

DRAFT - March 10, 2004

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March 12, 2004

FILE NO:

By Hand

The Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Compliance Filing and Notice of Implementation of the
New York Independent System Operator, Inc.
in Docket Nos. ER04-230-000 and ER04-230-001**

Dear Ms. Salas:

Pursuant to the Commission's February 11, 2004 order ("RTS Order")¹ in this proceeding, the New York Independent System Operator, Inc. ("NYISO") respectfully submits this compliance filing. In addition, consistent with PP 5 and 10 of the RTS Order, the NYISO is announcing when certain "early implementation" components of RTS will take effect.

I. List of Documents Submitted

The NYISO submits the following documents:

1. This filing letter;
2. a clean version of the NYISO's proposed compliance revisions to its Open Access Transmission Tariff ("OATT") and its Market Administration and Control Area Services Tariff ("Services Tariff") ("Attachment I");
3. a redlined version of the same ("Attachment II"); and

¹ *New York Independent System Operator, Inc.*, 106 FERC ¶ 61,111 (2004) ("RTS Order").

4. a form of *Federal Register* Notice (“Attachment III”).

II. Copies of Correspondence

Copies of correspondence concerning this filing should be served on:

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III. Service List

Copies of this filing are being served on all parties designated on the official service list maintained by the Secretary of the Commission in this proceeding. The NYISO is also serving a copy of this filing on the New York State Public Service Commission and the electric utility regulatory agencies in New Jersey and Pennsylvania.

IV. Description of the Proposed Changes

A. Definition of “Unjustifiable Changes” in Operating Parameters and Deletion of the Rest-of-State Real-Time AMP

The NYISO’s RTS Filing proposed a number of revisions to its Market Mitigation Measures (“MMM”), which are set forth in Attachment H of its Services Tariff, aimed at improving its market power mitigation rules. Among other things, the NYISO proposed applying real-time Automated Mitigation Procedures (“AMP”) outside of New York City (the “rest-of-state” area). In addition, the NYISO proposed to expressly state that making an “unjustifiable change” to a generator’s operating parameters that reduced its ability to provide energy or ancillary services could constitute physical withholding and subject it to penalties. This was previously implicit in Attachment H’s definition of “physical withholding” but the NYISO believed that it would be clearer to explicitly articulate the rule.

Honorable Magalie R. Salas

March [12], 2004

Page 3

The RTS Order directed the NYISO to more clearly define the term “unjustifiable changes” using a more “objective standard.”² Accordingly, new language defining “unjustifiable changes” in operating parameters has been added to § 2.4(a)(1). This addition specifies that an “unjustifiable change” in operating parameters is one that is “not attributable to the Electric Facility’s verifiable physical operating requirements,” and “is not a rational competitive response to economic factors other than market power.” This makes clear that a seller can demonstrate that a change in operating parameters is justified if it can be shown to be required by a unit’s verifiable physical operating characteristics. The change also makes clear that a change will be deemed justifiable if it is consistent with the seller’s economic interests in a competitive market.

The Commission also rejected the proposed extension of the AMP.³ The NYISO believes that this portion of the RTS Order is erroneous, and inconsistent with the Commission’s prior orders and its obligations under the Federal Power Act. The NYISO is accordingly seeking rehearing of this portion of the RTS Order in a contemporaneous filing. In the meantime, this compliance filing removes the real-time rest-of-state AMP provisions. The relevant language has been deleted from § 3.2.2(c), and § 3.2.2(d) of the RTS filing of Attachment H.

B. Implementing an Alternative to “Price Chasing”

In the RTS Filing, the NYISO proposed to eliminate off-dispatch generators’ right to be compensated for generating above their scheduled output levels when engaged in “price chasing.” In response to protests by Sithe Energy Marketing, LP and Indeck Energy Services, Inc. (collectively, “Sithe”) and others, the Commission directed the NYISO to “incorporate” one of three options proposed by Sithe no later than November 1, 2004. Specifically, the NYISO could either: (1) re-instate the pre-RTS price-chasing model; (2) replace price-chasing with rules allowing generators to self-schedule up to 30 minutes before the real-time commitment process; or (3) allow non-dispatchable generators to request that they be scheduled on a 15-minute, rather than a 5-minute, basis. The Commission left the decision to the NYISO.

