

115 FERC ¶ 61,005
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

New York Independent System Operator, Inc.

Docket Nos. EL06-57-000
ER06-291-001

ORDER EXTENDING VOLTAGE SUPPORT SERVICES RATES
AND DENYING REHEARING

(Issued April 3, 2006)

1. In this order the Commission accepts, subject to revision, a revised tariff sheet, to be effective April 5, 2006, filed by the New York Independent System Operator, Inc. (NYISO) pursuant to section 206 of the Federal Power Act (FPA)¹ that extends the rates paid for Voltage Support Services (VSS) under Rate Schedule 2 of its Market Administration and Control Area Services Tariff (Services Tariff). The Commission also finds, under section 206 of the FPA, that the current sunset provision in Rate Schedule 2 is unjust, unreasonable, unduly discriminatory or preferential, and contrary to the public interest because it exposes suppliers to a requirement to provide VSS to NYISO without compensation. By eliminating the sunset provision in this rate schedule, we establish the existing rate as the rate that is just, reasonable, not unduly discriminatory or preferential and in the public interest. In addition, as a result of our establishing the existing rate as the rate for VSS that is just, reasonable, not unduly discriminatory or preferential, and in the public interest, the issues raised in an earlier proceeding regarding refunds for the difference between the existing and new VSS rates to be established are now moot and we thus deny rehearing.

I. Background

A. History of VSS Rates

2. Since its inception in 1999, NYISO has been providing VSS. Rate Schedule 2 of NYISO's Services Tariff sets forth the annual compensation to suppliers that provide VSS. From 1999 through 2002, the rate paid to generators in New York State was calculated under a complex formula that used actual generator production cost data.

¹ 16 U.S.C. § 824e (2000).

Because of problems with that approach, in 2001 NYISO filed a simplified rate methodology based on an estimate of generator costs derived from transmission owners' FERC Form 1 data. On February 5, 2002, in an unpublished letter order, the Director, Division of Tariffs and Market Rates-East, accepted this rate methodology.² However, NYISO intended to use this methodology only as an interim measure.

3. Although the interim methodology was to be replaced by a more sophisticated methodology within a year, NYISO states that it has been very difficult to gain market participant support for changes to the rate methodology. Thus, for every year since 2002, NYISO has requested, and has been granted, annual extensions of the currently-effective rate mechanism.³

4. On December 5, 2005, in Docket No. ER06-291-000, NYISO made a filing requesting an extension to the VSS rate until April 4, 2006, in anticipation of the expiration of the VSS rate on December 31, 2005.⁴ NYISO stated that exigent circumstances were presented by the imminent expiration of Rate Schedule 2, the need for voltage support from generators to maintain bulk electric system reliability, and the Commission's policy requiring that suppliers of VSS be compensated. On December 30, 2005, the Commission accepted and suspended, subject to refund, revised tariff sheets to extend the applicability of NYISO's VSS rate for 120 days, until April 4, 2006.⁵ In that proceeding, NYISO expressed optimism that the parties could reach agreement on a new

² *New York Independent System Operator, Inc.*, Docket No. ER02-617-000 (2002) (unpublished letter order).

³ *New York Independent System Operator, Inc.*, Docket No. ER03-112-000 (2002) (unpublished letter order); *New York Independent System Operator, Inc.*, Docket No. ER04-144-000 (2003) (unpublished letter order); *New York Independent System Operator, Inc.*, 109 FERC ¶ 61,367 at P 6 (2004).

⁴ Under NYISO's Operating Agreement, when exigent circumstances are present, it can make filings with the Commission asking for temporary (120 day) tariff waivers without first obtaining stakeholder approval to do so.

⁵ *New York Independent System Operator, Inc.*, 113 FERC ¶ 61,340 (2005) (December 30 Order). The order also left open the possibility of refunds for the period between January 1, 2006 and the effective date of a new replacement VSS rate and referred the proceeding to the Commission's Dispute Resolution Service (DRS) to help the parties reach consensus on the disputed issues.

