

129 FERC ¶ 61,217  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

New York Independent System Operator, Inc.

Docket Nos. ER10-65-000  
ER09-405-001

ORDER ACCEPTING REPORTS, GRANTING WAIVER, AND ACCEPTING  
TARIFF SHEET SUBJECT TO CONDITIONS

(Issued December 11, 2009)

1. In a December 11, 2008 filing NYISO informed the Commission of a system modeling error and requested a limited tariff waiver so that NYISO would not have to retroactively change prices or settlements. On March 11, 2009, May 11, 2009, and August 10, 2009, respectively, under Docket No. PR09-405-001, the New York System Operator, Inc. (NYISO) submitted reports to comply with the Commission's February 9, 2009 order deferring action on NYISO's waiver request.<sup>1</sup> Also, on October 14, 2009, in Docket No. ER10-65-000, NYISO submitted, pursuant to section 205 of the Federal Power Act (FPA)<sup>2</sup>, a proposed revision to its Market Administration and Control Area Services Tariff (Services Tariff)<sup>3</sup> to address notification protocols for market problems that may arise with regard to NYISO's operation of its markets. In this order we accept NYISO's reports as satisfactorily complying with the Commission's February 9, 2009 Order, and grant NYISO's requested waiver, as discussed below. We also accept, subject to condition, NYISO's proposed tariff revision to become effective December 13, 2009, as requested.

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<sup>1</sup> *New York Indep. Sys. Operator, Inc.*, 126 FERC ¶ 61,100 (2009) (February 9, 2009 Order).

<sup>2</sup> Second Revised Sheet No. 83 to FERC Electric Tariff, Original Volume No. 2.

<sup>3</sup> 16 U.S.C. § 824d (2006).

## **I. Background**

2. On December 11, 2008, NYISO filed to: (1) inform the Commission of a system modeling error in its Security Constrained Unit Commitment (SCUC) software that affected day-ahead market (DAM) schedules and prices; (2) describe the steps taken to correct the error and prevent recurrence; and (3) request a limited tariff waiver so that NYISO would not have to retroactively change prices or settlements.

3. NYISO stated that during its January 8, 2008 updates to its Intelligent Source Selection program, NYISO inadvertently entered incorrect values for two of its three phase angle regulators (PARs), which caused the SCUC to underestimate the flows on the Central-East interface by an average of 680 MW. As a result, for 12 days, January 11 and 14 through 24 of 2008 (error period), the SCUC set schedules and prices in the DAM with an expectation of greater available transmission capacity from western New York to eastern New York than would be available in real-time market operations.

4. NYISO stated that over-scheduling of flows across this key interface had several direct and indirect market effects.<sup>4</sup> According to NYISO, over-scheduling contributed to relatively modest day-ahead congestion during most of the error period, and it contributed to inefficient commitment in eastern New York, which led to elevated real-time prices in eastern New York. NYISO stated that market participants responded to the inconsistency between the day-ahead market and real-time market by engaging in purchases and sales that increased scheduled flows across the Central-East interface in the day-ahead market and that these increases continued for several days after the error was corrected on January 25, 2008.

5. NYISO stated that the error affected both the day-ahead market and the real-time market. NYISO stated that its Independent Market Advisor, Dr. David Patton, reviewed the results of the day-ahead and real-time markets during the error period compared to market simulations for the same period using corrected PAR modeling inputs. NYISO stated that Dr. Patton identified various impacts on market clearing prices and uplift costs, although impacts on market clearing prices are difficult to determine with accuracy due to the influence of market participant behavior in reaction to prevailing market conditions. According to NYISO, during the error period, the average congestion price difference between the Central zone and the Capital zone was \$25/MWh in the day-ahead market simulations as compared to \$12/MWh in the actual day-ahead market, indicating that using the correct inputs would have led to additional congestion in the day-ahead market across the Central-East interface. NYISO concluded that this price difference overstates the effect of using the correct inputs and more accurately represents an upper

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<sup>4</sup> NYISO December 11, 2008 filing, Attachment 1, Affidavit of David B. Patton.

bound on the direct effects of the error on the day-ahead market during the error period. According to NYISO, Dr. Patton concluded that the overall effects were substantially offsetting.

6. With respect to the effects on the real-time market, NYISO estimated increased uplift costs during the error period of approximately \$10.9 million as a result of associated redispatch costs. NYISO added that these costs<sup>5</sup> were partially offset by a related reduction in transmission costs of approximately \$3.5 million, resulting in a net impact of approximately \$7.4 million. In addition, NYISO stated that over-scheduling in the day-ahead market caused more congestion revenue to be collected in the day-ahead market than is owed to the holders of the Transmission Congestion Contracts (TCCs). NYISO estimated this overcollection during the error period to be \$3.5 million.

7. NYISO stated that the erroneous PAR settings were inconsistent with the NYISO Tariff requirements of Appendix 1 to Attachment M-1;<sup>6</sup> thus, NYISO requested waiver of Appendix 1 so that NYISO would not have to make any retroactive price adjustments. Commentors and protestors to the December 11, 2008 filing in Docket No. ER09-405-000 either opposed or requested deferral of the requested waiver for numerous reasons, including: the need for a full analysis of the impact of the error, with stakeholder involvement, and whether any course of restitution is feasible; concern over the length of time it took NYISO to notify market participants of the error; and, the waiver request did not meet the Commission's standards for granting waiver, particularly because there has been harm, and the waiver should not be granted without knowing the full impact of the harm.

