

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New York Independent System Operator, Inc.)

Docket No. ER04-230-003

**THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.’S
MOTION TO REJECT, REQUEST FOR LEAVE TO ANSWER, AND ANSWER**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) hereby respectfully requests that the Commission reject the “protest” filed by Sithe Energy Marketing, L.P., Indeck Energy Services, Inc., PSEG Power LLC and PSEG Energy Resources & Trade (collectively, “Sithe”) for three reasons. First, Sithe makes new arguments, and seeks new relief, that are outside the scope of a compliance proceeding. Second, Sithe’s pleading is really an impermissible answer to the NYISO’s request for rehearing of the Real-Time Scheduling (“RTS”) Order,² not a protest of the NYISO’s compliance filing. Third, and finally, one of Sithe’s main arguments should be considered an untimely, and thus unlawful, request for rehearing.

In addition, because the “protest” of Dynegy Power Marketing, Inc. and Dynegy Northeast Generation (“Dynegy”) incorporates Sithe’s pleading by reference, it should be rejected for the same reasons.³

If the Commission nevertheless chooses to accept Sithe’s pleading, the NYISO requests leave to answer, and answers, it in order to ensure that the record in this proceeding is accurate.

¹ 18 C.F.R. § 385.212 and 385.213 (2003).

² *New York Independent System Operator, Inc.*, 106 FERC ¶ 61,111 (2004) (“RTS Order”).

³ Because Dynegy’s protest mirrors Sithe’s, all references to Sithe in this pleading should be construed as also referring to Dynegy.

I. MOTION TO REJECT

A. Sithe Makes Arguments and Seeks Relief that Are Beyond the Scope of a Compliance Proceeding

Much of Sithe's pleading, and of Mr. Younger's affidavit, makes arguments that would have been appropriate if they had been included in Sithe's original comments, or in a timely request for rehearing, but that are now inappropriate and irrelevant. Sithe has already had its opportunity to argue about the history of the price chasing issue,⁴ the alleged benefits of price-chasing, the supposed disadvantages of eliminating it, and the purportedly great importance of enhanced combined-cycle modeling.⁵ The Commission considered these arguments and directed the NYISO to either restore price-chasing, or implement one of two alternatives. It did not, as Sithe's repeatedly misrepresents, direct the NYISO to generally compensate off-dispatch generation units for uninstructed over-generation,⁶ or implement new combined-cycle modeling software.⁷

Similarly, the Commission should reject Mr. Younger's newly devised third alternative to price-chasing, *i.e.*, the so-called "self-directed out-of-merit generation" concept.⁸ Putting aside the concept's substantive flaws (which are discussed in detail below), it is inappropriate to introduce a new remedy during the compliance stage of this proceeding.⁹ Sithe should have

⁴ See Sithe at 7-8, 9; Younger Aff. at ¶¶ 7-14, 15-19.

⁵ See Motion to Intervene and Comments of Sithe at 4-7.

⁶ See Sithe at 1-2.

⁷ The NYISO agrees that enhanced combined-cycle modeling software would bring benefits. The fifteen-minute scheduling option will improve the efficient dispatch of combined-cycle units immediately without combined cycle modeling enhancements. Moreover, the costs and benefits of combined-cycle modeling improvements should be evaluated, preferably in consultation with stakeholders, before final commitments are made and timetables drawn.

⁸ See Sithe at 9; Younger Aff. at ¶¶ 32-33.

⁹ See, *e.g.*, *Arcadia Power Partners, LLC, et al.*, 106 FERC ¶ 61,215 (2004) (rejecting protest that was beyond the scope of compliance filing); *Consumers Energy Co.*, 105 FERC ¶ 61,194 (2003) (rejecting aspect of

(continued...)

included it in its original comments, or in a timely rehearing request. Accepting the proposal at this point would be a gross violation of procedural due process.