VSS rate before the expiration of the 120 days. This confidence has faded and NYISO is now before the Commission with a request to extend the VSS rate under section 206 of the FPA.

B. NYISO's Proposal

5. On March 3, 2006, in Docket No. EL06-57-000, NYISO submitted temporary amendments to Rate Schedule 2 pursuant to section 206 of the FPA, and section 19.01 of NYISO's Independent System Operator Agreement (ISO Agreement). NYISO asserts that allowing the VSS rate to simply expire due to continuing disagreement among its Market Participants over an interim rate and a permanent rate methodology would be unjust and unreasonable under section 206 of the FPA. NYISO states that despite the best efforts of the Commission's DRS, NYISO's Market Participants have been unable to agree on: (1) a replacement VSS rate and related issues; (2) a further interim extension of the current VSS rate; or (3) an alternative interim rate.

6. NYISO requests that the Commission: (1) determine that allowing the current VSS rate to expire would be unjust and unreasonable pending establishment of a permanent rate methodology; (2) continue the current VSS rate until the Commission determines the just and reasonable rate following the submission by NYISO of a study conducted by an independent consultant; and (3) continue the suspension of the rate and, together with the prior suspension period, make the new rate subject to refund from January 1, 2006. NYISO requests permission to submit the new VSS rate and rate methodology as a compliance filing.⁶

7. NYISO states that the extension of the VSS rate will allow NYISO, the independent consultant and Market Participants to conduct a study determining a VSS rate methodology. NYISO proposes to resolve, with the assistance of an independent consultant as needed: (1) compensation for all qualifying VSS capacity, accounting for generation additions and retirements since the current rate was established based on 2001 data; (2) compensation of generators for the full range of VAr⁷ production capability ("leading" or absorbing VARs as well as "lagging" or producing VARs); (3) compensation of generators for their net VAr production to the bulk electric system rather than their

⁶ NYISO Transmittal at 2.

⁷ Reactive Power (often referred to as "VARs" and measured in "MVAR" or megavolt amperes reactive) is analogous to "real power," which is measured in MWs or megawatts.

gross output; and (4) revisions to testing protocols in NYISO's manuals that will ensure that VSS suppliers test automatic voltage regulation (AVR) equipment in accordance with best practices.

8. NYISO states that it will retain an independent consultant expert in generator costs to conduct a study to establish the reactive power production costs that will form the basis of Rate Schedule 2. Among other things, the study will examine whether and how VSS costs should be adjusted over time to reflect cost decreases and increases. NYISO states that the objective of the study is to develop a formula or methodology to periodically adjust the per MVAR rate.⁸ Given that the nature and scope of the study has not been defined, NYISO maintains it cannot precisely estimate a completion date, but will endeavor to propose a new rate and rate methodology by the end of 2006. NYISO proposes, therefore, to make quarterly progress reports to the Commission on the status and schedule of the study.⁹

9. Additionally, NYISO states that it has not been possible to resolve VSS rate issues in NYISO's governance process, nor has it been possible to resolve these issues in negotiations, even with the able assistance of the Commission's DRS. NYISO affirms it has no reason to believe that the oppositional dynamic that has characterized the VSS rate process to date will be any different when applied to the ultimate rate and rate methodology that the independent consultant determines. NYISO asserts that sending the outcome of that study to NYISO's governance process for approval will most likely result in the same inability to obtain agreement. Therefore, NYISO proposes that the Commission allow NYISO to submit the outcome of the VSS cost-of-service study as a compliance filing, which would allow parties to submit their views and protests of the compliance filing to the Commission.¹⁰

10. NYISO states that the costs of VSS have been paid for by Load Serving Entities (LSEs) on a load ratio share allocation of statewide costs since NYISO commenced operations in 1999. NYISO submits that several LSEs have advocated for allocation of reactive power support costs according to need and location. Accordingly, the independent consultant will study whether it is feasible to allocate VSS costs locationally, and, if so, how those costs should be allocated across the state. NYISO states that the independent study on cost allocation will likely be conducted in parallel with the VSS

⁸ NYISO Transmittal at 8-9.