8. In the February 9, 2009 Order, the Commission stated that, based on the record presented, it could not find that good cause existed to grant the requested waiver. The Commission stated that the inability to reconstruct exactly what would have occurred in the market, absent the error, may not excuse the Commission from seeking a reasonable

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<sup>5</sup> NYISO asserted that because the day-ahead schedules were physically infeasible, NYISO was compelled to redispatch generation in the real-time market, the costs of which are recovered through negative balancing market residuals, i.e., uplift payments.

<sup>6</sup> Specifically, Appendix 1 of Attachment M-1 establishes that NYISO shall operate the day-ahead market consistent with certain contract elections submitted by Consolidated Edison Company of New York. NYISO inadvertently applied an incorrect value for these contract elections during the Waiver Period. As a consequence, the SCUC set schedules and prices in the day-ahead market with an expectation of greater available transmission capacity from western New York to eastern New York than would be physically available in the real-time market operations.

estimation of such effect in order to permit some type of remedy. The Commission stated that NYISO has the ability to correct for market errors and has, on occasion, done so. The Commission also noted that NYISO's had run simulations correcting for the original error but had provided the Commission with the details of those simulations. Accordingly, the Commission deferred action pending the submission of further information and other actions by NYISO as follows:

- (1) Within 30 days (by March 11, 2009) NYISO was required to provide the data requested by the protestors to its market participants, including its analysis of the effect on prices, interface flows, schedules and limits, and related information for the affected period, and the information regarding what the erroneous inputs were, and the results of its simulations with corrected inputs;
- (2) Within 90 days of the order (by May 11, 2009) NYISO was required to report to the Commission on the results of its stakeholder discussions on the PAR modeling error, including whether any course of restitution is feasible;
- (3) Within 30 days (by March 11, 2009) NYISO was required to report to the Commission: (a) when and how the error was discovered; (b) why NYISO did not self-report the error to the Commission's Office of Enforcement (OE); (c) whether NYISO notified its market monitor of the tariff violation (and when), or if the market monitor was otherwise aware of it; and (d) the steps NYISO took in informing its market participants, stakeholder committees, and this Commission of the error; and
- (4) Within 180 days (by August 10, 2009) NYISO was directed to file with the Commission either proposed tariff changes, or a status report on the development of procedures for: (a) early notification of stakeholders and stakeholder committees of possible errors affecting its markets; (b) timely follow-up and detailed explanations regarding errors; and (c) greater transparency and heightened responsiveness to the stakeholders and appropriate committees.

## **II. NYISO's Reports**

### **A. March 11, 2009 Report on Waiver Request**

#### **1. NYISO's Filing**

9. In the March 11, 2009 report, NYISO addresses the following Commission questions concerning the error: when and how the error was discovered; why NYISO did not self-report the error to the Commission's Office of Enforcement; if and when NYISO notified its market monitor of the tariff violation, or if the market monitor was otherwise aware of it; and what steps NYISO took to inform market participants, stakeholder committees, and the Commission of the error.

10. NYISO states that pursuant to Attachment M-1 to the NYISO Market Services Tariff, NYISO and PJM administer a joint operating protocol to implement the provisions of two contracts between Consolidated Edison (ConEd) and Public Service Electric and Gas Company (PSEG). NYISO states that it is responsible for (i) accounting for ConEd's contract elections submitted into the day-ahead market; (ii) the flow of energy by hour and MW over the JK interface from Ramapo, NY/Waldwick, NJ through PSEG in New Jersey and back into New York through the ABC interface; and (iii) establishing New York Desired Flow schedules for the day-ahead market, including the distribution of flows across certain interconnections. NYISO states that the J and K lines in the latter interface are controlled by three PARs. NYISO's distribution of flows (represented in PAR settings) then becomes part of the data inputs used by the SCUC to run the overall day-ahead market. NYISO states that the source of the erroneous inputs was telemetry data from two of a set of three newly installed redundant meters on the three PARs controlling the J and K lines at Ramapo/Waldwick. NYISO explains that the sign convention on the telemetry data at issue was negative whereas the existing three meters had always produced data with a positive sign. The Intelligent Source Selection software takes the telemetry data from meters and creates an historical repository which is accessed by the SCUC in order to distribute the New York Desired Flows across the PAR-controlled lines. NYISO states that the meter sign settings were properly accounted for in the real-time markets but not in the historical repository accessed by the SCUC to model the day-ahead market. NYISO states that the error was not detected right away because the SCUC review procedures in place throughout this period were designed simply to verify whether the PAR settings were non-zero values. NYISO adds that a zero value would indicate a line outage that needed to be accounted for in the day-ahead market, and a negative sign would have never appeared before the installation of the second set of meters.<sup>7</sup>

11. NYISO states that initially it "noticed and examined the unusual [market] outcomes" and discussed them internally, but was not aware of what was causing them. NYISO states that on January 23, 2008, DC Energy sent a confidential e-mail raising concerns that the PAR-setting values posted on its Open Access Same Time Information System (OASIS) might be inaccurate because the day-ahead market results seemed inconsistent with historical data and suggesting that this was perhaps due to a scheduling error. NYISO states that its Energy Market Operations management immediately investigated the issue, identified the cause of the discrepancies, and corrected the problem on January 24, 2008, for the operating day of January 25, 2008. NYISO states that in

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<sup>7</sup> By erroneously displaying negative signs, it indicated that congestion existed where it did not, causing flows to be scheduled that were not feasible, with several direct and indirect market effects, and contributed to inefficient commitment in eastern New York which led to elevated real-time prices in eastern New York.

