

111 FERC ¶ 61,200
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

New York Independent System Operator, Inc.

Docket No. ER04-230-009

ORDER ACCEPTING TARIFF REVISIONS

(Issued May 9, 2005)

1. In this order, we address two requests for tariff revisions filed by the New York Independent System Operator, Inc. (NYISO). We grant its requests to fix errors it made in determining prices (resulting from problems it had in implementing its Standard Market Design version 2 software (SMD2 software)) and to allow price corrections within 10 days (instead of 5) for the period from March 8, 2005 through September 30, 2005. This order benefits customers by allowing NYISO to promptly fix errors it has discovered in the prices it has charged under its Open Access Transmission Tariff (OATT) and under its and Market Administration and Control Area Services Tariff (“Services Tariff”) and by enforcing the terms of NYISO’s tariffs.

Background

2. On March 9, 2005, NYISO filed a request for expedited action and for revisions of its tariff. Both revisions relate to the same tariff requirement, i.e., a requirement to make price corrections within 5 calendar days. Attachment E to NYISO’s Services Tariff contains Temporary Extraordinary Procedures (TEP) that provide that price corrections must be posted within 5 calendar days after the date on which notice is posted that NYISO is considering a correction, along with any other tariff provision as may be required to process the corrections on that schedule.¹

¹The NYISO’s TEP authorizes it to take corrective action in response to “Emergency System Conditions,” which include situations in which “widespread electric transmission or generation equipment outages prevent the ISO from dispatching the system in accordance with the Market Rules.” During such situations, NYISO is empowered to “recalculate [Locational-Based Marginal Prices (LBMPs)] or other prices

(continued...)

3. NYISO's first proposed revision seeks to correct errors already made and discovered by NYISO. These errors include errors it made in its real-time market due to malfunctions in its SMD2 software. All these errors occurred on or before February 23, 2005 and were discussed by NYISO with its stakeholders in a series of meetings. NYISO requires a waiver to fix these errors because more than 5 days have elapsed since the errors were discovered.

4. NYISO's second proposed revision involves errors that it expects to discover as it runs the SMD2 software in the upcoming months with substituted prices. NYISO expects that all of these errors can be discovered and corrected between March 8, 2005 and September 30, 2005. Thus, its second waiver request is to allow it to take up to 10 days to correct errors that are found during this period.

5. Notice of NYISO's filing was published in the *Federal Register*, 70 Fed. Reg. 15,314 (2005), with protests and interventions due on or before March 28, 2005. A timely motion to intervene was filed by New York Transmission Owners. Timely motions to intervene and comments were filed by PSEG Energy Resources (PSEG), FPL Energy LLC (FPL), New York Municipal Power Agency (NYMPA), and Edison Mission Energy (Edison Mission). A timely limited protest was filed by AES Eastern Energy LP (AES), and timely protests were filed by the Mirant parties (Mirant)² and by Independent Power Producers of New York (IPPNY). Late filed motions to intervene and comments were filed by Coral Power LLC (Coral Power), SESCO Enterprises, LLC (SESCO), and DC Energy LLC (DC Energy).

6. On April 5, 2005, NYISO filed a motion to file an answer.

Discussion

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Furthermore, we will grant the motions of Coral Power, SESCO, and DC Energy to intervene out of time, given their interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

or payments in a manner that reflects, as closely as reasonably practicable, the LBMPs or other prices or payments that would have resulted but for the . . . Emergency System Condition and shall substitute the recalculated LBMPs or other prices or payments for the prices that resulted from . . . [the] Emergency System Condition.”

² The Mirant parties are comprised of: Mirant Americas Energy Marketing, LP; Mirant New York, Inc.; Mirant Bowline, LLC; Mirant Lovett, LLC; and Mirant NY-Gen, LLC.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept NYISO's answer, and will, therefore, reject it.

9. NYISO's filing involves two separate requests. First, it asks for approval to fix errors it made in determining prices (resulting from problems it had in implementing SMD2 software). Second, it asks permission to make price corrections within 10 days, instead of 5, for errors it discovers between March 8, 2005 and September 30, 2005.

10. As to NYISO's request to correct errors it has discovered resulting from implementation of the SMD2 software, Mirant opposes this request. Mirant argues that NYISO's authority to make price corrections is derived from its tariff and that it lacks authority to take longer than 5 days to make such corrections. Further, Mirant argues, the Commission should allow the proposed revision because NYISO failed to present a compelling reason why it could not correct prices in accordance with its tariff.

