108 FERC ¶ 61, 188
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 Nos. ER04-230-002,
ER04-230-003,
ER04-230-004,
ER04-230-005,
ER01-3155-005,
ER01-1385-014,
EL01-45-013

ORDER ON REHEARING AND COMPLIANCE FILINGS

(Issued August 10, 2004)

1. On February 11, 2004[1], the Commission accepted revised tariff sheets submitted by the New York Independent System Operator, Inc. (NYISO) to implement new real-time scheduling (RTS) software and a number of complementary new market rules. This order accepts a filing that the NYISO submitted to comply with the February 11 Order, and addresses several requests for rehearing or clarification of the February 11 Order. This action will benefit customers by enabling the real-time market systems to operate more efficiently.

Background

2. On November 26, 2003, as amended on December 1, 2003, pursuant to section 205 of the Federal Power Act, the NYISO submitted revisions to its Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff) to implement new RTS software and related new market rules. The new RTS software and the related market rule changes will: (1) permit the adoption of co-optimized two-settlement markets for regulation service and operating reserves;

[1] New York Independent System Operator, Inc., 106 FERC ¶ 61,111 (2004) (February 11 Order).

(2) support greater market participation by demand side resources; (3) facilitate the resolution of seams; and (4) serve as the foundation for future improvements. It will also enhance the NYISO's market power mitigation measures and related software and strengthen its ability to prevent market power abuses while not suppressing legitimate competitive bidding behavior.

3. In the February 11 Order, the Commission accepted the NYISO's filing subject to modification. Specifically, the Commission: (1) required the NYISO to submit revised tariff sheets indicating that the default availability bid for Operating Reserves applies only to Installed Capacity (ICAP) suppliers; (2) rejected the NYISO's proposal to extend Automated Mitigation Procedures (AMP) into the Real-Time Market outside New York City; and (3) required the NYISO to incorporate one of the three options suggested by Sithe Energy Marketing, L.P. (Sithe) as an alternative to the RTS proposal to remove the ability of off-dispatch suppliers to receive payments for uninstructed over-generation.

Requests for Rehearing and NYISO's Compliance Filings

4. On March 5, 2004, NYISO filed an emergency request for rehearing of the February 11 Order with respect to the Commission's ruling denying the application of a default availability bid to non-ICAP suppliers. On March 18, 2004, the Commission issued a data request to the NYISO requesting additional information. The NYISO submitted its responses to the data request on April 1, 2004. On May 7, 2004[2], the Commission granted emergency rehearing and accepted the NYISO's proposal to implement the automatic bid rejection rule and directed the NYISO to submit a compliance filing implementing the automatic bid rejection rule in place of the default availability bid as proposed by the NYISO in its response.[3] On June 7, 2004, the NYISO submitted its filing to comply with the May 7 Order.[4] No protests were filed.

5. On March 12, 2004 the NYISO filed a Request for Rehearing and Clarification of the February 11 Order, and the New York Transmission Owners[5] filed a Request for Rehearing of the February 11 Order.

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[2] *See* New York Independent System Operator, Inc., 107 FERC ¶ 61,134 (2004) (May 7 Order)

[3] The automatic bid rejection rule would allow the NYISO to reject any day-ahead market offers that do not include an operating reserves availability bid.

[4] 69 Fed. Reg. 34,151 (2004).

[5] The New York Transmission Owners is comprised of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and Niagara Mohawk Power Corporation.

6. On March 12, 2004, the NYISO submitted a filing to comply with the February 11 Order. Notice of NYISO's compliance filing was published in the *Federal Register*[6] with interventions, comments and protests due on or before April 2, 2004. Sithe, Indeck Energy Services, Inc., PSEG Power LLC and PSEG Energy Resources & Trade and Dynegy Power Marketing, Inc. and Dynegy Northeast Generation, Inc. (Dynegy) filed protests to the NYISO's compliance filing. On April 20, 2004, the NYISO filed an answer to Sithe's protest.

7. Although Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2003), prohibits answers to protests unless ordered by the decisional authority, we will accept NYISO's answer as it has provided information that has aided us in better understanding the matters at issue in this proceeding.

