail unilaterally declaring that it would self-supply. The NYISO responded that in the context of its centralized bid-based market system, participants were required to exercise their right to self-supply within the framework of its market structure and may not simply declare that they would exercise their right to self-supply. Thus, as per Section 3 of Schedule 5 of the OATT, NIMO was required to bid reserves that met the NYISO's "rules for acceptability" into the NYISO's market and have its bid accepted. If

NIMO's reserves were selected, NIMO's reserves costs would "be reduced by the market value of the services provided by the specified generation facilities as determined in the ISO Services Tariff."⁴

NIMO's complaint alleges that the NYISO's self-supply procedure is inconsistent with the NYISO's OATT and Commission precedent. It asks that the Commission compel the NYISO to allow it to self-supply reserves without bidding them into the NYISO's markets. In addition, NIMO asks the Commission to initiate a separate Section 206 proceeding concerning the failure of the NYISO's 10-minute reserve markets.

The NYISO urges the Commission to reject the Complaint because: (i) the NYISO has asked the Commission to establish a global settlement process that will enable all market participants to resolve issues associated with the 10-minute reserve markets and this settlement process would be undermined if NIMO were allowed to unilaterally proceed with its Complaint; and (ii) NIMO is incorrect to claim that the NYISO's self-supply procedure is inconsistent with the NYISO's OATT or Commission precedent. The NYISO also asks the Commission to consolidate this proceeding with Docket No. ER00-1969-000, which was initiated by the NYISO's March 27, 2000 filing.

³ See *Request of New York Independent System Operator, Inc. for Suspension of Market-Based Pricing for 10-Minute Reserves and to Shorten Notice Period*, Docket No. ER00-1969-000 ("March 27, 2000 filing").

⁴ See Complaint at Exhibit D (an e-mail from Charles E. King, the NYISO's Vice-President of Market Relations, explaining the NYISO's self-supply procedure and referencing Section 3 of Schedule 5 of the NYISO's OATT).

II. NIMO’s Complaint Is Facially Deficient and the Issues it Raises Would Be More Effectively Addressed in the Settlement Process the NYISO has Asked the Commission to Convene in Docket No. ER00-1969-000

In Order No. 602, the Commission revised its complaint procedures to “encourage and support consensual resolution of complaints . . . ,”⁵ and particularly encouraged the use of ADR processes, including “convening sessions,” under the auspices of the Commission’s Dispute Resolution Service (“DRS”).⁶ Consistent with this policy the Commission revised Rule 206(b) of its Rules of Practice and Procedure⁷ to require that all complaints state “whether the complainant believes that [ADR] under the Commission’s supervision could successfully resolve the complaint.”⁸ NIMO’s Complaint makes no mention of the possibility of ADR and thus does not comply with this requirement. The Complaint is therefore facially deficient and the NYISO would be within its rights to ask the Commission to reject it.

On the other hand, the NYISO has already asked the Commission to convene a DRS-facilitated multilateral settlement process to resolve all issues and disputes arising from the failure of the NYISO’s 10-minute reserve markets. Given that NIMO’s Complaint was unquestionably precipitated by the failure of the 10-minute reserve markets,⁹ the Commission should encourage NIMO to participate in the settlement process. Such an approach would be consistent with the pro-ADR policy established in Order No. 602 and would be especially

⁵ *Complaint Procedures* (“Order No. 602”), FERC Stats. & Regs. ¶31,071 at 30,756 (1999), *order on reh’g*, Order 602-A, FERC Stats. & Regs. ¶ 31,076 (1999).

⁶ *Id.*

⁷ 18 C.F.R. §§ 385.206(b).

⁸ 18 C.F.R. §§ 385.206(b)(9)(1).

⁹ *See generally* Complaint at 4-6. *See also* Complaint at 7, ¶ 21.

appropriate since the NYISO hopes that the settlement process will ultimately result in the payment of refunds to load-serving entities, thereby mooting NIMO's Complaint.