² RTS Order at P 32.

³ RTS Order at P 30.

After carefully reviewing the options and the technical issues associated with them, and after discussing the issues with its stakeholders, the NYISO believes that providing a fifteen-minute scheduling option would be the best choice. The NYISO has already explained why it does not wish to reinstate price-chasing.⁴ The NYISO also does not wish to adopt the first alternative to price-chasing, *i.e.*, “option ii,” establishing a later self-scheduling deadline. The NYISO disagrees with Sithe’s assertion that allowing self-scheduling as late as thirty minutes before a Real-Time Commitment (“RTC”) cycle is enough time for the NYISO to process self-schedules efficiently or to avoid adverse reliability impacts.⁵ RTS was designed to support self-schedule requests no later than seventy-five minutes before each hour. Moving the self-scheduling deadline to thirty minutes before each fifteen minute RTC cycle would be a drastic change that goes well beyond the enhancements that the NYISO proposed in the RTS filing.

By contrast, the second alternative to price-chasing, *i.e.*, “option iii,” creating a fifteen-minute scheduling option, is an enhancement that the NYISO was already considering developing and has discussed with some of its stakeholders. Unlike “option ii,” the NYISO believes “option iii” will bring greater benefits than costs.

The NYISO is not, however, including tariff changes to implement fifteen-minute scheduling in this filing.⁶ Instead, it intends to take the time to further discuss various design issues, including those discussed below, with its stakeholders. Once this process is complete, it will make another compliance filing which will include all necessary tariff revisions. The NYISO will propose to make these revisions effective by whatever implementation deadline is ultimately established by the Commission.⁷ It will make the compliance filing at least sixty days before that deadline.

⁴ See *Request for Leave to Answer and Answer of the New York Independent System Operator, Inc.*, at 3-4 (January 14, 2004). In its Answer, the NYISO argued that the introduction of the RTS software would effectively make price chasing obsolete. It further explained that there were operational and reliability issues associated with price chasing that could require manual operator intervention, and that price chasing was not worth the trouble it caused because it was a relatively little-used function.

⁵ See *Motion to Intervene and Comments of Sithe Energy Marketing, L.P. and Indeck Energy Services, Inc.* at 7.

⁶ The RTS Order states only that the NYISO must “incorporate” a price-chasing alternative by November 1, 2004 and does not specify when the relevant tariff changes must be filed.

⁷ The NYISO is concurrently submitting a separate request for rehearing seeking an additional one hundred and fifty days beyond November 1 to implement the fifteen-minute scheduling option.

Honorable Magalie R. Salas

March [12], 2004

Page 5

At present, the NYISO envisions that the fifteen-minute scheduling option would only be available to generators that are incapable of following five-minute dispatch signals, not to generators that simply choose to be non-dispatchable. Doing otherwise would run the risk of making it inefficiently attractive for generators to opt out of the NYISO's real-time dispatch, which could introduce a host of operational and reliability problems. Furthermore, the argument for restoring price-chasing or creating an alternative rested largely on the inability of units with certain physical characteristics to accurately represent their costs on a five minute basis.⁸

In addition, the NYISO expects that generators choosing the fifteen minute scheduling option would not be eligible to set market-clearing prices in the Real-Time Dispatch.

Similarly, the NYISO expects that a generator's eligibility for real-time bid production cost guarantee payments under RTS would not change simply because it chooses the fifteen minute scheduling option.

The NYISO does not believe that it is necessary to couple its introduction of a fifteen minute scheduling option with major changes to its combined-cycle modeling software but is open to the possibility of making upgrades. The costs of enhancing combined cycle modeling, and the time required, would be substantial. The NYISO hopes to discuss the budget and scheduling implications of doing early work on the combined cycle modeling software with its stakeholders and then decide whether to proceed.