⁹ *Id.* at 9.

¹⁰ *Id.*

cost study. NYISO proposes to make quarterly status reports for the cost allocation study, together with its quarterly status reports on the VSS cost study.¹¹ In addition, NYISO will hold technical meetings with non-generator suppliers of VSS to resolve metering, telemetry, testing, billing and payment protocols. Once NYISO obtains this information, it intends to file tariff amendments to provide compensation to non-generator suppliers of VARs who qualify for payment.

C. Proposed Tariff Revisions

11. NYISO proposes to replace the words “between January 1 and April 4, 2006” in Rate Schedule 2 with the language “until the Commission determines the just and reasonable rate following the submission by the NYISO of a study conducted by an independent consultant.”¹² NYISO requests that the remaining tariff changes, which consist of removing references to the year 2005, be made permanent.

12. In addition, NYISO states that if the Commission accepts the temporary extension of the 2005 VSS rate methodology proposed herein, NYISO also requests that the order acknowledge that NYISO’s customers are on notice of possible modifications. NYISO asserts that continuing the current VSS rate on a temporary basis subject to refund would have the salutary benefit of eliminating any incentive that parties may have to advance their own commercial interests by delaying completion of a study based on their prognostications of the outcome. NYISO requests that the Commission continue to find that the current VSS rate is subject to refund from January 1, 2006.

II. Request For Rehearing

13. On January 30, 2006, pursuant to Rules 212 and 713 of the Commission’s Rules of Practice and Procedure,¹³ New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, and Central Hudson Gas & Electric Corporation (collectively Movants) filed a request in Docket No. ER06-291-001 for clarification of the Commission’s December 30 Order.

14. Movants request that the Commission clarify that the December 30 Order allows for an effective date of January 1, 2006 for all aspects of the revised VSS rate methodology that NYISO will file upon the resolution of the pending issues, including,

¹¹ *Id.* at 10.

¹² *Id.* at 11.

¹³ 18 C.F.R. § 385.212 and 18 C.F.R. § 385.713 (2005).

but not limited to, the appropriate methodology for allocating VSS-related costs to consumers. Movants assert that the rate and cost allocation issues should be resolved as a package, and should all go into effect on the same date. They state that any other result would be unfair and illogical. Movants request that, if the Commission does not grant the requested clarification, it should grant rehearing and provide that the resolution of the cost allocation be made effective as of January 1, 2006.

III. Notice of Filings and Responsive Pleadings

15. Notice of NYISO's March 3, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 12349 (2006), with comments, protests and interventions due on or before March 13, 2006.

16. Timely motions to intervene were filed by the AES Eastern Energy, L.P. (AES) and by the Mirant Parties.¹⁴ Timely motions to intervene and comments were filed by: FPL Energy Generators;¹⁵ Independent Power Producers of New York, Inc. (Independent Power Producers); Multiple Intervenors;¹⁶ Long Island Power Authority and LIPA; Keyspan-Ravenswood, LLC; and the Edison Mission Companies (Edison Mission).¹⁷ The New York Public Service Commission filed a notice of intervention and comments.

¹⁴ The Mirant Parties are: Mirant Energy Trading, LLC; Mirant New York, Inc.; Mirant Bowline, LLC; Mirant Lovett, LLC; and Mirant NY-Gen, LLC.

¹⁵ The FPL generators are: Bayswater Peaking Facility, LLC and Jamaica Bay Peaking Facility, LLC.

¹⁶ Multiple Intervenors is an unincorporated association of approximately 50 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State.

¹⁷ The Edison Mission Companies are: Edison Mission Energy and Edison Mission Marketing & Trading, Inc.