Moreover, if the Commission allows individual Section 206 proceedings to move forward at the same time as the multilateral settlement process, it risks undermining that process by weakening the incentive to participate. Assuming that the Commission grants the NYISO's request to convene such a settlement process, it would be highly inefficient and wasteful of time and resources for the Commission to allow NIMO, or any other party, to prematurely abandon the process and unilaterally challenge the justness and reasonableness of 10-minute reserve prices (especially given that the NYISO has already informed the Commission that it did not believe those rates to be just and reasonable),¹⁰ "conduct discovery of the NYISO and any generators supplying Operating Reserves to the NYISO . . . ,"¹¹ or seek a separate evidentiary hearing or refund effective date.¹² The Commission should therefore, at a minimum, require NIMO to await the outcome of the settlement process before proceeding with a separate complaint.

III. Motion to Consolidate

If the Commission does not dismiss the Complaint, consistent with the foregoing, the NYISO respectfully requests that the Commission consolidate this proceeding with Docket No. ER00-1969-000 and encourage NIMO to participate in the ADR settlement process that the NYISO asked the Commission to convene in its March 27, 2000 filing.

¹⁰ Complaint at 11.

¹¹ Complaint at 11-12.

¹² Complaint at 12.

IV. The NYISO’s Interpretation of the NYISO OATT’s Self-Supply Provision Is Consistent with the NYISO’s OATT and Commission Precedent

A. The NYISO’s Self-Supply Procedure Is Consistent with the NYISO’s OATT

Contrary to NIMO’s assertions, the NYISO’s self-supply procedure is entirely consistent with Section 3 of Schedule 5 of the NYISO’s OATT, which has been accepted by the Commission.¹³ That provision establishes a self-supply procedure pursuant to which a transmission customer which is accepted as a self-supplier will have the amount that it is charged for operating reserves reduced by the market value of the reserves provided by its facilities, which must themselves be under the NYISO’s operational control, as per the ISO Services Tariff. This procedure does not nullify NIMO’s right to self-supply, rather, it incorporates that right into the NYISO’s market framework.

NIMO has previously acknowledged the nature of the NYISO’s market, and effectively conceded that its right to self-supply must be exercised within the framework of the NYISO’s market process. In a recent filing, the Member Systems of the Energy Association of New York State (“Member Systems”), which include all of New York’s transmission owning public utilities, including NIMO, recognized that the treatment of:

[A]ncillary services in the restructured New York electricity market necessarily differs from the treatment of ancillary services under individual utility *pro forma* tariffs in Order No. 888. The NYISO will obtain ancillary services on an

¹³ *Central Hudson Gas & Electric Corp., et. al.*, 86 FERC ¶ 61,062 (1999); *order on reh’g*, 88 FERC ¶ 61,138 (1999). Section 3 of Schedule 5 of the OATT states that “Transmission Customers, including LSEs may provide for Self-Supply of Operating Reserves by placing generation facilities supplying any one of the Operating Reserves under ISO Operational Control. The generation facilities must meet ISO rules for acceptability. The amount that any such customer will be charged for Operating Reserves Services will be reduced by the market value of the services provided by the specified generation facilities as determined in the ISO Services Tariff.”

unbundled basis, using market-based procurement where possible. Self-provision of ancillary services is typically implemented through sales to the NYISO.¹⁴

Moreover, with respect to the self-supply of operating reserves, the Member Systems specifically stated that:

Transmission Customers, including LSEs, may provide for Self-Supply for Operating Reserves by placing generation facilities supplying any one of the operating reserves under NYISO Operational Control. The amount that any such customer is charged for Operating Reserves Service is reduced by the market value of the services provided by the specified generation facilities, as determined in the NYISO Services Tariff.

There should thus be little doubt that the NYISO's self-supply procedure is consistent with the NYISO's OATT.

