

97 FERC ¶ 61, 334  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, Linda Breathitt,  
and Nora Mead Brownell.

New York Independent System Operator, Inc.

Docket No. ER02-209-000

ORDER ON TARIFF FILING

(Issued December 21, 2001)

In this order, we grant New York Independent System Operator, Inc.'s (NYISO) request for extension of the Commission-approved penalties,<sup>1</sup> effective as of the date of this order until April 30, 2002, at which time NYISO will have filed a comprehensive market mitigation proposal to become effective May 1, 2002, as directed by the order granting extension of the Automatic Mitigation Procedures (AMP).<sup>2</sup> These penalties are imposed on generators that submit false information and fail to follow NYISO's dispatch instructions, as well as on load-serving entities (LSEs) that repeatedly cause operational problems by underscheduling in the day-ahead market (DAM). Our decision in this order will prevent from occurring operational problems related to market participants' failure to follow an ISO's instruction and information requests, thereby enhancing the New York system's reliability.

Background

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<sup>1</sup> See New York Independent System Operator, Inc., 96 FERC ¶ 61,249 (2001).

<sup>2</sup> New Your Independent System Operator, Inc., 97 FERC ¶ 61,242 (2001).

By order (August 31 Order)<sup>3</sup> acting on NYISO's "exigent circumstances" filing,<sup>4</sup> the Commission accepted NYISO's proposal to impose an escalating set of penalties for repetition of certain violations of the Commission-approved market mitigation measures (MMM),<sup>5</sup> effective July 3, 2001 through the end of the Summer 2001 capability period, October 31, 2001. In particular, the August 31 Order approved an increase in financial penalties for submitting false information regarding the derating or outage of an electric facility and for failure to follow NYISO's dispatch instructions that causes a material increase in prices or guarantee payments. The August 31 Order also imposed increased financial penalties on LSEs that cause operational problems by deliberately underbidding in the DAM. We, however, rejected as unwarranted NYISO's proposal to levy new financial penalties on generators for repeated exercises of market power.

On October 24, 2001, NYISO made a filing pursuant to section 206 of the Federal Power Act (FPA)<sup>6</sup> requesting an extension of the Commission-approved market mitigation measures. NYISO explains that the penalties were originally proposed by the "exigent circumstances" filing with an automatic sunset of 120 days, which expired on October 31, 2001. NYISO states that the continuation of the penalties is particularly important in the face of the continuing periods of relative scarcity of supply in New York. According to NYISO, physical withholding could occur for extended period of time, as well as load bidding provisions in the MMM take some period of time to apply, in order for a determination to be made that there is an artificial divergence between day-ahead and real-time prices. NYISO also requests that the penalty extension become effective on November 1, 2001 in order to avoid gaps in NYISO's market mitigation penalty authority.

#### Notice, Interventions, Comments, and Protests

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<sup>3</sup> See supra note 1.

<sup>4</sup> Section 19.01 of the ISO Agreement allows NYISO to make a unilateral filing under section 205 of the Federal Power Act, without the concurrence of the Management Committee, when the NYISO Board concludes that exigent circumstances relating to the reliability of New York power system or the NYISO-administered market exist and the urgency of the situation justifies a deviation from the normal ISO governance procedures.

<sup>5</sup> See New York Independent System Operator, Inc., et al., 89 FERC ¶ 61,196 (1999); New York Independent System Operator, Inc., et al., 90 FERC ¶ 61,317 (2000), clarified, 91 FERC ¶ 61,154 (2000); New York Independent System Operator, Inc., 95 FERC ¶ 61,471, reh'g denied, 97 FERC ¶ 61,176 (2001).

<sup>6</sup> 16 U.S.C. § 824e (1994).

Notice of the filing was published in the Federal Register, 66 Fed. Reg. 56,666 (2001), with comments, protests, or interventions due on or before November 14, 2001. Timely motions to intervene were filed by entities listed in Appendix to this order. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2001), a timely, unopposed motion to intervene makes the movant a party to the proceeding. Given the lack of undue prejudice and the parties' interests, we also find good cause to grant pursuant to 18 C.F.R. 385.214(d) an unopposed, untimely motion to intervene filed by Mirant Americas Energy Marketing, LP, Mirant New York, Inc., Mirant Bowline, LLC, Mirant Lovett, LLC, and Mirant NY-Gen, LLC.