Discussion

A. **March 12 Compliance Filing**

8. In its March 12 compliance filing, the NYISO: 1) proposes new language in its definition of physical withholding that includes a more objective standard regarding what constitutes an "unjustifiable change" to one or more operating parameters of a generator that could constitute physical withholding[7]; 2) removes the real-time rest-of-state AMP provisions pending action on its rehearing request relating to this directive; and 3) makes several miscellaneous ministerial, typographical, and formatting corrections to the original RTS filing.[8] In addition, the NYISO addresses its proposal to remove the right of off-dispatch generators to be compensated for generating above their schedule output levels, which is discussed below.

9. Along with these changes, the NYISO proposes early implementation of certain mitigation measures. By its filing, the NYISO states that it is providing notice that it will be activating most of the approved enhancements to its Market Mitigation Measures (MMM) effective on May 1, 2004, the start of the "Summer Capability Period." The NYISO states that a majority of the substantive revisions to Attachment H of the NYISO's Services Tariff that were described in the RTS filing can be activated prior to

[6] 69 Fed. Reg. 15,317 (2004).

[7] This addition specifies that an "unjustifiable change" in operating parameters is one that is "not attributable to the Electric Facility's verifiable physical operating requirements," and "is not a rational competitive response to economic factors other than market power."

[8] The compliance filing further mentions the NYISO's emergency rehearing request regarding the default reserves availability bid. The May 7 Order renders moot this part of NYISO's compliance filing.

the implementation of the RTS software and there is no reason to delay their introduction.[9] We will accept the NYISO's notice that it will be activating the approved enhancements on May 1, 2004.

10. The NYISO's proposed tariff revisions with the exception of those discussed below, satisfactorily comply with the February 11 Order, and are accepted on the effective date of RTS.

B. Requests for Rehearing and Protests to Compliance Filing

1. Automated Mitigation Procedures

11. In its February 11 Order, the Commission held that the NYISO did not justify the extension of Automated Mitigation Procedures into the Real-Time Market outside New York City (Real-Time Rest-of-State AMP). The Commission stated that it will only approve mitigation measures that address well-defined structural problems in the market, and rejected this proposal without prejudice to a filing that explains the underlying structural problem outside of New York City that justifies the use of Real-Time Rest-of State AMP.

12. On rehearing, the NYISO states that the February 11 Order appears to reflect a misunderstanding of the operation and market effects of Real-Time-Rest-of-State AMP. The NYISO stresses that Real-Time Rest-of-State AMP will only be applied when the structure of a relevant market gives rise to significant market power leading to substantial increases in rates, and only after a generator's breach of the conduct and impact tests for market power establishes that an abuse of market power has in fact occurred. The NYISO states that implementing Real-Time Rest-of-State AMP will result in a more accurate and timely mitigation process, and may well result in fewer instances of mitigation than under the existing manual procedures.

13. The NYISO points out that the Commission approved the NYISO's MMM in March 2000,[10] which implemented market power mitigation based on the use of conduct (assessment of bidding levels) and impact (assessment of the effect of elevated bids on market prices) tests. MMM has been applied throughout New York State in both the Day Ahead and Real Time Markets through manual application of the conduct and impact tests since the issuance of the March 2000 Order. Further, the NYISO submits that in

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[9] Specific language in sections 4.2.2(d)(3) and 5.1 of the Services Tariff must be held in abeyance because they are related to market changes that will not be in place until RTS is implemented and therefore must be retained.

[10] New York Independent System Operator, Inc., et al., 90 FERC ¶ 61,317 (2000).

March 2002, the Commission endorsed the permanent use of the AMP for the state wide Day Ahead Market, and the Day Ahead and Real Time Markets in New York City.[11]

14. Specifically, the NYISO states, the only significant difference between the existing manual procedures applied outside New York City and the requested extension of AMP is that the AMP will provide a more timely and accurate application of the impact test. As with the current rest-of-state manual procedures, under the requested extension of the AMP, an initial breach of the conduct and impact tests would result in consultations with the seller, without mitigation being imposed. As with the manual process, if after consultations the NYISO determines that the seller's conduct and impact is not competitive, the seller would be put on a watch list, and its bids evaluated under the applicable conduct test. The AMP software, however, will have the capability to re-evaluate the impact test in the same interval to which the bids crossing the conduct test apply, as part of the price determination process for each interval. Mitigation under the AMP is applied only if conduct and impact tests are breached in the same interval, rather than impact being determined manually on the basis of a prior interval. The NYISO contends that the impact test will be more accurate and timely under the AMP than under the more limited capabilities of the manual procedures now in place. The NYISO states that the February 11 Order arbitrarily precludes the NYISO from implementing this improvement in mitigation.

