

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

New York Independent System Operator, Inc.) Docket No. ER06-617-000

**MOTION TO SUBMIT ANSWER AND ANSWER TO PROTESTS
OF THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission's ("Commission's") Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc., ("NYISO") hereby (a) explains the legal basis for its right to answer the protest filed by the New York Municipal Power Agency ("NYMPA"), (b) respectfully requests leave to answer the protests filed by the New York Transmission Owners ("Transmission Owners") and NYMPA, and (c) submits this "Answer" to the protests filed by the Transmission Owners and NYMPA in response to the NYISO's February 8, 2006 Report of Tariff Implementation Errors, Request for Approval of Proposed Compensation Methodology, and Request for Limited Tariff Waivers of the New York Independent System Operator, Inc. ("Report") that was submitted in the above-captioned docket.

I. List of Issues

This filing presents the issues whether the Commission should:

- (1) Permit the NYISO to answer, as of right or for good cause shown, the Protests of the Transmission Owners and NYMPA.

Relevant authority includes Rules 212 and 213 of the Commission's Rules of Practice and Procedure; *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*,

¹ 18 C.F.R. §§ 212, 213 (2004).

93 FERC ¶ 61,017 at 61,036 (2000); *New York Independent System Operator, Inc.*, 91 FERC ¶ 61,218 at 61,797 (2000); and *Central Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,138 at 61,381 (1999).

- (2) Accept the NYISO's proposal to compensate the GP2 mitigated generators that ran in Real-Time to satisfy the Real-Time obligation that resulted from their erroneous Day-Ahead commitment based on their "full bids" in the manner proposed in the NYISO's Report.

Relevant authority includes *New York Independent System Operator, Inc.*, 110 FERC ¶ 61,227 (2005); *New York Independent System Operator, Inc.*, 109 FERC ¶ 61,163 (2004); *New York Independent System Operator, Inc.*, 95 FERC ¶ 61,471 *mimeo* at n. 9 (2001).

- (3) Accept the NYISO's proposal to "zero out" the Day-Ahead and Real-Time schedules (and all balancing obligations) of the GP2 mitigated generators that did not run in Real-Time to satisfy the Real-Time obligation that resulted from their erroneous Day-Ahead commitment in the manner proposed in the NYISO's Report.

Relevant authority includes *New York Independent System Operator, Inc.*, 110 FERC ¶ 61,227 (2005).

- (4) Reject NYMPA's request that the Commission modify the method of allocating BPCG-related uplift that is set forth in Rate Schedule 1 to the NYISO's Tariffs and accept the NYISO's proposed method of allocating GP2-related BPCG uplift without modification.

Relevant authority includes the NYISO's Open Access Transmission Tariff ("OATT") Sections 1, 2.B.4(c) (Sheet Nos. 233-233.01), 4.B (Sheet No. 238) and the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff") Section 1.A.

II. Explanation of Right To Submit Answer/Motion for Leave to Submit Answer

The NYISO submits that Rule 213(a)(3) of the Commission's Rules of Practice and Procedure authorize this Answer to NYMPA's protest. NYMPA's Protest is not limited to commenting on the merits of the Report that was submitted by the NYISO. Instead, NYMPA's Protest requests that the Commission waive certain requirements of the NYISO's Commission-accepted allocation of Bid Production Cost Guarantee ("BPCG") uplift to exempt Loads that "did not participate in the [NYISOs] day-ahead and real-time markets"² from cost responsibility for the Guarantee Payment 2 ("GP2") related mitigation errors that are described in the NYISO's Report. While NYMPA styles its pleading a "Protest," it is, in fact, a motion that seeks affirmative relief; a limited waiver of the requirements of Rate Schedule 1 to the NYISO's OATT and Services Tariffs that would exempt from responsibility for GP2-related BPCG uplift charges entities that did not participate in the NYISO's Day-Ahead or Real-Time Markets. While Rule 213(a)(2) of the Commission's Rules of Practice and Procedure provides that an answer may not be made to a protest unless approved by the Commission, Rule 213(a)(3) allows the NYISO to answer any other pleading, including motions that seek affirmative relief from the Commission. Because NYMPA's pleading seeks affirmative relief from the Commission, the NYISO submits that the Commission's Rules of Practice and Procedure authorize this Answer to

² NYMPA March 1, 2006 protest at 1.