B. The NYISO's Self Supply Procedure Is Consistent with Commission Precedent and the Commission's Ancillary Services Policies

The NYISO disagrees with NIMO's assertion that its interpretation of the self-supply provision of the NYISO OATT is inconsistent with Commission precedent and policy. As an initial matter, the Commission has accepted the NYISO's OATT, including Section 3 of Schedule 5. In addition, the Commission specified in Order No. 888, which first established the right to self-supply operating reserves, that transmission customers would only be allowed to self-supply if they satisfied applicable "regional criteria."¹⁵ Order No. 888 emphasized that transmission providers, such as the NYISO, may "rely upon prevailing regional practices" in

¹⁴ *Reply Brief of the Member Systems of the Energy Association of New York State*, Docket No. ER97-1523-011, *et. al.*, at 24 (March 13, 2000).

¹⁵ *See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,717 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *appeal* (continued . . .)

establishing these regional criteria.¹⁶ In the NYISO's case, New York's centralized, bid-based ancillary service markets and locational reserve requirements constitute "prevailing regional practices." Accordingly, pursuant to Order No. 888, NIMO may not exercise its right to self-supply in a manner that would be inconsistent with these fundamental features of the New York market. The NYISO was therefore justified to conclude that NIMO could not self-supply unless it complied with the NYISO's rules for acceptability as per its OATT.

Moreover, the Commission has previously recognized that the operational difficulties associated with permitting unilateral self-supply outside of the ordinary workings of sophisticated bid-based ancillary services markets could justify requiring transmission customers to make self-supply arrangements within the framework of such markets. For example, the Commission has directed market participants in California to:

[C]onsider whether the market process is or can be designed in such a way as to effect self-supply through the market process rather than through a separate self-supply arrangement. If a simultaneous sale to and purchase from the Ancillary Services market would place a customer in the same financial position as supplying Ancillary Services on its own behalf, the ISO may be able to avoid having two separate processes that are difficult to reconcile operationally. While the Commission's *pro forma* tariff includes a self-supply option, the parties should address whether the ability to sell into the ISO's Ancillary Services markets may be another way of accommodating the ability to self-supply.¹⁷

In the NYISO's case, the scheduling and billing problems that would result if transmission customers such as NIMO were allowed to self-supply outside of the ordinary

docketed, Transmission Access Policy Study Group, et al. v. FERC, Nos. 97-1715 *et al.* (D.C. Cir.).

¹⁶ *Id.*

¹⁷ *AES Redondo Beach, L.L.C., et al.*, 87 FERC ¶ 61,208 at 61,810 (1999). *See also Pacific Gas & Electric Co., et al.*, 81 FERC ¶ 61,122 (1997) (acknowledging that "Self-provision of Ancillary Services does not mean self-dispatch of Ancillary Services . . .").

workings of the NYISO's centralized ancillary services market are precisely the kind of operational difficulties that the Commission has suggested would justify incorporating the right of self-supply into a centralized market process.

The NYISO's self-supply procedure is also consistent with Order No. 2000, which explicitly recognized that it is typically more efficient for RTOs¹⁸ to provide ancillary services on an aggregated basis,¹⁹ and stated that RTOs would be afforded considerable flexibility in developing ancillary services arrangements.²⁰ Likewise, Order No. 2000 reaffirmed that transmission customers' right to self-supply is subject to an RTO's responsibility to ensure that customers adequately obtain such services, its authority to decide the minimum required amounts of each ancillary service and its right to determine the locations at which such services must be provided.²¹

In addition, the NYISO's self-supply procedure is consistent with Order No. 2000's determination that "allowing self-supply provides a possible competitive check on the RTO to ensure that to the extent it does provide the services, it acquires them at lowest cost." The NYISO simply administers a bid-based ancillary services market, which, when it is operating properly, ensures that transmission customers receive ancillary services at the lowest cost.²²

¹⁸ The NYISO is an independent entity that administers a bid-based centralized ancillary services market. Accordingly, it is reasonable for Order No 2000's guidance to inform the Commission's analysis in this proceeding.

¹⁹ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,130-31 (2000).

²⁰ *Id.* at 31,141.

²¹ Order No. 2000 at 31,131.