October 2008 it implemented controls and processes, including daily review and analysis, to address the errors at issue.

12. NYISO states that it contacted the Commission's Office of Energy Market Regulation, Division of Tariffs and Market Development – East (OEMR-East) to schedule a meeting, which occurred March 17, 2008, to inform the Commission about the error. NYISO states that in the past it has self-reported tariff administration errors to OEMR-East, whereas it has reported instances of suspected market manipulation or other improper market behavior to the Commission's Office of Enforcement (OE). NYISO states that in the future when it self-reports a market administration error and, where applicable, a tariff violation, it will formally apprise OE, consistent with the affirmative reporting obligations now imposed by Order No. 719. NYISO states that at the March 17, 2008 meeting NYISO had not yet determined that the modeling error had violated any tariff provisions. NYISO adds that OEMR-East advised NYISO to determine whether the error constituted a tariff violation and, if so, whether it needed to file a tariff waiver request. NYISO states that Commission staff also advised NYISO to investigate and explain in detail to the Commission whether it would be appropriate to correct any affected day-ahead market prices.

13. After the March 17, 2008 meeting with OEMR-East, NYISO states that it apprised its internal Market Monitoring unit of the error, and NYISO examined the relevant tariff provisions, and eventually concluded the error was inconsistent with Attachment M-1 of the Market Services Tariff. NYISO states that it studied the impact of the error with external Independent Market Advisor Dr. David Patton (NYISO informed Dr. Patton by early July 2008). Upon completion of this analysis, NYISO concluded it was not appropriate to change the impacted day-ahead market results.

14. NYISO states that it briefed its market participants about the error on December 3, 2008, by describing the PAR modeling error to its Management Committee and stating its intent to file a tariff waiver request, which it did on December 11, 2008. NYISO also states that it implemented, on its own initiative, controls and processes to address the errors at issue. Finally, NYISO requests that the Commission accept this report and grant the requested tariff waiver.

## **2. Notice and Comments**

15. Notice of NYISO's March 11, 2009 report was published in the *Federal Register*, 74 Fed. Reg. 11930 (2009), with comments due on or before April 1, 2009.

16. AES Eastern Energy, L.P., Constellation Energy Commodities Group, Inc., filed motions to intervene. The New York Municipal Power Agency (NYMPA) and the Municipal Electric Utilities Association of New York (MEUA), and the New York

Transmission Owners<sup>8</sup> (NYTOs) filed motions to intervene and comments. The Indicated Transmission Owners<sup>9</sup> filed comments in response to the comments of NYMPA and MEUA, and NYMPA and MEUA filed a response to the response of the Indicated Transmission Owners.

17. NYMPA and MEUA: (1) support NYISO's practice of contacting Commission staff to discuss market administration errors as long as the period between when an error is discovered and when NYISO files formal notice at the Commission is limited to 2 weeks; (2) oppose waiver to the extent it would relieve NYISO of providing restitution if Market participants have been harmed. NYMPA and MEUA assert that if market resettlement is not the answer, then a sort of rough justice approach must be developed; (3) urge the Commission not to penalize NYISO, since the Market Participants would ultimately pay the penalty; and (4) note that this is the third meter-related problem resulting in over \$10 million in potential refunds, and recommend that NYISO and the NYTO's commence a thorough evaluation of existing meter operations, metering procedures and software, and determine whether corrective actions and meter upgrades are required to prevent recurrences.

18. NYTOs assert that NYISO's renewed request to grant the tariff waiver is premature, that nothing in NYISO's report supports the request, and that it should be denied at present. NYTOs note that at the time of the March 11, 2009 filing, NYISO's Management Committee had not yet discussed NYISO's report with market participants, and the development of proposed tariff changes for stakeholder involvement in the analysis of errors and the development of corrective actions had not begun.

19. In their response to NYMPA and MEUA, Indicated Transmission Owners state that they wish to clarify that the errors at issue in this proceeding were the result of human error in inputting data, and not due to metering errors or inaccuracies, as suggested by NYMPA and MEUA in their comments. Accordingly, Indicated Transmission Owners state that there is no basis for concluding that NYISO's modeling input error, or other matters separately pending before the Commission, necessitate any

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<sup>8</sup> The New York Transmission Owners in this pleading are: Central Hudson Gas & Electric Corporation, Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, and Rochester Gas and Electric Corporation.

<sup>9</sup> The Indicated Transmission Owners in this pleading are: Long Island Power Authority, Long Island Lighting Company, Niagara Mohawk Power Corporation, New York Power Authority, and Central Hudson Gas & Electric Corporation.

action on metering maintenance or upgrades and further, that such meter upgrade matters are outside the scope of this proceeding.

20. In their answer to the answer of Indicated Transmission Owners, NYMPA and MEUA assert that Indicated Transmission Owners misunderstood NYMPA and MEUA's request that the Commission direct all of the New York transmission owners and NYISO to collaboratively, comprehensively evaluate New York's metering processes. NYMPA and MEUA assert they are not advocating wholesale across the board replacement of meters, but rather urging a Commission order that NYISO and the New York transmission owners work together to conduct a broad and comprehensive evaluation of the metering system, including review of metering requirements, procedures, maintenance and calibration, quality assurance, staff training, etc. so NYISO will receive sufficiently accurate information. NYMPA and MEUA state that this may result in the replacement of some meters, for example, where an inaccurate meter cannot be repaired.