11. NYISO's request to correct within 10 days errors NYISO discovers for the period between March 8, 2005 and September 30, 2005, engendered protests from a number of intervenors. SESCO and Mirant argue that NYISO should not be permitted to extend the time for correcting prices from 5 days to 10 days. They argue that all exercises of existing price correction authority for the period after March 7, 2005 must be subject to the requirements of NYISO's filed tariffs, including the applicable notice and posting requirements. They contend that NYISO should abide by its tariffs. In addition, Coral Power argues any extension of time for SMD2 price corrections instead should be the subject of case-by-case requests for waivers filed during the normal five-day price correction period and, while it does not object, the Commission should make clear that a specific finding is needed that waivers are required for NYISO to implement the price corrections and modified price correction procedures.

12. While PSEG, IPPNY, AES, and DC Energy are willing to allow NYISO the relief requested for the period limited to February 4 through March 7 in light of the extenuating circumstances that exist specific to the initial implementation of NYISO's new, complicated SMD2 software, they oppose the second requested tariff revision. They contend that NYISO failed to justify a departure from the 5 calendar day period to post price corrections for errors occurring from March 8, 2005 through September 30, 2005.

13. In addition, SESCO and DC Energy assert that it would be helpful for the Commission to implement milestones for: (a) a NYISO report on the status of the software corrections and testing the adequacy of price determinations; (b) the shortening of the period to correct prices under the temporary extraordinary procedures (TEP) and the price reservation process consistent with the Commission's recent order in a similar ISO-New England proceeding and other NYISO cases in which the Commission has

criticized the continued use of the TEP; (c) the shortening of the time to post notices under the TEP consistent with such orders; and (d) the elimination of the TEP.

Commission Conclusion

14. We find NYISO's request for a tariff revision that would allow NYISO to correct the identified SMD2 errors to be a reasonable solution to the problem presented, i.e., errors that accompanied the implementation of the new, more complicated SMD2 software, and will grant this first request. NYISO has an obligation to ensure that prices are determined in accordance with the requirements of its Commission-approved tariffs. The NYISO is also aware of the Market Participants' desire for price certainty, and it shares their desire that accurate market prices be calculated and posted as soon as possible. Given the complexity and unanticipated nature of the implementation errors which only came to light after SMD2 started operations, it was not possible for NYISO to identify the errors and steps necessary to correct them within the 5-day correction window. The proposed correction methodology will produce prices that are as close as practicable to the design and intent of the price determination requirements of SMD2. We essentially agree with Coral Power that a tariff revision is needed for NYISO to make these corrections because NYISO's tariff states that such errors were to be corrected within 5 days, and accept such a revision here. We find Mirant's contrary position, that no corrections should be made, to be unpersuasive.

15. We likewise accept NYISO's second requested tariff revision. First, upcoming summer loads will expose the SMD2 software to system conditions not previously encountered, increasing the likelihood that the SMD2 software will produce errors that require correction. Second, NYISO's experience with SMD2 to date has shown that, even though relatively few intervals in a day may require correction, the process of analyzing those intervals and confirming the need and reasons for corrections has proven significantly more difficult and time consuming than anticipated. Finally, establishing a more achievable price correction deadline will ultimately enhance market certainty, by avoiding the delays and uncertainty inherent in having to return to the Commission on an ad hoc basis for case-specific price corrections that are simply not feasible in some shorter timeframe.

16. SESCO and DC Energy argue that the Commission should implement the milestones described in paragraph 13 above. They argue that these milestones will not only add accountability to the correction process, but will help restore confidence in the NYISO administered markets.³ Although we accept NYISO's two tariff revisions, we

³ DC Energy Comments at 8; SESCO Comments at 4.

agree that the idea of milestones to ensure timely progress and promote additional accountability by NYISO has merit in this instance. Accordingly,

- NYISO should, no later than October 31, 2005, file a report with the Commission, for informational purposes only, that includes a plan and schedule for shortening the time periods both for posting notices of price corrections and for correcting prices under the TEP as well as eventually phasing out the TEP altogether;⁴ and
- NYISO should file biweekly reports with the Commission, for informational purposes only, on the use of the TEP and on both the status of software corrections and the status of testing of the adequacy of price determinations.⁵

The Commission orders:

NYISO's requested tariff revisions to allow it to fix SMD2 errors that occurred before March 8, 2005 and to make price corrections within 10 days for the period from March 8, 2005 through September 30, 2005 are hereby accepted, as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Deputy Secretary.

⁴ In this regard, as its name implies, the TEP was always considered to be both temporary and extraordinary.

⁵ See 16 U.S.C. §§ 825c(a), 825f(a) (2000).