NYMPA's Protest. The NYISO also requests permission to answer the protests of NYMPA and the Transmission Owners for the reasons set forth below.

The NYISO recognizes that the Commission generally discourages answers to protests. The Commission has, however, 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.³ The NYISO's Answer meets this standard. The NYISO's response to the protests of NYMPA and the Transmission Owners does not introduce new issues, but instead is submitted for the limited purpose of clarifying certain factual matters, and responding to a proposal to waive certain cost allocation rules set forth in the NYISO's Rate Schedule 1, thereby assisting the Commission in its review and consideration of the complex issues presented in this proceeding. The NYISO therefore respectfully requests that the Commission exercise its discretion and accept the NYISO's Answer to the protests filed by NYMPA and the Transmission Owners.

III. Answer to the Transmission Owners' Protest

A. The Commission's Orders Direct the NYISO to Pay the Inappropriately Mitigated Generators their "Full Bid"

In their protest the Transmission owners allege that the NYISO's proposed method of compensating generators that were inappropriately mitigated and committed ignores its

³ 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).

obligation under its Market Mitigation Measures⁴ to ensure that generators that are committed and eligible to receive guarantee payments cannot submit inflated Minimum Generation (“MinGen”)⁵ or Start-Up Bids.⁶ The Transmission Owners argue that the generators that were mitigated and committed based on the NYISO’s GP2 impact test should all be compensated as if the NYISO had mitigated the conduct-failing components of their Bids because, once the generators were erroneously committed, compensating them at their unmitigated Bids could permit these units to receive compensation that exceeds the guarantee payment impact thresholds set forth in the MMM.

The Transmission Owners allege that “[t]he NYISO presumes that an exception [to applying the mitigation measures specified in its MMM] should apply to cases in which generators were mistakenly committed.” In fact, the NYISO’s proposed compensation methodology has a different basis. As explained on page 14 of the NYISO’s Report, the proposed compensation methodology for GP2 mitigated generators was designed to comport with the Commission’s instruction that “if the NYISO subsequently determines that the bid [that was erroneously mitigated] was not an attempt to assert market power, the generator will be paid its full bid.”⁷ While it is possible that certain of the GP2 mitigated Day-Ahead Bids at issue in this proceeding were submitted to economically withhold the unit from commitment, or in the unlikely hope that the generators in question would “hit the jackpot” and be compensated at the above-market levels specified in their Bids, the NYISO can state that (a) none of the Bids at

⁴ The NYISO’s MMM are set forth in Attachment H to its Services Tariff.

⁵ Unless otherwise specified, capitalized terms used in this filing have the meanings specified in the NYISO’s Services Tariff.

⁶ See Transmission Owners’ March 1, 2006 protest at 7-9.

⁷ *New York Independent System Operator, Inc.*, 95 FERC ¶ 61,471 *mimeo* at n. 9 (2001).

issue had a substantial impact on Locational Based Marginal Prices (“LBMPs”), and (b) none of the generators in question would have been committed absent the erroneous GP2 mitigation. For these reasons, the NYISO has presumed that it should compensate the GP2 mitigated generators in the manner specified in the Commission’s “full bid” orders.⁸ However, if so instructed by the Commission, the NYISO will leave the GP2 mitigated Bids in place.

B. Transmission Owners Protest of the NYISO’s Proposed Treatment of GP2 Mitigated Generators that Did Not Run in Real Time

On pages 12 and 13 of their protest, the Transmission Owners protest the NYISO’s proposal to “zero out” the Day-Ahead and Real-Time schedules (and all balancing obligations) of the GP2 mitigated generators that did not run in Real-Time to satisfy the Real-Time obligation that resulted from their erroneous Day-Ahead commitment. The Transmission Owners’ concerns appear to be based on the assumption that this provision of the NYISO’s compensation proposal will increase the cost to Loads of “undoing” the GP2 mitigation. On page 19 of its Report the NYISO explains:

[T]he NYISO will **reclaim** slightly more than \$50,000 (net) in balancing payments/charges when it eliminates the Day-Ahead and Real-Time schedules and balancing obligations of generators that did not run in Real-Time to satisfy the schedules that resulted from their Day-Ahead GP2 mitigation. [Emphasis added.]