B. Sithe is Impermissibly Answering the NYISO’s Request for Rehearing, Not Protesting Its Compliance Filing

Under the Commission’s procedural rules, answers to rehearing requests are normally prohibited.¹⁰ Sithe is trying to circumvent this restriction by presenting its pleading as a protest of the NYISO’s compliance filing.¹¹ It does not, however, respond to the actual content of the NYISO’s compliance filing. Instead, Sithe mischaracterizes the compliance filing, and conflates it with the NYISO’s rehearing request, in an attempt to make its pleading seem legitimate. Indeed, Mr. Younger concedes in his affidavit that he is responding to both the NYISO’s compliance filing and its rehearing request.¹²

Sithe’s main stated objection to the compliance filing is its supposed failure to include tariff sheets implementing the NYISO’s preferred alternative to price-chasing, *i.e.*, the fifteen-minute scheduling option. In reality, as the NYISO’s compliance filing noted, the RTS Order did not require the NYISO to immediately file tariff sheets to implement fifteen-minute schedules.¹³ It stated only that such a mechanism had to be in place by November 1. The NYISO explained that it would make a compliance filing in advance of that date, or whatever

protest as beyond the scope of compliance filing and noting that protestor never filed rehearing request); *Mid-Continent Area Power Pool*, 101 FERC ¶ 61,006 (2002) (finding that arguments raised in compliance filing protest should have been raised in a request for rehearing); *Atlanta Gas Light Co.*, 86 FERC ¶ 61,127 (1999) (rejecting aspect of protest that attempted to introduce issues at the compliance stage); *Delmarva Power & Light Co.*, 63 FERC ¶ 61,321, at 63,160 (1993) (FERC has “explained in numerous orders that we will not consider arguments raised in a compliance proceeding that are not responsive to the narrow issue of the filing utility’s compliance with the explicit directives of the Commission in an earlier order”).

¹⁰ See 18 C.F.R. § 385.713 (2003).

¹¹ See Sithe at 6, 8.

¹² See Younger Aff. at ¶ 6.

¹³ See NYISO Request for Rehearing at 11-13 (March 12, 2004); Compliance Filing at 4-5.

deadline is ultimately set by the Commission, that would include the necessary tariff revisions. Delaying that filing is justified because numerous tariff provisions will be implicated and there is good reason to take the time to solicit stakeholder input. Since RTS will not take effect until the Fall, the NYISO's decision not to immediately file fifteen-minute scheduling tariff sheets will not result in an implementation delay. There is thus no basis for Sithe to protest this aspect of the compliance filing.

Sithe's real concern appears to be that the NYISO asked the Commission, in its request for rehearing, for an additional 150 days to implement the fifteen-minute scheduling option. Sithe is not entitled to answer this request and should not be permitted to do so through subterfuge.

Similarly, the NYISO has not "unilaterally declared" that it is delaying price-chasing, nor has it "proposed to remove that market tool [*i.e.*, price-chasing] without Commission approval."¹⁴ As the Commission is aware, the RTS Filing included tariff revisions that would eliminate price-chasing. The RTS Order accepted these changes on the condition that the NYISO implement a price-chasing alternative by November 1. The NYISO availed itself of its statutory right to seek rehearing with respect to the deadline, not the substantive condition. The NYISO has not claimed that its request for rehearing establishes a stay, nor done anything that would make it more difficult to meet the Commission's deadline if its request for rehearing is rejected. Instead, the request for rehearing truthfully informed the Commission that refusing to afford the NYISO additional time to implement fifteen-minute scheduling will very likely delay the overall introduction of RTS, and left it to the Commission to make the decision. The Commission should reject Sithe's answer to the NYISO's request for rehearing.

¹⁴ Sithe at 9.

In addition, contrary to Sithe's insinuations, the NYISO's compliance filing is not "disregarding" the link between improved combined-cycle unit modeling and a fifteen minute scheduling option.¹⁵ The filing states that the NYISO would discuss the necessity for, and priority of, combined-cycle modeling in the course of developing a coherent compliance package. Indeed, the NYISO has met with market participants four times this year, most recently on April 6, 2004, to discuss the combined-cycle modeling option that the NYISO is exploring with its software vendor.¹⁶ More information relevant to implementation decisions will become available in coming weeks and the NYISO will use it to inform future modeling decisions. Again, the compliance filing does not propose to do what Sithe's "protest" claims it does. Sithe is using its pleading to challenge the request for rehearing's request for additional time to introduce fifteen minute scheduling and improved combined cycle modeling. This should not be permitted.