15. The NYISO further states that the February 11 Order does not articulate any reason why the AMP protects against rates that are unjust and unreasonable in New York City Day Ahead and Real Time Markets and in the state-wide Day-Ahead Market, yet Real-Time-Rest-of-State AMP with a consultation process is not appropriate for the same reasons.

16. With NYISO's additional description of the operation of the proposed AMP procedures outside of New York City, we grant rehearing and allow the existing mitigation outside of New York City to be automated. We now understand that Real-Time AMP would merely automate the mitigation procedures that we have previously approved and that are currently being implemented on a manual basis. Real-Time AMP would not introduce any new standards or thresholds for mitigation. The use of Real-Time AMP would apply such mitigation more timely and accurately and in a non-discretionary manner that protects customers and allows generators to receive a competitive price for supplying energy.

[11] New York Independent System Operator, Inc., et al., 99 FERC ¶ 61,246 (2002).

2. Off-Dispatch Units and Price Chasing

17. The February 11 Order required the NYISO to implement one of the three options supported by Sithe in its December 19, 2003 comments, as an alternative to the RTS proposal to remove the ability of off-dispatch suppliers to receive payments for uninstructed over-generation by November 1, 2004, stating that the options could be a reasonable resolution of this issue. Specifically, under the Sithe options, the NYISO should either: 1) reinstate the ability to chase price; 2) replace the ability to chase price with the ability to self-schedule up to 30 minutes before the real-time commitment process; or 3) allow some units to have their generation scheduled on a fifteen minute basis, rather than a five minute basis. Sithe noted in its December 19 comments that Option 3 should also include improvements in the modeling of combined-cycle units.

18. In its March 12 filing to comply with the February 11 Order, the NYISO states that providing a fifteen minute scheduling option would be the best option, as it is an enhancement that the NYISO is already considering, and is one that will bring greater benefits than costs. However, the NYISO did not include tariff changes in its compliance filing to implement fifteen-minute scheduling because it intends to take further time to discuss various design issues associated with implementation of fifteen minute scheduling with its stakeholders. Once this process is complete, the NYISO states that it will make another compliance filing which will include all necessary tariff revisions, and will propose to make those revisions effective by whatever implementation deadline is ultimately established by the Commission.

19. The NYISO also notes that it envisions that the fifteen-minute scheduling option would only be available to generators that are incapable of following five-minute dispatch signals and not to those that simply choose to be non-dispatchable, to avoid making it inefficiently attractive for generators to opt out of the NYISO's real-time dispatch. NYISO also expects that generators choosing the fifteen-minute scheduling option would not be eligible to set market-clearing prices in Real-Time Dispatch.

20. In its rehearing request, the NYISO urges the Commission to modify its November 1, 2004 deadline for instituting fifteen minute scheduling as the alternative to price chasing. The NYISO requests that the Commission allow the NYISO one hundred and fifty days after the completion of all RTS implementation efforts in order to incorporate the fifteen minute scheduling option into its markets. The NYISO states that the current deadline does not provide an adequate amount of time for the extensive software coding and testing, which the NYISO estimates will take approximately five months. The NYISO states that the software vendor cannot even begin the work until November 1, 2004. Further, the NYISO needs adequate time to hold stakeholder discussions that should improve the fifteen minute scheduling option. The NYISO points out that the current deadline may fall before RTS is implemented, which will require the

NYISO to implement a RTS enhancement at the same time as the implementation of RTS itself.

