

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

**New York Independent System Operator, Inc.     )     Docket No. ER06-185-000**

**RESPONSE OF  
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.  
TO REQUEST OF THE NEW YORK TRANSMISSION OWNERS  
TO HOLD PROCEEDINGS IN ABEYANCE**

On November 29, 2005 the New York Transmission Owners<sup>1</sup> submitted a filing under the title Motion to Intervene and Protest of the New York Transmission Owners (“NYTO Filing”), in response to the filing on November 8, 2005 by the New York Independent System Operator, Inc. (“NYISO”) of a Report of Tariff Implementation Errors and Request for Limited Tariff Waivers (“November 8 Filing”).<sup>2</sup> Since the NYTO Filing requests affirmative relief and thus is in effect a form of motion, the NYISO respectfully requests leave to respond, and responds, to the NYTO Filing.<sup>3</sup>

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<sup>1</sup> Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA, New York Power Authority, New York State Electric & Gas Corporation, Rochester Gas & Electric Corporation, Orange and Rockland Utilities, Inc. and Niagara Mohawk Power Corporation d/b/a National Grid.

<sup>2</sup> *New York Independent System Operator, Inc.*, Report of Tariff Implementation Errors and Request for Limited Tariff Waivers of the New York Independent System Operator, Inc., Docket No. ER06-185-000 (Nov. 8, 2005).

<sup>3</sup> On December 6, 2005, Consolidated Edison Company of New York, Inc. (“ConEd”) and Orange and Rockland Utilities, Inc. (“O&R”), two of the signatories to the NYTO Filing, filed a Supplemental Protest (“Supplemental Protest”). To the extent this Supplemental Protest was intended to supplement the NYTO Filing, the NYISO requests leave to respond, and responds, to it as well.

## I. REQUEST FOR LEAVE TO SUBMIT RESPONSE

The NYISO recognizes that the Commission generally discourages responses to protests. The NYTO Filing, however, seeks affirmative relief from the Commission by requesting the Commission to (1) “hold the NYISO’s waiver request in abeyance until the NYISO” takes certain actions, (2) “order the NYISO to undertake a stakeholder process,” and (3) “order the NYISO to file a detailed refund report within 30 days of the conclusion of such stakeholder process.”<sup>4</sup> The Commission’s Rules of Practice and Procedure therefore permit the NYISO to respond to the NYTO Filing.<sup>5</sup>

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.<sup>6</sup> 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 NYTO Filing (including the Supplemental Protest), thereby assisting the Commission in its review and

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<sup>4</sup> NYTO Filing at 5-6.

<sup>5</sup> 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).

<sup>6</sup> See, e.g., *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).

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.

## II. RESPONSE

### A. *The New York Transmission Owners Mischaracterize This Docket as a Request for Authority to Issue Refunds*

The New York Transmission Owners assert that the NYISO is requesting leave to “process retroactive refunds” and argue that the NYISO has “failed to show that the errors in question trigger the need for refunds.”<sup>7</sup> These assertions attempt to turn this proceeding into a case in which the NYISO must submit information to justify the imposition of refunds. The New York Transmission Owners, however, misapprehend the nature and limited scope of the tariff clarification/waiver requested in the NYISO's November 8 Filing.

As the November 8 filing explained, certain aspects of the implementation of the NYISO's Market Mitigation Measures (“MMM”)<sup>8</sup> did not conform to applicable tariff requirements as they have changed from time to time. The NYISO is now taking corrective action to ensure compliance with its tariff obligations by correcting the billing of certain Bid Production Cost Guarantee (“BPCG”) payments within the tariff procedures for final bill settlements. These corrections do not require further authorization from the Commission, since they are based on the NYISO's existing obligations under its tariff and the filed rate doctrine.<sup>9</sup>

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<sup>7</sup> NYTO Filing at 1, 4.

<sup>8</sup> The NYISO's Market Mitigation Measures are set forth in Attachment H to the NYISO's Market Services Tariff.