The NYISO is not proposing to socialize net costs to Loads in order to fund its proposal to “zero out” the ten GP2 mitigated generators that did not run in Real-Time to satisfy their Day-Ahead schedules. Instead, on a net basis, the NYISO will be **recouping** approximately \$50,000 in balancing payments made to these GP2 mitigated generators. For this reason, the Transmission

⁸ *New York Independent System Operator, Inc.*, 110 FERC ¶ 61,227 (2005); *New York Independent System Operator, Inc.*, 109 FERC ¶ 61,163 (2004); *New York Independent System Operator, Inc.*, 95 FERC ¶ 61,471 *mimeo* at n. 9 (2001).

Owners' assertions appear to be based on a misunderstanding of the NYISO's proposed treatment of the GP2 mitigated generators that did not run in Real-Time to satisfy their Day-Ahead schedules.⁹ The NYISO notes that none of the affected generators have protested the NYISO's filing. The Commission should accept the NYISO's proposed treatment of the GP2 mitigated generators that did not run in Real-Time to satisfy their Day-Ahead schedules without modification for the reasons explained in the NYISO's Report.

IV. Answer to NYMPA's Protest

NYMPA's prayer for relief contains a broad request that the Commission reject the NYISO's proposal to use its OATT and Services Tariff Rate Schedule 1 as the mechanism for allocating the uplift that is necessary to compensate the GP2 mitigated generators. However, the relief that NYMPA recommends to the Commission in the body of its protest is more focused. NYMPA's protest asks the Commission to require the NYISO to change its allocation of BPCG uplift, on a one-time basis, to exclude entities that, in whole or in part, have "hedged themselves from the uncertainties of the spot market"¹⁰ by entering into bilateral transactions and instead to "charge market participants according to the ratio of energy purchases in the day-ahead market for each hour or each day during the 82 days in which mitigation of bids based on GP2 impact occurred."¹¹ NYMPA's request should be rejected for each of the following reasons:

⁹ In addition, the Transmission Owners' proposed treatment of GP2 mitigated generators that did not run in Real-Time, unless coupled with their proposal to leave in place the mitigation of all GP2 committed generators, could require the NYISO to provide significant additional BPCG compensation to generators that submitted high Start-Up and MinGen Bids.

¹⁰ NYMPA March 1, 2006 protest at 8 and 9.

¹¹ *Id.* at 10.

1. In New York all Loads that take service under both the NYISO OATT and the Services Tariff (including the NYMPA Loads) are required to pay uplift associated with Day-Ahead and Real-Time BPCG payments.¹² Section 1.A of Rate Schedule 1 of the Services Tariff incorporates by reference Section 2.B.4 of Rate Schedule 1 to the OATT. Section 2.B.4(c) of Rate Schedule 1 to the NYISO's OATT provides:

The ISO shall calculate and each Transmission Customer shall pay, a daily charge equal to the product of (A) the bid production cost guarantee costs listed in Section 4.B of this Rate Schedule for each day and (B) the ratio of (i) the Transmission Customer's withdrawal billing units for that day as described in Section 2.A of this Rate Schedule to (ii) the sum of all ISO Transmission Customers' withdrawal billing units for that day, as described in Section 2A of this Rate Schedule...

Section 4.B of OATT Rate Schedule 1, in turn, provides:

B. Bid Production Guarantees

The ISO's costs also include the costs associated with differences between the amounts bid by generating facilities that have been committed and scheduled by the ISO to provide Energy and Ancillary Services, and the actual revenues received by these generating facilities for providing such Energy and Ancillary Services....

Withdrawal billing units are described in Section 2.A of OATT Rate Schedule 1:

The Transmission Customer's withdrawal billing units shall be based on its Actual Energy Withdrawals for all Transmission Service to supply Loads in the NYCA, and hourly Energy schedules for all Wheels Through and Exports.

The NYISO is proposing to allocate the uplift costs it will incur to compensate the GP2 mitigated generators in the same manner it allocates uplift resulting from any other Day-Ahead or Real-Time BPCG payment. Granting NYMPA's protest would effectively change New York's standard allocation of BPCG-related uplift on a one-time basis and would disrupt settled market expectations in New York. If NYMPA believes the method by which BPCG-related uplift is

¹² See OATT Sections 1, 2.B.4(c) (Sheet Nos. 233-233.01), 4.B (Sheet No. 238); Services Tariff Section 1.A.

allocated in New York needs to be changed, the NYMPA should raise the issue within the NYISO's governance process, rather than seeking to obtain a single-case exception to a longstanding tariff rule from the Commission.

