

114 FERC ¶ 61,189  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket Nos. ER03-552-011  
and ER03-984-009

ORDER ON STATUS REPORT

(Issued February 22, 2006)

1. In its order issued on March 23, 2005, *New York Independent System Operator, Inc.*, 110 FERC ¶ 61,309 (2005) (March 23 Order), the Commission urged the New York Independent System Operator, Inc. (NYISO) to implement the Netting Bilaterals Project (Project) as soon as possible and required NYISO to file a status report on its progress within 120 days. On July 21, 2005, NYISO made the instant filing to comply with the Commission's March 23 Order. In this order, we direct NYISO to file a timetable for implementation of the Netting Bilaterals Project as well as quarterly reports on its progress.

**Background**

2. In its July 21, 2005 report, NYISO describes its efforts to determine the feasibility and priority of the Project. NYISO states that it has worked through its Project Prioritization Team (PPT) to determine the relative priority of the Project to NYISO's stakeholders.<sup>1</sup> The PPT advised NYISO that the Project is not a high priority for market participants. NYISO further states that, while the Project may be a market enhancement, it appears that the form of netting it would provide would benefit only a small number of market participants. NYISO reminds the Commission that it operates under rigorous budgetary and human resources limitations and that it must weigh budget and resource impacts against a project's impact on the market as a whole. Nevertheless, NYISO states that it has reviewed the Project on several occasions and, after careful consideration, has moved the project from Group 3 level, no work planned in 2005, to Group 2 level, "the non-priority list where some work may be undertaken in 2005 if possible using baseline

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<sup>1</sup> According to NYISO, the PPT, which consists of the elected chairs of the three main market participant governance committees and the chair of the Budget, Standards and Performance Subcommittee, advises NYISO on the relative priority of the various projects under consideration and provides NYISO with the stakeholders' perspective on the value of projects under consideration.

resources.” NYISO states that it cannot predict when efforts to complete the Project may begin, because of finite budget and resources, but believes those efforts cannot begin before 2006.

3. In its July 21, 2005 report, NYISO also asserts that the form of netting that is currently allowed by NYISO (*i.e.*, allowing an overall net seller to treat a portion of its net position as cash collateral to satisfy any collateral requirements) is broader in scope than what would be available through the Netting Bilaterals Project. NYISO explains that the Netting Bilaterals Project would benefit only a market participant that engages in a particular transaction structure whereby the market participant purchases energy from the NYISO markets and hedges those purchases with bilateral transactions that are registered with NYISO. As such, according to NYISO, the Project is best viewed as a proposed market structure with credit implications, rather than a credit mechanism. NYISO also argues that netting bilaterals could leave them without adequate security.

4. Notice of NYISO’s filing was published in the *Federal Register*, 70 Fed. Reg. 44,094 (2005), with protests and interventions due on or before August 11, 2005. Strategic Energy, L.L.C (Strategic) filed a timely protest. The Small Customers Marketing Association, National Energy Marketers Association (NEMA), and EPIC Merchant Energy LP (EPIC Merchant) each filed late comments in support of Strategic’s protest. On August 26, 2005, NYISO filed an answer to Strategic’s protest. On September 12, 2005, Strategic filed an answer to NYISO’s answer.

### **Discussion**

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

### **Strategic’s Protest**

6. To ensure that the Project is implemented consistent with the Commission’s March 23 Order and the Commission’s policy statement on electric creditworthiness,<sup>2</sup> Strategic requests that the Commission direct NYISO to implement the Project on or before March 1, 2006 and to submit monthly progress reports with the Commission detailing substantial progress towards meeting that deadline. Strategic asserts that NYISO’s response is woefully inadequate and must be remedied if the Project is to be completed as soon as possible, as urged by the Commission’s March 23 Order. Strategic

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<sup>2</sup> *Policy Statement on Electric Creditworthiness*, 109 FERC ¶ 61,186 (2004).

contends that allowing the PPT to determine the Project's priority was an improper response to the March 23 Order since the Commission has already directed NYISO to make the Project a priority.