<sup>9</sup> See *NRG Power Marketing, Inc. v. New York Independent System Operator, Inc.*, 91 FERC ¶ 61,346 (2000).

The NYISO's filing did not ask the Commission for authority to impose retroactive mitigation. To the contrary, the NYISO's November 8 Filing requested the Commission to confirm, consistent with its long-standing policies, the application §4.2.2(d) of the MMM to bar any redetermination of LBMPs in connection with the mitigation errors during the period in question. The NYISO explained that recalculating the relevant market clearing prices would potentially be very disruptive of settled market expectations, and that the calculations would be "very difficult if not virtually impossible." The NYISO specifically requested the Commission to confirm that §4.2.2(d) of the MMM would "bar any redetermination of LBMPs" in connection with the tariff implementation errors and "[w]aive any other provisions of the Services Tariff if and to the extent that they could be interpreted to require retroactive mitigation of LBMPs . . . ." <sup>10</sup>

The New York Transmission Owners' "refund" assertions are similarly misplaced. For the information of the Commission and by way of background for the clarification/waiver request, the November 8 Filing described the NYISO's intention to correct certain initial BPCG calculations in the ordinary course of its final bill close-out process to bring those calculations into compliance with the guarantee payment mitigation provisions of the Services Tariff. These actions are necessary because of the NYISO's determination that the initial BPCG statements were based on calculations that used methodologies that had been superseded by certain tariff revisions. As explained in the November 8 Filing, these corrections do not require a redetermination of market clearing prices, but rather individual unit guarantee payments. In addition, contrary to the suggestion in the NYTO Filing, those corrections do not involve "refunds," as the billing procedures for the underlying BPCG obligations remain open and

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<sup>10</sup> November 8 Filing at 11, 19.

subject to final determination in accordance with the NYISO's tariffs. Since those final bills will conform to the tariff, there is no issue of the NYISO's being out of compliance with the tariff and needing to issue "refunds." The November 8 Filing simply advises the Market Participants and the Commission of certain BPCG calculations that will need to be made in the final billing and settlement process as a result of the matters reported in the filing. Neither the methodologies for correcting the initial BPCG calculations to implement the requirements of the Service Tariff nor the information related thereto are matters before the Commission for decision as a result of the November 8 Filing.

To the extent the Supplemental Protest of ConEd and O&R was intended to supplement the NYTO Filing, it does not provide any facts or arguments that change the analysis set forth above. The thrust of the Supplemental Protest appears to be that the bar on retroactive redetermination of market clearing prices in § 4.2.2(d) of the MMM should somehow also operate to preclude the correct determination of BPCG payments in the Market Participants' final bills. Nothing in the language or policy of § 4.2.2(d), which are concerned with changes in market outcomes rather than individual unit payments, supports this far-reaching result, and the provisions of § 7.4 of the Services Tariff on correction of bills are plainly to the contrary.

*B. The NYISO Has and Will Provide Individual Market Participants with the Information Necessary to Resolve Billing Issues*

The NYISO has informed the Market Participants of the total estimated amounts involved in the BPCG corrections.<sup>11</sup> In addition, the NYISO has provided the actual adjustments for the months of June, July and August, 2002 to each Market Participant as a line item on its bill for the

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<sup>11</sup> See [http://www.nyiso.com/public/webdocs/services/financial\\_services/customer\\_settlements/billing\\_issues\\_report/bawg\\_report.pdf](http://www.nyiso.com/public/webdocs/services/financial_services/customer_settlements/billing_issues_report/bawg_report.pdf)

affected months and has provided more specific hourly data to affected owners of New York City generation for the period June, 2002 to April, 2004. The NYISO will continue work with the Market Participants to provide the information necessary to resolve any issues an individual Market Participant may have concerning its final bill. These issues, however, should be resolved on an individual basis in the normal course of the bill and settlement close-out process in order to protect confidential information. The NYISO does not normally provide Market Participants with access to each other's billing information, and there is no reason to depart from that practice here. The Market Participants will receive the same level of detail regarding the uplift charge component of BPCG payments as they have received for any comparable uplift charges since the NYISO's inception. The New York Transmission Owners' suggestion that the NYISO has not provided sufficient information to justify the imposition of "refunds" is thus a red herring, and seeks to greatly expand the scope of the information they are normally provided in the billing and settlement process.<sup>12</sup>