21. NYMPA and MEUA argue that Indicated Transmission Owners characterization of the errors at hand as "human errors" rather than metering issues is merely splitting hairs, when the ultimate result, regardless of the cause, was inaccurate metering data being supplied. NYMPA and MEUA assert that errors, whether due to calibration mistakes, maintenance mistakes, installation errors, or whatever, may safely be characterized as "metering errors." Therefore, NYMPA and MEUA argue that a comprehensive metering plan is within the scope of the proceeding, stating that metering errors – human or mechanical – are the cause of the problem, and therefore cannot be outside the scope of the proceeding. NYMPA and MEUA observe that NYISO has metering issues, as indicated by the recent NYISO report regarding development of internal procedures and controls to prevent future data entry errors. NYMPA and MEUA applaud these efforts, but urge a comprehensive, open, and transparent process that results in a public report.

**B. May 11, 2009 Report on Restitution Discussions and Request for Deferral of Ruling**

**1. NYISO's Filing**

22. In this report NYISO lists five meetings it conducted after its March 11, 2009 report.<sup>10</sup> NYISO states that no consensus has yet been reached on the feasibility of restitution. NYISO states that the discussions on the feasibility of restitution have so far

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<sup>10</sup> March 25, 2009 Management Committee meeting; April 1, 2009 Market Issues Working Group meeting; April 14, 2009 Business Issues Committee meeting; April 22, 2009 Market issues Working Group meeting; and April 23, 2009 Management Committee meeting.

resulted in a significant number of stakeholders expressing serious reservations about the feasibility and/or advisability of restitution, and other stakeholders expressing a desire to pursue additional analyses of a rough justice concept. NYISO proposes to continue discussions and file a second report on or before July 1, 2009.

23. Regarding the development of transparency procedures, NYISO reports that at the March 25 and April 1 meetings, and the April 6, 8, 13, and 15 stakeholder sector sessions, NYISO conducted initial discussions concerning procedures for prompt stakeholder notification of possible errors, providing timely follow-up and detailed explanations, and implementation of greater transparency and more responsiveness to stakeholders and appropriate committees.

## 2. Notice and Comments

24. Notice of NYISO's May 11, 2009 report was published in the *Federal Register*, 74 Fed. Reg. 24002 (2009), with comments due on or before June 1, 2009. The Indicated LSEs<sup>11</sup> filed comments. The Responding NYTOs<sup>12</sup> filed comments in response to the comments filed by the Indicated LSEs. Indicated LSEs filed an answer to the Responding NYTOs' comments.

25. Indicated LSEs support some form of "rough justice," stating that restitution should not be a choice between a perfect resettlement and no restitution at all. Indicated LSEs assert that partial restitution based on the reasonable estimates that NYISO has already provided to those that overpaid and those that underpaid is a reasonable compromise. Indicated LSEs note that the Commission directed NYISO to discuss with its stakeholders "whether *any* course of restitution is feasible." Indicated LSEs contend that this is not the same thing as reaching a stakeholder consensus about restitution. Indicated LSEs assert that no consensus is required for a restitution to be feasible, as NYISO has already identified and notified those that underpaid and those that overpaid, and the amounts of the under- and over-payments; therefore, it would now merely be a matter of rebilling. Indicated LSEs state that a consensus is unlikely, as some who underpaid do not want to pay restitution to those that overpaid. Indicated LSEs state that Consolidated Edison Company of New York (ConEd) and Orange & Rockland Utilities,

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<sup>11</sup> The Indicated LSEs in this pleading are: NYMPA, MEUA, New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation.

<sup>12</sup> The Responding NYTOs in this pleading are: Long Island Power Authority, Long Island Lighting Company, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric Corporation, Niagara Mohawk Power Corporation, and New York Power Authority.

Inc. (Orange & Rockland) filed comments that were silent on the waiver and restitution, while other NYTOs opposed NYISO's waiver.

26. Indicated LSEs urge the Commission to direct NYISO to collect from those that underpaid the estimated amount to refund those that overpaid. Indicated LSEs state that in the event those that overpaid are not fully reimbursed, the difference should not be collected through an uplift charge which would only come from (and therefore hurt) all stakeholders. Indicated LSEs suggest that NYISO file with the Commission the estimated over- and under-payments of each party, with no confidential treatment.

27. Responding NYTOs argue that Indicated LSEs have wrongly claimed that certain NYTOs have taken the position that the requested tariff waiver should be denied on substantive grounds. Responding NYTOs assert that LIPA, Central Hudson Gas & Electric Corp., New York Power Authority and Niagara Mohawk Power Corporation have joined in pleadings which take the consistent position that the requested waiver is premature, and a ruling on the merits of the waiver should be deferred until further information is made available to stakeholders, and stakeholder discussion occurs, as was ultimately adopted by the Commission in the February 9, 2009 Order.