Calpine Corporation (Calpine) challenges NYISO's authority to make section 206 filings. It argues that NYISO should not be permitted to convert a temporary tariff provision, with a 120-day sunset limitation, into a permanent amendment with an unlimited life span completely in the absence of stakeholder and market participants input. Calpine further argues that NYISO has failed to meet the burden of proof under section 206 of the FPA. According to Calpine, NYISO has not produced evidence to establish that, absent Commission action, the subject rate is unjust, unreasonable, or unduly discriminatory. Calpine further argues that the continuation of NYISO's penalty authority is inconsistent with the Commission's goal of developing market rules that will contribute to the development of robust competitive markets. It believes that granting the penalty authority to NYISO will allow it to defer addressing and resolving the root causes of alleged market inefficiencies.

Keyspan-Ravenswood, Inc. (Ravenswood) incorporates by reference its original comments filed in Docket No. ER01-2489-000. Ravenswood states that NYISO's filing does not set forth specific standards by which NYISO would make a determination that a market participant has engaged in physical withholding. Ravenswood also requests clarification of what would constitute "substantially similar" conduct that would subject a market participant to double and treble sanctions. Ravenswood argues that under the proposed penalty plan, NYISO would act as judge, jury and decision-maker in the detection, condemnation and punishment of market power abuses. In Ravenswood's opinion, NYISO should be required, prior to assessment of penalties, to provide parties with notice of the penalty and with the opportunity to present its case before an independent, impartial decision-maker. Ravenswood concludes that NYISO's filing constitutes an improper delegation of authority from the Commission to NYISO to set just and reasonable rates and to investigate matters within its jurisdiction.

Aquila Energy Marketing Corp., Edison Mission Energy, Inc. and Edison Mission Marketing & Trading, Inc. (collectively, Aquila) argues that the "operational problems" standard for the imposition of penalties for underbidding of load in the DAM by LSEs is ambiguous and unworkable. It requests that the Commission direct NYISO to make a compliance filing to remove the "operational problems" standard and replace it with rules that impose penalties for physical withholding when physical withholding has an impact on market prices.

Discussion

The penalties in question expired on October 31, 2001. Absent this penalty authority, NYISO would not be able to avoid reliability problems caused by market participants' failure to provide NYISO with accurate information regarding outages and refusal to follow NYISO's dispatch and other instructions. The Commission has approved imposition of similar penalties in other cases.<sup>7</sup> Also, NYISO has the authority to make, on behalf of its Board, section 206 filings without Management Committee's concurrence pursuant to Section 19.01 of the ISO Agreement.

The issue here is whether NYISO should be permitted to continue with previously approved penalties. NYISO's proposal provides for an escalating set of penalties for repeated violations of the MMM and will not change the market mitigation thresholds or other substantive provisions of the MMM. The instant proceeding is not a proper forum to challenge the substance of NYISO's Commission-approved MMM.

For these reasons, we grant an extension of the proposed penalties, effective as of the date of this order until April 30, 2002, at which time NYISO will have filed a comprehensive market mitigation proposal to become effective May 1, 2002, as directed by the order granting extension of the AMP. As we stated in that order, NYISO is strongly urged to collaborate with PJM Interconnection, LLC and ISO New England, Inc. to ensure that market mitigation measures are consistent throughout the Northeast.

The Commission orders:

NYISO's request for extension of the proposed penalties is hereby granted, effective as of the date of this order until April 30, 2002.

By the Commission.

( S E A L )

Linwood A. Watson, Jr.,  
Acting Secretary.

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<sup>7</sup> New England Power Pool, 85 FERC ¶ 61,379 (1998).



New York Independent System Operator, Inc.  
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Aquila Energy Marketing Corporation, Edison Mission Energy, Inc.  
and Edison Mission Marketing & Trading, Inc.\*

Calpine Corporation\*

Dynegy Power Marketing, Inc.

Keyspan-Ravenswood, Inc.\*

Members of the Transmission Owners Committee

of the Energy Association of the New York Power Pool

Mirant Americas Energy Marketing, LP, Mirant New York, Inc., Mirant Bowline, LLC,  
Mirant Lovett, LLC, and Mirant NY-Gen, LLC

Morgan Stanley Capital Group, Inc.

New York State Public Service Commission

NRG Companies

Orion Power New York G.P., Inc.

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\* filed comments and/or protests