### **III. STATEMENT OF ISSUES**

This filing and the NYISO's November 8 Filing present the following issues to the Commission for decision:

- Whether the Commission should confirm the application of §4.2.2(d) of the NYISO's Market Mitigation Measures ("MMM") as filed in Attachment H of its Market Administration and Control Area Services Tariff, and its policy in favor of price certainty and against retroactive application of market mitigation measures

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<sup>12</sup> It should be noted that the errors that the NYISO has identified involved the incorrect application of mitigation measures. The NYISO is not aware of any calculation errors made by the NYISO's settlement software, given the inputs it was provided, that caused or resulted in the SRE/OOM bill corrections that the NYISO is now processing.

to change market clearing prices, to bar any redetermination of LBMPs in connection with the mitigation errors described in section III of the NYISO's November 8 Filing;

- Whether the Commission should waive any other provisions of the Services Tariff if and to the extent they could be interpreted to require retroactive mitigation of LBMPs, as specified in section V of the November 8 Filing;
- Whether the Commission should deny the NYTO Filing's request for affirmative relief; and
- Whether the Commission should grant (to the extent such response is not expressly allowed under Rule 213) the NYISO's request for leave to respond to the NYTO Filing (including the Supplemental Protest) in order to clarify certain facts and correct inaccurate statements.

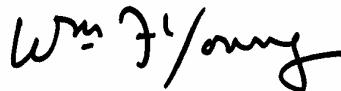
As stated in the November 8 Filing, the authorities on which the NYISO relies for this action are *New York Independent System Operator, Inc.*, 90 FERC ¶ 61,217 at 62,055 (2000) (Commission policy against retroactive mitigation); *Wisvest-Connecticut*, 101 FERC ¶ 61,372 at 62,551 (2002) (demonstrating the Commission's tariff waiver authority and observing that error was "an inadvertent mishap"); *Great Lakes Gas Transmission Limited Partnership*, 102 FERC ¶ 61,331 (2003) (demonstrating the Commission's tariff waiver authority); *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330 (2003) (same); *Northern Border Pipeline Co.*, 76 FERC ¶ 61,141 (1996) (same). The NYISO also relies on the analysis of these orders, demonstrating the Commission's tariff waiver authority, presented in its November 8 Filing at § V. For the Commission's authority to deny the NYTO Protest's request for relief, the NYISO relies upon *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 113 FERC ¶ 61,226 at

P 11-12 (2005) (deeming all issues waived that do not comply with the Commission's Final Rule as listed in Order No. 663). For the Commission's authority to accept this response, the NYISO relies upon 18 C.F.R. §385.213; *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000); *New York Independent System Operator, Inc.*, 91 FERC ¶ 61,218 at 61,797 (2000); *Central Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,138 at 61,381 (1999).

#### IV. CONCLUSION

Accordingly, for the reasons set forth above and in the NYISO's November 8 Filing, the NYISO respectfully requests the Commission to: (1) deny the New York Transmission Owners' requests for affirmative relief, (2) consider the NYISO's November 8 Filing without holding it in abeyance as requested in the NYTO Filing, and (3) to grant the relief requested in the NYISO's November 8 Filing.

Respectfully submitted,



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Dated: December 12, 2005

cc: Shelton M. Cannon, Room 8A-03, Tel. (202) 502-8213  
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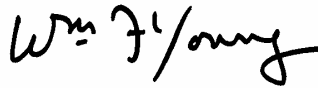


Kathleen Nieman, Room 82-65, Tel. (202) 502-8050

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service lists 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.

Dated at Washington, DC this 12th day of December, 2005.

A handwritten signature in black ink, appearing to read "Wm F. Young". The signature is written in a cursive style with a horizontal line underneath it.

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