28. Responding NYTOs argue that Indicated LSEs wrongly ascribe motives by claiming that some overpaid Load Serving Entities (LSEs) will not reach a consensus because they do not want to pay restitution. Responding NYTOs want this unsupported and mischaracterizing position about ConEd and Orange & Rockland to be removed from the administrative record. Responding NYTOs state that, contrary to unjustified claims by Indicated LSEs, NYISO has not yet been able to sort through the complex recreation of market outcomes to provide individual LSEs with enough information to determine which market participants may or may not have benefited from the errors. Responding NYTOs dispute Indicated LSEs' claims that NYISO's calculations determined which market participants underpaid and overpaid and that each market participant was notified by NYISO as to whether they specifically overpaid or underpaid. Responding NYTOs state that NYISO has not provided individual market participants with any comprehensive calculation of what they have over or under paid, and NYISO has certainly not provided a list containing these amounts. Responding NYTO's assert that this fact negates Indicated LSEs' claims as to the motives behind the NYTOs' positions.

29. Responding NYTOs state that, in addition, NYISO has not yet provided individual market participants with information sufficient to determine impacts on individual Transmission Congestion Contracts, or information to allow a market participant to determine the impact on its generation resources. Notwithstanding the incomplete nature of NYISO's data, Indicated LSEs want a simple restitution now. Responding NYTOs assert that the present data does not reflect anything close to even a rough estimate of market participant impact from the errors. Responding NYTOs assert that Indicated LSEs have misinterpreted the data NYISO provided. Responding NYTOs note that the

balancing congestion residual values provided by NYISO were positive for all LSEs, indicating that all LSEs overpaid, and thereby making refunds from those who underpaid impossible. Responding NYTOs assert that this negates Indicated LSEs claims that “restitution is obviously feasible,” particularly given the clear misinterpretation of data and misunderstanding of the present NYISO analysis and data sets.

30. In its response to Responding NYTOs, Indicated LSEs assert that Responding NYTOs’ answer should be denied because it relies upon non-existent factual misstatements. Indicated LSEs point to positions various members of Responding NYTOs took at particular times during the proceeding.

### **C. July 1, 2009 Second Report on Restitution Discussions**

#### **1. NYISO’s Filing**

31. In this report NYISO states that NYISO and Dr. Patton reviewed a proposal by Indicated LSEs<sup>13</sup> for a form of rough justice (Rough Justice Proposal), and believe it is appropriate to discuss the Rough Justice Proposal in the stakeholder process. NYISO states that the Rough Justice Proposal will be vetted by (1) the Market Issues Working Group on July 8, 2009; (2) the Business Issues Committee on July 22, 2009; and (3) the Management Committee on July 29, 2009. NYISO states that it intends to continue discussions with stakeholders and file a report on or before August 10, 2009, on those results.

#### **2. Notice and Comments**

32. Notice of NYISO’s July 1, 2009 report was published in the *Federal Register*, 74 Fed. Reg. 34328 (2009), with comments due on or before July 22, 2009. Independent Power Producers of New York filed a motion to intervene. New York State Electric & Gas Corporation, and Rochester Gas and Electric (NYSEG and RGE) filed comments.

33. NYSEG and RGE<sup>14</sup> support NYISO’s July 1, 2009 report. NYSEG and RGE note that under NYISO’s interpretation of the Rough Justice Proposal, NYISO would partially

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<sup>13</sup> The Rough Justice Proposal was made by the New York Municipal Power Agency, the Municipal Electric Utilities Association of New York, New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation, collectively as the “Indicated LSEs.”

<sup>14</sup> NYSEG and RGE did not file as part of the NYTOs, but filed comments with NYMPA and MEUA to the May 11 Status Report under the collective name of “Indicated LSEs”.

compensate the LSEs, which collectively overpaid \$10.5 million, using \$3.5 million in over-collections. NYSEG and RGE believe NYISO's interpretation is a workable solution. However, they assert that NYISO's interpretation does not address all of the concerns expressed by the Indicated LSEs, and they believe that, due to the uneven impact across the regions of the error, NYISO would be able to compensate equitably the western LSEs for the greater harm they suffered.

**D. August 10, 2009 Final Report on Restitution Discussions and Report on Error Notification and Transparency Procedures**

**1. NYISO's Filing**

34. NYISO's Final Report concludes that restitution is not feasible, and asserts that there is stakeholder consensus on this. NYISO states that at the July 8, 2009 MIWG meeting, it advanced the Rough Justice Proposal as NYISO understood it. NYISO states that the Rough Justice Proposal obtained little support for a number of reasons, including that it did not address the full range of complex impacts of the error, including impacts on entities other than those serving load, as well as a considerable amount of sentiment that reconstruction of market outcomes would not be feasible. Additionally, NYISO states that some stakeholders noted that the most important focus for NYISO was to continue pursuing efforts to avoid errors initially, identify them quickly if they occur, and address any errors promptly and transparently.

35. NYISO states that at the July 22, 2009 meeting of the Business Issues Committee a representative from one of the Indicated LSEs presented the Rough Justice Proposal, after which NYISO invited stakeholder discussion. NYISO states that the Rough Justice Proposal gained no support beyond Indicated LSEs. NYISO states that the final stakeholder discussions were held at the July 29, 2009 Management Committee meeting, with no stakeholder support for the Rough Justice Proposal beyond Indicated LSEs, and no other restitution proposals offered. Additionally, NYISO asserts that almost all stakeholders speaking at this meeting (and most speaking at the preceding meetings) opposed efforts to devise a restitution methodology for this error, albeit for different reasons. Stakeholders opposing restitution emphasized the importance of price finality and rate certainty as well as the inappropriateness or inadvisability of pursuit of restitution for this particular error due to the facts presented. NYISO also states that many stakeholders agreed that devising a methodology to correct for this error would be particularly difficult because it would (1) require NYISO to make numerous assumptions as to how market participants would have behaved had the errors not occurred; (2) need to account for potential impacts on market participants' NYISO TCC positions, NYISO energy import/export transactions, and other hedging strategies and derivatives; and (3) constitute an effort to reconstruct the Locational-Based Marginal Price (LBMP) outcomes in the NYISO energy markets, a type of effort often disfavored in Commission precedent.