C. Exempting Non-ICAP Suppliers from the Day-Ahead Default Availability Bid

(To Be Included Only if FERC Does Not Grant the Emergency Request by 3/12)

The RTS Order required the NYISO to revise the Services Tariff to exempt non-Installed Capacity suppliers from a rule automatically assigning a \$0/MWh default availability bid to suppliers that voluntarily offer their capacity into the day-ahead market on a flexible basis. In a March 5, 2004 Emergency Request for Rehearing, the NYISO challenged this ruling and requested additional time to submit its compliance filing on this issue. Because the Commission has not yet acted on the emergency request, the NYISO is including compliance

⁸ See *Sithe* at 5-7, *Motion to Intervene and Comments of Independent Power Producers of New York, Inc.*, at 9-10.

tariff sheets that exempt non-ICAP suppliers from the default bid rule. The NYISO is not withdrawing its emergency request for rehearing on this issue.

V. Notice of Early Implementation of Certain Mitigation Measures

In the RTS Filing, the NYISO requested a flexible effective date for implementing RTS, due to the complexity of the software development, testing, and integration work required in advance of implementation. The RTS Order authorized the NYISO to “implement parts of the filing” before the rest of RTS, provided that it: (i) gave the Commission and stakeholders at least two weeks notice of implementation; and (ii) posted a notice of the effective date on its website at least forty eight hours in advance. By this filing, the NYISO provides notice that it will be activating most of the approved enhancements to its MMM effective on May 1, 2004, the start of the “Summer Capability Period.” These components can be activated prior to the implementation of the RTS software and there is therefore no reason to delay their introduction.

More specifically, all of the substantive revisions to Attachment H that were described in the RTS filing will be put in place on May 1, except for the two revisions described below (and as indicated above the rest-of-state AMP provisions, pending resolution of the NYISO’s rehearing request). These two revisions must be held in abeyance because they are related to market changes that will not be in place until RTS is implemented.

i) The following language at the end of § 4.2.2(d)(3) that would have been deleted by the RTS filing needs to be retained: “Automated mitigation measures shall not be applied to Minimum Generation bids applicable to units to be started after hour 20 in a dispatch day and that have a minimum run time of at least 4 hours.” This provision will not be needed once start-up bids can be submitted on an hourly basis under RTS. In the meantime, without hourly bidding, and hourly mitigation where warranted, the language marked for deletion needs to be retained to help ensure cost recovery for units that are started late in the day and as a result have a minimum run time that would extend past midnight of the dispatch day in which they are started. Such units may need to submit relatively high bids to protect against such late starts, since they would have to recover their start-up costs over the short number of hours remaining in the dispatch day.

ii) In § 5.1, the requirement that generating units located in a Constrained Area (currently, New York City) that are capable of doing so shall “operate On Dispatch” needs to be retained. Once RTS is in place, as specified in the RTS filing this language should be deleted and replaced by a requirement to “respond to RTD base point signals.” Since there will

Honorable Magalie R. Salas

March [12], 2004

Page 7

not be any "RTD base point signals" until RTS is implemented, the current "operate On Dispatch" requirement needs to be retained pending implementation of RTS.

In addition to the foregoing substantive changes from the Attachment H revisions submitted with the RTS filing, the previously-filed revisions included references to new defined terms that would be added to the Services Tariff by the RTS filing. In a number of instances, the new defined terms will not be included in the Services Tariff until the RTS effective date. Accordingly, in a number of places the version of Attachment H submitted with this filing retains wording appropriate for the defined terms in the currently effective version of the Services Tariff.

Although the Commission normally discourages the inclusion of non-compliance items in compliances filings it is appropriate to make an exception here. Because the tariff sheets that will be made effective on May 1 overlap with those affected by this compliance filing it is far simpler, and will be less confusing to the public, for both the compliance and the "early implementation" revisions to be included in a single filing.

VI. Federal Register Notice

A form of *Federal Register* Notice is attached as Attachment III hereto. In addition, the *Federal Register* Notice has been provided in Microsoft Word format on the attached diskette.

VII. Conclusion

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this compliance filing and notice.

Respectfully submitted,

**NEW YORK INDEPENDENT
SYSTEM OPERATOR, INC.**

By _____

Ted J. Murphy

Counsel for
New York Independent System Operator, Inc.

Honorable Magalie R. Salas
March [12], 2004
Page 8

Attachments