

118 FERC ¶ 61,015
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 12, 2007

In Reply Refer To:
New York Independent System Operator, Inc.
Docket No. ER07-33-000 and ER07-33-001

New York Independent System Operator, Inc.
Attn: Robert E. Fernandez, Esq.
General Counsel and Secretary
10 Krey Boulevard
Rensselaer, NY 12144

Dear Mr. Fernandez:

1. On October 6, 2006, the New York Independent System Operator, Inc. (NYISO) informed the Commission that it planned to deploy software on October 11, 2006 aimed at bringing NYISO closer to full compliance with the requirements of its Market Power Mitigation Measures (Mitigation Measures).¹ NYISO also informed the Commission that a software issue identified in quality assurance testing could cause inappropriate mitigation of certain generating units under unusual and unlikely circumstances. As a result, NYISO requests what it characterizes as a limited, temporary tariff waiver to address a possible but limited impact on market-clearing Locational Based Marginal Prices (LBMPs) that would result from any inappropriate mitigation for the period beginning October 11, 2006 and ending January 31, 2007.

2. NYISO explains that its software will ensure that generators operating Out-of-Merit (OOM)² will automatically be subject to a conduct test for possible mitigation at

¹ Attachment H of NYISO's Market Administration and Control Area Services Tariff (Services Tariff) establishes Market Power Mitigation Measures intended to promote price levels determined by competitive forces.

² Generators operating Out-of-Merit produce at a different level of output than they would otherwise produce in a dispatch which was not security constrained. NYISO may designate generators as OOM to meet system reliability or to provide ancillary services.

the threshold(s) specified in section 3.1.2(b)(2) of Attachment H of the Services Tariff, and that an impact test will also be performed on these OOM generators. The mitigation thresholds applied to OOM units are more stringent than those applied to in-merit units.

3. NYISO explains that it discovered a problem with its software during quality assurance testing. When a generator is operating OOM, it is identified as such by an OOM flag. The software appropriately uses the OOM flag to apply the more stringent thresholds when testing for possible mitigation; however, when NYISO instructs a generator to return from OOM status to in-merit status, the OOM flag can persist for a period of up to two and a half hours. Since the software relies on the OOM flag to apply the appropriate mitigation thresholds, OOM generators that have been returned from OOM status to in-merit status may be subject to improper mitigation for up to two and a half hours.

4. NYISO expects that, in practice, inappropriate mitigation will rarely occur. NYISO explains that inappropriate mitigation will only occur if NYISO returns a generator from OOM status to in-merit status when the In-City area faces no transmission constraints, *and* the generator fails the OOM conduct threshold. NYISO states that these conditions occurred less than 0.6 percent of all intervals during the summer of 2006. Further, NYISO explains that once a generator is returned to in-merit status, the generator will be committed in economic order, subject to competition from generators located elsewhere in the New York control area and imports from other control areas. Mitigation would occur only if prices in the load pocket increase by the lesser of 200 percent or \$100/Mwh, a relatively high threshold. NYISO, therefore, predicts appropriate results will occur over 99 percent of the time.

5. In the event that generators are inappropriately mitigated, however, NYISO states that its Services Tariff would require it to restate affected LBMPs. NYISO claims that restating prices would undermine market confidence and cause risks associated with the necessary re-running of the real-time market. As such, NYISO requests what it characterizes as a limited, temporary waiver from its tariff obligation to revise any LBMP's in intervals where inappropriate mitigation of generators returned by NYISO from OOM status to in-merit status causes market clearing prices to diverge from the requirements of its Services Tariff.

6. NYISO argues that its request is appropriate for several reasons. NYISO claims that waiver will prevent harm to market participants by preventing disruption of settled

expectations.³ NYISO also claims that it would not be able to determine whether the unmitigated bid would impact the market clearing price without re-running the entire real-time market for the relevant hour, a process NYISO characterizes as burdensome and potentially risky. NYISO explains that, if all the inputs to the original real-time market are not duplicated perfectly in the re-running of the market, NYISO would be replacing one inappropriate market result with another. Finally, NYISO states that resetting the market clearing price would result in a disjunction between LBMPs and schedules; generators would still be compensated based on their actual real-time schedules, but the price would be set using an entirely different theoretical dispatch.

7. On November 15, 2006, NYISO filed a letter stating that it has completed the initial coding of a software fix, and that it planned to deploy the fix in January 2007 unless unexpected difficulties or adverse system conditions prevent deployment. As a result, NYISO limits its instant request to the period beginning October 11, 2006 and ending January 31, 2007.

8. Notice of the filing was published in the *Federal Register*,⁴ with protests and interventions due on or before October 27, 2006. A timely motion to intervene was filed by the New York Transmission Owners. A motion to intervene out-of-time was filed by KeySpan-Ravenswood, LLC (KeySpan). A motion to intervene and protest was filed by NRG Power Marketing, Inc., Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Oswego Harbor Power LLC (collectively, the NRG Companies). Notice of NYISO's November 15, 2006 filing was published in the *Federal Register*,⁵ with protests and interventions due on or before December 28, 2006. No motions to intervene or protests were received.

9. In its protest, the NRG Companies state that they do not necessarily oppose NYISO's request; the NRG Companies express concern that NYISO's application of its Mitigation Measures could result in improper mitigation, and therefore ask that the

³ NYISO adds that after the fact revision of market clearing prices as the result of the application of market mitigation measures is contrary to Commission policy. *See New York Independent System Operator, Inc.*, 90 FERC ¶ 61,217, at 62,055 (2000) (holding that "we do not intend for mitigation to entail any retroactive recalculation of market-clearing prices").

⁴ 71 Fed. Reg. 61,965 (2006).

⁵ 71 Fed. Reg. 69,109 (2006).

Commission direct NYISO to correct any issues with its software that could give rise to improper mitigation without delay.

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁶ the timely unopposed motions to intervene serve to make the parties that filed them parties to this proceeding. We will grant KeySpan's motion to intervene out-of-time given its interest in this proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay.

11. The Commission will grant NYISO's request that, for the period beginning October 11, 2006 and ending January 31, 2007, it need not revise LBMPs in intervals where inappropriate mitigation caused by the software error causes market clearing prices to diverge from the requirements of its Services Tariff.

12. The Commission will, however, require NYISO to file a status report within 30 days after deploying the fix. This report should inform the Commission whether or not the fix was successful. NYISO will also be required to immediately inform the Commission if unexpected difficulties or adverse system conditions prevent the deployment of the fix.

By direction of the Commission.

Magalie R. Salas,
Secretary.

⁶ 18 C.F.R. § 385.214 (2006).