36. NYISO states that it invited stakeholders' written suggestions describing stakeholder sentiment for inclusion in the August 10, 2009 report, but received none.

37. Regarding the Error Notification and Transparency Procedures Status in the August 10, 2009 Report, NYISO recounts the stakeholder process used in developing and vetting the tariff revision through Market Issues Working Group meetings, the Management Committee, the Business Issues Committee and ultimately through submittal to the NYISO Board and, as discussed below, to the Commission on October 14, 2009.

## 2. Notice and Comments

38. Notice of NYISO's August 10, 2009 report was published in the *Federal Register*, 74 Fed. Reg. 45197 (2009), with comments due on or before August 31, 2009. NYSEG and RGE filed comments. Long Island Power Authority and Long Island Lighting Company (collectively "LIPA")<sup>15</sup> filed comments in support of NYISO's report.

39. NYSEG and RGE state that NYISO's proposed modifications to its tariffs and manuals reflect significant progress that will likely enhance transparency and result in timely notification to the marketplace when errors occur. However, NYSEG and RGE state that NYISO should have focused more effort on the feasibility of restitution. NYSEG and RGE note that the Commission directed NYISO to determine whether restitution is feasible, not that stakeholders needed to reach a consensus. NYSEG and RGE assert that feasibility is a matter of what can be done, rather than what stakeholders think should be done. NYSEG and RGE assert that NYISO's acceptance of their Rough Justice Proposal for consideration indicates that restitution is in fact feasible, and that it is possible to make a reasonable estimation in order to permit some type of remedy.

40. NYSEG and RGE state that NYISO does not address in its Final Report whether the Rough Justice Proposal is feasible, it instead describes the difficulties of reconstructing Location Based Marginal Pricing (LBMP) outcomes and day-ahead market prices, assumptions related to market participant behavior had the errors not occurred, and the need to account for Transmission Congestion Contract positions and other hedging strategies and derivatives. NYSEG and RGE state that the Final Report refers to these difficulties as reasons why NYISO stakeholders have concluded that restitution is not reasonable or appropriate. NYSEG and RGE assert that it is not necessary to address these complex issues to provide some measure of relief to the affected LSEs located west of the Total East interface, which NYSEG and RGE assert bore the brunt of increased LBMPs, in addition to their load ratio share of increased uplift

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<sup>15</sup> LIPA were part of the "Responding NYTOs" for the May 11, 2009 Status Report.

costs due to the error. NYSEG and RGE note that NYISO verified the impacts of \$10.5 million in increased uplift payments, and \$3.5 million in increased congestion revenues, which NYSEG and RGE claim can be used to offset some of the impacts on these LSEs without requiring a recalculation of market prices or making assumptions regarding market participant behavior.

41. NYSEG and RGE state that Commission has already concluded that a tariff waiver under these circumstances would harm third parties, and assert the Rough Justice Proposal demonstrates a practical approach to feasible restitution. NYSEG and RGE assert that NYISO should work with stakeholders to determine how to implement the Rough Justice Proposal or a similar practical approach to restitution.

42. LIPA agrees that NYISO fully explored, within the stakeholder process, whether a feasible restitution methodology could be developed to address the error. Additionally, LIPA asserts that NYISO reached the necessary and appropriate conclusion that restitution is not feasible due to the complex interconnection of real-time bid and offer behavior of market participants, etc. Finally, LIPA asserts that the “rough justice” remedy proposed by NYSEG and RGE is inappropriate as it would remediate a small subset of market participants in a larger, more complex error, and ignore the error’s impact on entities other than those serving load, thus benefiting NYSEG and RGE while ignoring all other market participants which, if properly accounted for, could offset the amount claimed by NYSEG and RGE.

43. LIPA notes that in the July 22, 2009 version of the Rough Justice Proposal, LIPA would be one of the largest net beneficiaries, since it paid \$1,056,252 of the balancing congestion residuals and would receive approximately a third of these charges, or \$352,000, if the Day Ahead congestion rents were rebated pro rata to those who paid the balancing congestion residuals. In contrast, as demonstrated on Attachment A of its comments, LIPA notes that it only received \$61,610 in Day Ahead congestion rents that it would be required to forego in order to receive a payment of \$352,000. LIPA states that despite the fact it would likely be the largest net beneficiary of this “rough justice” restitution proposal, LIPA joined what it calls the “vast majority of other stakeholders” in opposing this unbalanced and unjust methodology because, LIPA asserts, it improperly corrects very limited impacts without recognizing the numerous market impacts that cannot be estimated and corrected due to the significant uncertainty and complexity of the impacts.

## **E. Discussion**

### **1. Procedural Matters**

44. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

45. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

## 2. Commission Determination

46. The Commission accepts the four reports filed by NYISO and finds that NYISO complied with the February 9, 2009 Order. The Commission agrees with the large majority of affected NYISO stakeholders that NYISO and its stakeholders thoroughly investigated the feasibility of reimbursement, but the ramifications of the error in question are too complex to enable NYISO to equitably and fairly rebill its customers.