7. Strategic further asserts that NYISO's rationales for not implementing the Project as soon as possible are without merit. First, in response to NYISO's assertion that the Project would benefit only a small number of market participants, Strategic states that Select Energy and fellow retailers, such as Constellation New Energy and the Small Customer Marketing Coalition, support accelerating work on the Project. In addition, Strategic asserts that NYISO's argument (that the project would benefit only a small number of market participants that purchase energy from NYISO markets and hedge those purchases with the bilateral transactions registered with NYISO) is incorrect. According to Strategic, the restructuring of electric markets has brought many new players into the industry, and those new players need improved credit policies. Strategic cites to the *Policy Statement on Electric Creditworthiness* where the Commission stated that internal bilateral energy contracts are a financial hedging tool and netting adds value to this tool.<sup>3</sup>

8. Next, Strategic responds to NYISO's claim that netting bilaterals could leave them without adequate security by pointing out that PJM Interconnection, L.L.C., (PJM) and ISO New England, Inc. (ISO-NE) implement the same program and neither has complained that netting leaves them without adequate security. Strategic adds that if NYISO had concerns about this it should have expressed these concerns earlier, for example, at the July 13, 2004 technical conference on electric creditworthiness, but NYISO never expressed such concerns at that time or later.

9. Strategic emphasizes that NYISO's current netting policies are not adequate. Strategic states that it informed the Commission during the July 13, 2004 technical conference that the lack of a netting policy forces an energy service company (ESCO) to use a contract for differences (CFD) in an attempt to hedge the spot market price. An ESCO using a CFD is considered by NYISO as a day ahead fixed load. NYISO then calculates credit requirements under its gross settlement based on the entire New York load without subtracting bilateral contracts. This approach results in greater collateral being required than would otherwise be needed. Strategic points out that collateral requirements in New York are almost four times greater than in the nearest market. For instance, Strategic states that it sold more power in PJM but had significantly lower collateral requirements, \$150,000, compared to \$30.3 million in New York. While Strategic's transaction volumes and prices have changed in the various markets, it states that the disproportionate impact of collateral requirements in NYISO's markets has been unabated.

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<sup>3</sup> *Id.* at P 30.

10. Strategic asks the Commission to direct NYISO to complete the Project within six months, to ensure that the project is completed “as soon as possible.” Strategic believes that the July 21, 2005 report represents just the latest in a series of indefinite delays. Strategic states that two and one half years ago, NYISO’s Business Issues Committee adopted a proposal to start the implementation of the Netting Bilaterals Project. Strategic points out that, despite repeated requests, NYISO has never completed the Concept of Operations (COO),<sup>4</sup> a critical first step to implementing this project even though NYISO informed the Commission that it would complete the COO by April 2005. Strategic also notes that, in February 2005, in response to the Commission’s direction in the *Policy Statement on Electric Creditworthiness*, NYISO stated that it had added the study and development of a program that would allow netting of bilaterals to its project development list. Now, Strategic states, NYISO is telling the Commission that it cannot predict at this time precisely when the efforts to complete the Netting Bilaterals Project may begin, because of finite budget and resources, and that it does not believe those efforts can begin before 2006.

11. On August 25, 2005, NEMA filed comments in support of Strategic’s protest. On September 2, 2005, EPIC also filed in support of Strategic’s protest and requesting that the Commission direct NYISO to implement the Netting Bilaterals Project no later than March 1, 2006.

### **Commission Conclusion**

12. NYISO worked through its PPT to determine the relative priority of the Netting Bilaterals Project to NYISO stakeholders and the PPT advised NYISO that the Project is not a high priority for market participants. By contrast, the protestors point out that the Project is needed by a number of market participants and urge that the Project be given a higher priority.

13. The Commission is concerned with the apparent lack of progress that NYISO has made on the Project, despite the direction in our March 23 Order that NYISO implement the Project as soon as possible. As we found in our *Policy Statement on Electric Creditworthiness*, the netting of bilaterals is a way to reduce market participants’ risk and improve market liquidity. Although implementing the Project is not without obstacles,

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<sup>4</sup> NYISO describes a COO as the “first document in the lifecycle of software system implementation or enhancement.” The COO generally describes the proposed functionality in plain terms. It does not attempt to provide detailed explanations of requirement or implementation details, but rather explains the functionality in conceptual terms for discussion prior to detailed design.

we note that other independent system operators and regional transmission organizations (*e.g.*, PJM and ISO-NE) have been able to successfully implement procedures that allow for the netting of bilaterals.<sup>5</sup>

14. Therefore, the Commission will direct NYISO to file, within 60 days of the date of issuance of this order, a timetable for implementation of the Netting Bilaterals Project that includes, *inter alia*, specific dates for completion of the COO, and realistic dates for implementation. We will process this filing as a compliance filing, subject to the Commission's notice and comment procedures. We also will direct NYISO to submit, on an informational basis that requires no Commission action, quarterly status reports on its progress with the Commission, within 15 days after the end of each calendar quarter, beginning with the calendar quarter ending June 30, 2006.

The Commission orders:

NYISO is hereby directed to file a timetable and quarterly status reports, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>5</sup> See *Policy Statement on Electric Creditworthiness*, 109 FERC ¶ 61,186 at P 30, n. 19, & n. 28.