²² *See, e.g., Pacific Gas & Electric Co., et. al.*, 81 FERC ¶ 61,122 at 61,496 (1997) (explaining that the California ISO "should not be deemed to procure ancillary services on its own behalf since the ISO is not a participant in the market place").

Indeed, the NYISO's self-supply procedure is intended to keep prices low for all market participants by requiring self-suppliers to bid into the market, instead of withholding such resources for their own benefit.

C. NIMO Did Not Comply With the Commission's Requirements for Self-Supplying Ancillary Services

Even if the NYISO were not permitted to make its self-supply procedure part of its centralized market process, NIMO would not be allowed to self-supply 10-minute reserve simply by declaring its intentions via e-mail. Commission precedent clearly states that a transmission customer "must reach agreement" with its transmission provider "as to the amount of ancillary services" that it will self-supply.²³ Moreover, it would be highly inefficient, particularly in a market as sophisticated as the one administered by the NYISO, to allow market participants to establish individualized self-supply arrangements simply by declaring their intention to do so.

V. Compliance with Rule 213 of the Commission's Rules of Practice and Procedure

A. Disputed Factual Allegations

- The NYISO disputes NIMO's allegations that it has misinterpreted its Open-Access Transmission Tariff and developed a self-supply procedure that is inconsistent with Commission policy.

B. Law Upon Which This Answer Relies

- *Complaint Procedures* ("Order No. 602"), FERC Stats. & Regs. ¶31,071 at 30,856 (1999), *order on reh'g*, Order 602-A, FERC Stats. & Regs. ¶ 31,076 (1999) (requiring complaints to address the possibility that the issues they raise might be better addressed through ADR procedures).
- 18 C.F.R. § 206(b) (same).
- *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and*

²³ See, e.g., *Allegheny Power System, Inc.*, 80 FERC ¶ 61,143 at 61,542 (1997).

Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,717 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *appeal docketed, Transmission Access Policy Study Group, et al. v. FERC*, Nos. 97-1715 (Transmission Customers must exercise their right to self-supply in a manner consistent with prevailing regional practices).

- *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,131 (2000) (affording RTOs flexibility with respect to customers' right to self-supply).
- *AES Redondo Beach, L.L.C.*, 87 FERC ¶ 61,208 at 61,810 (1999) (directing parties to consider whether transmission customers' right to self-supply ancillary services could be incorporated into a centralized ISO market process).
- *Allegheny Power System, Inc., et. al.*, 80 FERC ¶ 61,143 at 61,542 (1997) (explaining that all self-supply arrangements must separately be agreed to by a transmission provider and its transmission customers).

C. Admissions and Denials of NIMO's Material Allegations

- The NYISO admits that prices in the NYISO-administered 10-minute reserve markets have increased substantially and that the increases are not attributable to the interplay of competitive market forces.
- The NYISO denies that it has misinterpreted its Open-Access Transmission Tariff, eliminated NIMO's right to self-supply operating reserves or rendered the language of Section 3 of Schedule 5 of its Open-Access Transmission Tariff a nullity.
- The NYISO denies that its self-supply procedure is inconsistent with Commission precedent or policy.

D. Defenses

- NIMO's Complaint is defective because it fails to discuss the possibility of using Alternative Dispute Resolution Procedures, as is required by 18 C.F.R. § 385.206(b).
- NIMO's Complaint should be rejected, or at the very least deferred, because the NYISO has called for a multilateral settlement process which may efficiently resolve all of NIMO's concerns using ADR procedures.
- The NYISO has properly interpreted the self-supply provision in its Commission-approved Open-Access Transmission Tariff.

- Even if the NYISO had not interpreted its Open-Access Transmission Tariff correctly, NIMO could not properly arrange for self-supply simply by declaring its intention to do so in an e-mail.

VI. Conclusion

WHEREFORE, for the foregoing reasons the New York Independent System Operator, Inc., respectfully asks that the Commission dismiss the March 24, 2000 Complaint of Niagara Mohawk Power Corporation.

Respectfully submitted,

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April 10, 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 10th day of April, 2000.

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