21. On rehearing, the New York Transmission Owners request the Commission to reverse its decision and allow the NYISO to implement the RTS self-scheduling mechanism provision by which off-dispatch generating units could modify the amount of energy they produce in response to changes in energy prices. The New York Transmission Owners assert that the Commission erred in failing to conduct an analysis of the various options proposed by Sithe, and the related economic and reliability impacts prior to affording them equal status. The New York Transmission Owners are concerned that permitting price chasing could undermine reliability and impose undesirable economic impacts as well as undermine the NYISO's scheduling assumptions. The New York Transmission Owners urge the Commission to permit the NYISO to introduce changes through the stakeholder process in a manner that allows them to be efficiently and effectively accommodated.

22. In its protest to NYISO's compliance filing, Sithe states that the NYISO does not comply with the February 11 Order. According to Sithe, the NYISO unilaterally decided to inform the Commission that it was selecting part of the third option (allowing some units to have the NYISO RTS software set their schedules on a 15-minute basis rather than a five-minute basis), but left out a necessary portion of that option in order for that option to be effective, i.e., the NYISO did not include improved overall modeling of combined-cycle units that operate off-dispatch. Sithe also objects to the NYISO's request for a minimum 150-day extension of time to implement 15-minute scheduling.

23. According to the Affidavit of Mr. Younger attached to Sithe's protest, there are a number of reasons that units operate off-dispatch. One of the main reasons that units, such as combined cycle plants with multiple gas turbines, operate off-dispatch is that the NYISO bidding process does not provide sufficient flexibility to represent their unit costs. Sithe states that for these units it is impossible to develop an energy bid that is consistent with the plant cost under all configurations. Another reason is that such units have costs or operating limitations that cannot be accurately represented in the energy bid, such as significant costs changing from one generation level to another. Providing a unit a 5 minute schedule based upon its bid would not result in optimal operation for the unit at any time that it is operating under a different configuration, or changing from one generation level to another. Under the NYISO's proposal, if the unit were to operate off-dispatch it would be limited to guessing at an economic operating schedule more than an hour before that schedule would be effective.

24. Sithe proposes another interim option that it asserts the NYISO has available today. The NYISO would treat off-dispatch unit operation as self directed Out-Of-Merit

generation.[12] The generator would notify the system operators of its new schedule shortly before its intended schedule change (e.g., either fifteen or thirty minutes before the schedule change). Generation deviations from the Day-Ahead Market schedule would be paid at the real-time Locational Based Marginal Price. According to Sithe, this treatment is routinely applied to paying for generation from a unit while it is performing its Demonstrated Maximum Net Capability test. Units operation in this fashion would not be eligible to set price. According to Sithe, since the units are not having their schedules set by the NYISO software, their operation is already treated in the dispatch operation and price setting as if they are operating Out-Of-Merit. Sithe states that implementing this interim solution would not require any changes to the RTS software and would not delay RTS implementation. Although Sithe believes that treating any unit as Out-of-Merit generation should be a last resort, it claims that in this limited case, given the NYISO's claimed inability to institute other options, it can be employed as an interim measure until the NYISO can implement 15-minute scheduling in conjunction with enhanced combined-cycle modeling.

25. In its answer to the protests filed under NYISO's compliance filing, the NYISO states that the Commission should reject the protest submitted by Sithe for the following reasons: 1) Sithe makes new arguments, and seeks new relief, that are outside of scope of a compliance proceeding; 2) Sithe's pleading is really an impermissible answer to the NYISO's request for rehearing of the February 11 Order; and 3) Sithe's proposed interim option should be considered an untimely, and thus unlawful, request for rehearing. NYISO states that Sithe's pleading is really a protest of NYISO's request for rehearing of an extension of time to comply with the February 11 Order. Further, NYISO states that Sithe already had the opportunity to discuss and offer options relating to price chasing in the original proceeding, and therefore, Sithe's proposed interim solution cannot be raised at this stage of the process.

26. The NYISO objects to Sithe's proposed interim solution because it is not a viable option to price chasing. The approach proposed by Mr. Younger is not a "practical method for managing large numbers of units with frequent schedule changes and would divert the system operators' attention from their primary function of overseeing system reliability."[13] NYISO states the proposal may also have significant negative impacts on the market as it would allow the scheduling decision of on an off-dispatch generator to be by the generator after the software has already made economic commitment decisions on quick start internal supply and external transactions, and would greatly increase the uncertainty facing system operators and effectively force them to guess what generators were likely to do after commitment and external transaction scheduling decisions have been made.