17. NRG Companies, New York Transmission Owners,¹⁸ and the New York Municipal Power Agency each filed a motion to intervene, comments, and a protest.¹⁹

18. NYISO filed a request for leave to file an answer and an answer to the protest of the New York Transmission Owners.

19. New York Association of Public Power filed a motion to intervene out-of-time on March 23, 2006.

IV. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will also accept the motion to intervene out-of-time. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept NYISO's answer and, therefore, we will reject it.

V. Discussion

22. New York Transmission Owners state that NYISO's request should be denied because it goes beyond the scope of the December 30 Order and cannot reasonably be construed as a compliance filing. They urge the Commission to advise NYISO that any new VSS rate and VSS rate methodology must comply with the Commission's

¹⁸ The New York Transmission Owners are: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation. New York Transmission Owners' filing was labeled as comments, but in actuality it is a protest of NYISO's filing.

¹⁹ The NRG Companies are: NRG Power Marketing, Inc.; Arthur Kill Power, LLC; Astoria Gas Turbine Power LLC; Dunkirk Power LLC; Huntley Power LLC; and Oswego Harbor Power LLC.

requirements for cost-based rates and must provide adequate information to show that the rates are just and reasonable. In addition, it offers suggestions for the issues the consultant's report should address.

23. NRG Companies support the portion of NYISO's filing that seeks to continue the existing VSS rate in the New York Control Area. NRG Companies argue that, with the expiration of the current rate on April 4, 2006, the continuation of the existing rate is compelled by: (1) the Commission's own rulings that VSS is an essential transmission service and must be compensated; (2) the filed rate doctrine; and (3) the FPA. NRG Companies also support the proposal in the filing that would require NYISO to make a compliance filing concerning the rate design and rates that result from the completion of the study on the rate methodology. However, NRG Companies strongly oppose NYISO's request to make the current VSS rate subject to retroactive payments to or from suppliers and users of VSS, unless there has been a showing pursuant to section 206 of the FPA that the existing rate is unjust and unreasonable. Like the New York Transmission Owners, NRG Companies also offer suggestions for the issues the consultant's report should address.

24. New York Municipal Power Agency also supports the continuation of the existing VSS rate. However, it objects to NYISO's proposal to submit the proposed consultant's report as a compliance filing, arguing that this would improperly circumvent NYISO's stakeholder process.

25. The remaining parties generally support the portion of the NYISO's filing that seeks to extend the effectiveness of the current VSS rate. However, FPL Energy Generators comment that if the Commission approves the new rate after December 31, 2006, the new rate should be made effective retroactive to January 1, 2007, rather than January 1, 2006. Similarly, Independent Power Producers and Ravenswood comment that any replacement rate should be made effective prospectively only. LIPA argues the potential retroactive effect should cover both the establishment of any new VSS methodology as well as any proposed compensation of non-generator VSS suppliers and urge that the Commission defer its decision until NYISO makes a section 205 filing with a request for a retroactive effective date.

26. Edison Mission contends that by maintaining the currently filed VSS rate, it is unnecessary for the Commission to address the refund issue because NYISO is simply extending the pre-existing, cost-of-service VSS rate that has already been approved by the Commission as just and reasonable. Edison Mission maintains that when a new filing is made by NYISO, the Commission may make the new rate effective and at that time consider all the issues related to the justness and reasonableness of the VSS rate, and make appropriate decisions regarding suspension and refunds.

27. Multiple Intervenors object to NYISO's proposal to submit a compliance filing and urges the Commission to direct that further action on VSS issues shall proceed pursuant to the Commission-approved stakeholder committee process, arguing that NYISO's stakeholder process should not be bypassed.

28. FPL Energy Generators, Independent Power Producers and Multiple Intervenors, the Public Service Commission of New York, and LIPA support NYISO filing the consultant's report as a compliance filing, but offer suggestions as to the issues the consultant's report should address. Similarly, Edison Mission urges the Commission to require NYISO to oversee and conduct the study to establish the reactive power production costs that will form the new VSS rate arguing that NYISO is the most knowledgeable, least biased party, and has a duty to ensure the reliable operation of the New York bulk power system, including VSS. LIPA urges the Commission to direct NYISO to expeditiously complete technical discussions regarding the potential compensation of non-generator VSS suppliers and file any proposed tariff amendments no later than June 1, 2006.