47. The Commission agrees with LIPA that the Rough Justice Proposal addresses only a subset of a larger, more complex error, and in so doing fails to account for offsetting factors that would reduce the calculation of harm to load-serving entities. The Commission finds LIPA's arguments particularly convincing given that LIPA, apparently one of the largest net beneficiaries under the "rough justice" proposal, nonetheless states that the Rough Justice Proposal is an unbalanced and unjust methodology, rewarding very few LSEs, while not taking into account the effects on other stakeholders.

48. While we agree with Indicated LSEs that restitution should not be a choice between a perfect resettlement and no restitution at all, nonetheless, any form of "rough justice" must be sufficiently accurate to constitute a just restitution. We have previously found that "it is reasonable for NYISO to make only those settlement corrections that can be determined with a degree of accuracy and do not have unintended, and adverse, market consequences, including unsettling expectations."<sup>16</sup> In the instant case, accurate calculation of restitution is complicated by the need to account for market participants' hedging devices and derivatives and by the numerous assumptions related to what market behavior would have been absent the error. Therefore we find that although NYISO and its stakeholders engaged in serious attempts at determining appropriate restitution, due to the many interrelated market impacts of the PAR modeling error that are not capable of realistic estimation, determining reasonable "rough justice" restitution amounts is not possible. Consequently, the Commission will not require NYISO to make restitution for the PAR modeling error.

49. The Commission further finds that the various reports filed by NYISO satisfactorily comply with the February 9, 2009 Order. By March 11, 2009, NYISO provided to its market participants, as requested by protestors, NYISO's analysis of the effect of the error on prices, interface flows, schedules and limits, and related information

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<sup>16</sup> *New York Indep. Sys. Operator, Inc.*, 115 FERC ¶ 61,026, at P 59 (2006).

for the affected period, the information regarding what the erroneous inputs were, and the results of NYISO's simulations with corrected inputs. In addition, by March 11, 2009, NYISO filed with the Commission information about the discovery of the error, and NYISO's process for notifying its market monitor, stakeholders, and the Commission. By May 11, 2009, NYISO reported to the Commission the results of its stakeholder discussions regarding the feasibility of restitution. On July 1, 2009, NYISO reported results of further discussions on restitution where it tested a stakeholder proposal. NYISO filed a Final Report on August 10, 2009, concluding that restitution is not feasible. As discussed below, NYISO also reported the results of its efforts to develop procedures for early notification of stakeholders and stakeholder committees of possible errors affecting its markets, timely follow-up and detailed explanations regarding errors, and greater transparency and heightened responsiveness to the stakeholders and appropriate committees.

50. The Commission will not require NYISO and the NYTOs to commence a thorough evaluation of the existing meter operations as requested by NYMPA and MEUA. The Commission agrees with Indicated Transmission Owners that the errors at issue here were not metering errors that would have been prevented by such an evaluation and thus, this request is outside the scope of this proceeding. The error was caused by NYISO's introduction of incorrect modeling values for two of the three Ramapo-Waldwick phase angle regulators, causing the software to underestimate the flows on the Central-East interface. This was the result of human error in inputting data, and not due to metering errors or inaccuracies. The Commission does not believe that NYMPA and MEUA's request for an evaluation of the metering system, including review of metering requirements, procedures, maintenance and calibration, quality assurance and other things would have prevented this error. NYISO states in its March 11, 2009 report that upon discovering the error, it commenced a daily manual examination of the PAR settings and meter values used in the day ahead market, and implemented new company controls and procedures to protect against a similar error occurring again, with periodic review by the Process Controls Group.

51. Finally, for the reasons discussed above regarding the complexity of the matter of restitution and due to the difficulty of attempting to otherwise retroactively enforce the provisions of Appendix A of the Tariff, we grant the requested waiver conditioned on NYISO's further compliance filing as directed herein.

### **III. NYISO's Proposed Tariff Revision**

#### **A. NYISO's Filing**

52. On October 14, 2009, in Docket No. ER10-65-000, NYISO filed Second Revised Sheet No. 83, proposing a revision to section 3.5 of its Market Administration and Control Area Services Tariff (Services Tariff) adding the following sentence: "The ISO

shall report to Staff of the Federal Energy Regulatory Commission and to Market Participants on problems that may arise with regard to its operation of NYISO markets pursuant to procedures posted to its website.” NYISO proposes an effective date of December 13, 2009, for its proposed tariff revision. NYISO states that the procedures for this reporting are contained in a new manual, which can be found on its website,<sup>17</sup> titled “NYISO Administrative Practices Manual” (Administrative Practices Manual), developed through NYISO’s stakeholder governance process. NYISO states that the procedures and the proposed tariff language were approved by the Business Issues Committee, the Management Committee and the NYISO Board of Directors.

53. NYISO states that the procedures contained in the Administrative Practices Manual require that upon discovery of a potential market problem, NYISO will notify its Independent Market Advisor of the issue, and if it is determined that there is sufficient credible information to believe that a market problem has occurred, NYISO will notify Market Participants through a specified procedure within five calendar days of discovery of the problem. NYISO further states that if it is determined that disclosure of a market problem could lead to gaming or other harmful outcomes, NYISO must notify the Market Participants that it has discovered a potential problem that is confidential in nature. The Administrative Practices Manual states that unless otherwise directed by Commission staff, NYISO will provide notice to its Market Participants of the identification of a potential market problem, conduct a confidential investigation, and consult with Market Participants as soon as practicable after resolution of the underlying issue pursuant to direction from the Commission.