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[12] See Affidavit of Mark D. Younger at 14.

[13] NYISO answer at P. 9.

27. The February 11 Order required the NYISO to incorporate one of the three options proposed by Sithe by November 1, 2004. The NYISO seeks to extend that date to at least one hundred and fifty days after the completion of all RTS implementation efforts due to extensive software coding and testing requirements and the inability of its software vendor to start work until after November 1, 2004. Sithe questions the validity of the NYISO's claims but states that they have no interest in delaying the implementation of RTS and offer an alternative interim solution. Dynegy urges the Commission to direct the NYISO to adopt the alternative measure immediately.

28. We will accept Sithe's protest in this matter because it addresses NYISO's comments related to price chasing in its March 12 compliance filing. However, we agree with NYISO, that Sithe's interim proposal is not viable and cannot be raised at this stage of the proceedings, and therefore we will reject the proposed interim solution. The NYISO has convinced us that it is necessary to grant an extension of time to implement the 15-minute schedule option that it has chosen to comply with the Commission's February 11 Order. However, this option must include improved modeling of combined-cycle units contemporaneously, for the reasons discussed by Sithe. As explained in Mr. Younger's affidavit, the need for combined cycle units to price chase arises, in large part, because NYISO's current software does not adequately model the costs of combined cycle units. Modifying the market rules so that schedules may be changed every 15 minutes based on sellers' bids, without modifying the software, would not adequately address this problem because the software does not adequately model the bids of combined cycle units. Therefore, we grant rehearing, and will require the NYISO to submit a compliance filing one hundred and fifty (150) days after the effective date of RTS to implement 15-minute scheduling in combination with improvement of combined cycle modeling.

3. <u>Clarification</u>

29. The NYISO seeks clarification of a portion of the February 11 Order which required the NYISO to file tariff revisions associated with the inclusion of Demand Side Resources in the RTS no later than 120 days after the commencement of RTS. The NYISO states that the Commission's ruling here is unclear. RTS is shorthand for the NYISO software enhancements that will upgrade its Real-Time Market software and better align it with the Day-Ahead Market software. It does not specifically refer to any particular market or product. The NYISO, therefore, would like the Commission to clarify its expectations, or at least indicate that it will allow the NYISO, in consultation with its stakeholders, to determine what should be filed.

30. To clarify the February 11 Order, we direct the NYISO to file, no later than 120 days after the implementation of RTS, a report on the status of certain demand side provisions, or the actual implementation of the provisions themselves, mentioned in the NYISO's RTS filing. Specifically, the NYISO describes market rules that would make

available certain expanded demand side bidding options in the non-synchronized Operating Reserves markets and permit demand side resources to provide synchronized Operating Reserves.[14] We recognize that there are certain impediments to enhanced demand side participation that are outside the NYISO's control. Nevertheless, we expect the NYISO to work with market participants to expedite the inclusion of any demand side enhancements that RTS software can accommodate.

The Commission orders:

(A) NYISO's March 12, 2004, compliance filing is hereby accepted for filing, effective May 1, 2004, for the implementation of mitigation provisions accepted by the February 11 Order. The rest of the revisions are hereby accepted the effective date of RTS.

(B) NYISO's June 7, 2004, compliance filing is hereby accepted for filing, the effective date of RTS implementation.

(C) The requests for rehearing and clarification of the February 11 Order are accepted in part and denied in part as described in the body of this order.

(D) Within 150 days after the effective date of RTS, the NYISO must submit a compliance filing to implement 15-minute scheduling in combination with improvement of combined cycle modeling, as described in the body of the order.

(E) Within 120 days after the implementation of RTS, the NYISO must file a report on the status of certain demand side provisions, or the actual implementation of the provisions themselves, mentioned in the NYISO's RTS filing, as described in the body of this order.

(F) The February 11 Order renders moot the issues raised in Docket Nos. ER01-1385-014, ER01-3155-005, and EL01-45-013.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Magalie R. Salas,
Secretary.

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[14] See RTS filing Transmittal Letter at 33-34.