Commission Conclusion

29. The Commission has been asked to grant an extension of the VSS rate under section 206 of the FPA, while NYISO retains an independent consultant to study the issue and develop a methodology for a permanent VSS rate. In addition, NYISO asks for approval to submit the consultant's report as a compliance filing, rather than NYISO making a separate filing under section 205 or 206 of the FPA to propose a new permanent VSS rate. Finally, NYISO asks for Commission approval to submit the new VSS rate, effective January 1, 2006.

30. After a review of NYISO's submittal, it is clear that it goes beyond simple compliance with the requirements of the December 30 Order. Given the lack of consensus among NYISO's stakeholders, we understand NYISO's motivation in characterizing as a compliance filing its request to continue the current VSS rate. This approach would allow NYISO to keep the *status quo* in place even though its stakeholders seem unable to reach an agreement on how to proceed. Moreover, the alternative of simply allowing the current rate to expire and requiring suppliers to provide VSS without compensation would be unjust and unreasonable and not in the public interest.

31. However, the Commission rejects NYISO's characterization of the proposed rate filing as a compliance filing. Instead, the Commission finds, under section 206 of the FPA, that the current sunset provision in Rate Schedule 2 is unjust and unreasonable and unduly discriminatory or preferential and not in the public interest because it exposes suppliers to a requirement to provide voltage support services without compensation.

Thus, we will accept the revised tariff sheet and direct NYISO to eliminate the sunset provision in this rate schedule -- leaving the existing VSS rate as the rate that is just and reasonable and in the public interest. Further, as discussed below, NYISO is directed to remove reference in Rate Schedule 2 to the submission by NYISO of a study conducted by an independent consultant and the rates paid for VSS being subject to revision retroactively to January 1, 2006. NYISO is directed to file a revised tariff sheet for Rate Schedule 2 with an effective date of April 5, 2006, within 15 days of the date of this order.

32. Given that we are extending the existing rate under section 206 of the FPA as the VSS rate that is just and reasonable and in the public interest, the issue of refunds left open in the December 30 Order becomes moot. It also makes the issues raised on rehearing in Docket No. ER06-291-001 moot since there will be no refund liability regarding the current VSS rates. We will deny NYISO's request to file a consultant's report as a compliance filing in lieu of a section 205 or 206 filing proposing a new VSS rate methodology. At such time as NYISO proposes a new rate under section 205 or 206 of the FPA, it must provide full cost support for the new rate pursuant to section 35.13 of the Commission's regulations. If NYISO wishes to enlist the services of a consultant to prepare this rate filing, it may do so. The parties have offered their suggestions as to the issues to be addressed in the consultant's report. The Commission finds, however, that the issues to be addressed in the consultant's report are best determined by NYISO or through the stakeholders process.

The Commission orders:

(A) NYISO's proposed tariff sheet filed in Docket No. EL06-57-000 is accepted subject to revision, effective April 5, 2006, as discussed in the body of this order.

(B) Pursuant to section 206 of the FPA, NYISO is hereby directed to eliminate from Rate Schedule 2 of its Services Tariff references to the sunset provision, the submission of a study conducted by an independent consultant, and the rates paid for VSS being subject to revision retroactively to January 1, 2006, as discussed in the body of this order. NYISO is directed to file a revised tariff sheet for Rate Schedule 2 with an effective date of April 5, 2006, within 15 days of the date of this order.

(C) NYISO's request in Docket No. EL06-57-000 to submit a consultant's report as a compliance filing, rather than NYISO making a separate filing under section 205 or 206 of the FPA proposing a new VSS rate to replace the current VSS rate, is hereby denied, as discussed in the body of this order.

(D) The request for rehearing in Docket No. ER06-291-001 is hereby denied as moot, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.