54. The Administrative Practices Manual states that NYISO’s report to its Market Participants, subject to applicable confidentiality restrictions, will include the following descriptions: (1) the market problem and any tariff implications; (2) time frame involved; (3) underlying cause of the market problem; (4) economic impacts; and (5) steps planned or taken to address the market problem, including a proposed timetable for development of any necessary tariff revisions with Market Participants. The Administrative Practices Manual states that NYISO will provide the above report as soon as possible, but in no event later than 30 calendar days of its initial notice to Market Participants..

55. Finally, the Administrative Practices Manual provides that any changes in this process will be reported to the Commission’s Office of Enforcement, or its successor, but provides no specific schedule for reporting such changes.

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<sup>17</sup> *Citing*

[http://www.nyiso.com/public/webdocs/documents/manuals/administrative/AdminPractice\\_sMnl.pdf](http://www.nyiso.com/public/webdocs/documents/manuals/administrative/AdminPractice_sMnl.pdf).

56. NYISO states that it has now followed the basic elements of this procedure for several months and that this procedure ensures Market Participants and the Commission are promptly notified when there is an error affecting NYISO's markets, and are provided with impact and corrective action information in a timely fashion.

**B. Notice and Comments**

57. Notice of NYISO's October 14, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 54985 (2009), with comments due on or before November 4, 2009. New York Transmission Owners<sup>18</sup> filed a motion to intervene. No comments or protests were filed.

**C. Discussion**

**1. Procedural Matters**

58. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

**2. Commission Determination**

59. The February 9, 2009 Order required NYISO to develop, through its stakeholder process, and file with the Commission, either proposed tariff changes, or a status report on the development of procedures for early notification of stakeholders and stakeholder committees of possible errors affecting NYISO's markets, timely follow-up and detailed explanations regarding errors, and greater transparency and heightened responsiveness to the stakeholders and appropriate committees. NYISO filed a proposed tariff change in Docket No. ER10-65-000 to implement new notification protocols by reference to its new Administrative Practices Manual available on its website.

60. We find that, with one revision as directed below, NYISO's proposed notification protocols contained in its Administrative Practices Manual are reasonable. However, they should appear in its tariff in place of its proposed language and not in a Manual. Accordingly, we accept NYISO's proposed tariff sheet effective December 13, 2009, conditioned upon NYISO filing, within 30 days of the date of this order, revised tariff

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<sup>18</sup> New York Transmission Owners in Docket No. ER10-65-000 are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

sheets containing the protocols of the Administrative Practices Manual revised as described below.

61. NYISO's Administrative Practices Manual provides, in pertinent part, that "[u]pon discovery of a potential market problem, NYISO will notify its Independent Market Advisor of the issue" and "[u]pon the determination in consultation with the Independent Market Advisor that there is sufficient credible information to believe that a Market Problem has occurred, the NYISO will report the Market Problem to appropriate Commission staff." Consistent with Order No. 719, and the tariff provisions recently accepted by the Commission in compliance thereof,<sup>19</sup> NYISO should revise the protocols to provide that it will immediately inform both the Market Monitoring Unit (MMU) and the Commission's Office of Enforcement upon discovery of any such potential Market Problem.<sup>20</sup> Notification to the Commission's Office of Enforcement should not be subject to a NYISO determination that sufficient credible information exists that a Market Problem has occurred before it must do so. The term "Market Problem," which only applies to NYISO's notification and reporting requirements under the instant protocols, should not be confused with, or used in lieu of "Market Violation,"<sup>21</sup> as defined in Order No. 719. Further, we note that the Market Monitor is required to notify and/or refer any behavior that falls within the definition of "Market Violation" to the Commission, even if that violation might also fall within the definition of "Market Problem."

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<sup>19</sup> *New York Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,164, at P 83, 98 (2009). See, e.g., sections 4.5.3 and 4.5.4 of Attachment O to NYISO's Services Tariff, Original Sheet Nos. 587-588, NYISO FERC Electric Tariff, Original Volume No. 2.

<sup>20</sup> Market Problem is defined by NYISO to "include market design flaws, software implementation and modeling anomalies or errors, market data anomalies or errors, and economic inefficiencies that have a material effect on the NYISO-administered markets or transmission service. The term does not include erroneous Energy or Ancillary Services prices (which are managed through procedures outlined in Attachment E to the Services Tariff) or erroneous customer settlements (including those that are managed through the Billing Issues Group and regularly reported to the Billing and Accounting Working Group)." NYISO Administrative Practices Manual, 1-1, n 2.

<sup>21</sup> A Market Violation is "a tariff violation, violation of a Commission-approved order, rule or regulation, market manipulation, or inappropriate dispatch that creates substantial concerns regarding unnecessary market inefficiencies." 18 C.F.R. § 35.28(b)(8) (2009).

The Commission orders:

(A) NYISO's waiver request is hereby granted, subject to conditions, as discussed in the body of this order.

(B) NYISO's March 11, 2009, May 11, 2009, and August 10, 2009 reports are hereby accepted for filing, in compliance with the Commission's February 9, 2009 Order.

(C) NYISO's proposed tariff revision in Docket No. ER10-65-000 is hereby accepted, effective December 13, 2009, subject to the condition set forth in the text above.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.