To the best of the NYISO's collective recollection, the remedy that NYMPA proposes in its protest was not raised or discussed within the NYISO's governance process on any of the several occasions when the NYISO presented the GP2 issue to its governance committees for discussion. While NYMPA representatives did generically question the appropriateness of allocating uplift costs associated with correcting the GP2 mitigation to their Loads, NYMPA arguments were limited to proposing that the NYISO re-run its Day-Ahead Market for each of the impacted days; a position that NYMPA abandons in its protest. The NYISO would not oppose discussing revisions to the appropriate allocation of uplift costs within its governance process. However, the NYISO does not believe that this proceeding presents the appropriate forum for revising or creating an exception to longstanding New York BPCG uplift allocation rules because such revisions would upset settled market expectations in New York.

2. The ISO-NE "Energy Uplift Orders" to which NYMPA cites on page 2 (n.1) of its protest reflect a cost allocation method that is (based on the NYISO's reading of the Energy Uplift Orders) substantially different in New York than it is in New England. New York's Commission-accepted rules for allocating BPCG-related uplift are identified above. Apparently suppliers in New England are responsible for paying BPCG-related uplift under a broader set of circumstances. This simply is not the case in New York.

3. NYMPA's claims that the NYISO's proposed remedy will "frustrate the expectations of load entities who have hedged themselves from the uncertainties of the spot market"¹³ by entering into Bilateral Transactions is not accurate. Loads that take service under both the Services Tariff and OATT have been held responsible for BPCG-related uplift since the earliest days of the NYISO. The NYMPA Loads could not have entered into bilateral contracts with suppliers based on a realistic expectation that they would be insulated from BPCG uplift costs. Instead, it is NYMPA's proposal to allocate the costs of correcting BPCG uplift impacted by the GP2 mitigation "according to the ratio of energy purchases in the day-ahead market for each hour or day during the 82 days in which mitigation of bids based on GP2 impact occurred"¹⁴ that would substantially revise settled market expectations in New York.

4. In response to NYMPA's factual claims that its Loads "do not normally participate in day-ahead or real-time markets"¹⁵ in New York, the NYISO reviewed a single sample day (January 24, 2005) on which GP2 mitigation occurred at the "statewide" level. While a number of NYMPA Loads appear to have been served entirely via Bilateral Transactions, the NYISO's review indicates that NYMPA Loads, at multiple locations, took service as "physical loads" in the NYISO's Day-Ahead Market.¹⁶ The NYISO also identified NYMPA transactions on January 24, 2005 that indicated to the NYISO that NYMPA, in fact, participates in the NYISO's Day-Ahead Market.

¹³ NYMPA March 1, 2006 protest at 8 and 9.

¹⁴ *Id.* at 10.

¹⁵ *Id.*

¹⁶ The Services Tariff also confirms that the scheduling of units for reliability is done for the benefit of all Loads, including Loads served by Bilateral Schedules. *See* Services Tariff Sections 4.9.2 and 4.10.

For the reasons set forth above, the affirmative relief that NYMPA requests should be rejected and the NYISO's proposed method of allocating GP2-related BPCG uplift should be accepted without modification.

V. Conclusion

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully requests that the Commission:

- (a) reject the protests submitted by the Transmission Owners and NYMPA;
- (b) accept the NYISO's filing, without modification;
- (c) act on the NYISO's Report by April 10, 2006, in order to provide the NYISO with adequate time to process customer bills that will be impacted; and
- (d) grant the NYISO any and all other relief to which it is entitled.

Respectfully submitted,

/s/ Alex M. Schnell
Alex M. Schnell
New York Independent System Operator, Inc.

March 8, 2006

cc: Shelton M. Cannon
Anna V. Cochrane
Cheri Yochelson
Michael A. Bardee
Kathleen Nieman
Dean Wight

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.

Dated at Rensselaer, New York this 8th day of March, 2006.

/s/ Alex M. Schnell

Alex M. Schnell

10 Krey Boulevard

Rensselaer, NY 12144

518-356-8707