The Commission has on rare occasions exercised its discretion and accepted answers to requests for rehearing, but there is no reason to do so here. First, Sithe has not requested a waiver of the Commission's rule but has instead disguised the true nature of its pleading. This alone should disqualify it from receiving a waiver. Second, the Commission generally accepts answers to requests for rehearing only when they shed light on complex issues and clarify the record. Sithe's pleading fails this test because it serves only to obfuscate the issues and confuse the record.

¹⁵ Sithe at 4.

¹⁶ The NYISO began discussing the potential usefulness of combined cycle modeling at a Market Structures Working Group Meeting on January 29, 2004, continued it at two Generation Issues Task Force meetings February 13 and February 23 and held the most recent discussion on this issue April 6, 2004. The NYISO has also begun necessary discussions with its market participants on the tariff filing that is necessary to implement the fifteen-minute scheduling option.

C. Sithe's Pleading Includes an Untimely and Unlawful Request for Rehearing

Sithe's contention that the NYISO has somehow failed to comply with the RTS Order by failing to immediately move to implement improved software for modeling combined-cycle units as part of a "fifteen-minute scheduling option" has no textual basis in the RTS Order. In Sithe's December 11, 2003 comments on the RTS Filing, it argued that the NYISO should either reinstitute price-chasing or adopt one of two alternatives, including the fifteen-minute scheduling option. Although Sithe suggested that it believed the fifteen-minute scheduling option would be more effective if coupled with enhanced combined-cycle modeling, the NYISO did not believe, and the Commission did not indicate, that it was a necessary component of a fifteen-minute scheduling option.¹⁷

The RTS Order did not direct the NYISO to institute combined-cycle modeling enhancements.¹⁸ This is why Sithe is forced to cite to its comments, rather than the RTS Order itself, as establishing the NYISO's supposed obligation to implement them.¹⁹ Similarly, Dynegy's suggestion that the RTS Order expressly required combined-cycle enhancements modeling is a misrepresentation.²⁰

Only the Commission can impose compliance obligations on the NYISO. Because the RTS Order never directed the NYISO to implement combined-cycle modeling, Sithe's argument that the NYISO has somehow neglected a compliance obligation is groundless. Moreover, the NYISO has repeatedly stated that it is examining the possibility of including enhanced combined-cycle modeling in its software, and will do so if the benefits outweigh the costs.

¹⁷ See Sithe Motion to Intervene and Comments at 7.

¹⁸ See RTS Order at P 40.

¹⁹ See Sithe at 2-3.

²⁰ See Dynegy at 2.

If Sithe wanted the Commission to declare combined-cycle modeling an integral part of the fifteen-minute scheduling option, it should have sought rehearing before the statutory deadline. It may not circumvent the Federal Power Act through procedural contrivances.²¹

II. REQUEST FOR LEAVE TO ANSWER

The NYISO recognizes that the Commission generally discourages answers to responsive pleadings. The Commission has, however, allowed such answers when they help to clarify complex issues, provide additional information that will assist the Commission, correct inaccurate statements, or are otherwise helpful in the development of the record in a proceeding.²² The NYISO's answer will meet this standard. There is a clear need to clarify the record given the misleading nature of Sithe's pleading. Allowing the NYISO to answer would be especially appropriate if the Commission opts to waive its procedural rules and accepts Sithe's otherwise impermissible pleading.

III. ANSWER

A. **Sithe's Allegation That No Additional Time Is Needed to Implement a Fifteen-Minute Scheduling Option Is Uninformed and Without Merit**

Sithe wrongly suggests that the NYISO has exaggerated the time required to implement fifteen-minute scheduling and could do it more quickly if only it would "multi-task."²³ Sithe

²¹ See 18 C.F.R. § 385.713.

²² See, e.g., *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was "helpful in the development of the record . . ."); *New York Independent System Operator, Inc.*, 91 FERC ¶ 61,218 at 61,797 (2000) (allowing an answer deemed "useful in addressing the issues arising in these proceedings . . ."); *Central Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,138, 61,381 (1999) (accepting prohibited pleadings because they helped to clarify the issues and because of the complex nature of the proceeding); *BES Hydro Co.*, 45 FERC ¶ 61,478 at 62,490 (1988) (accepting to "consider all relevant filings in this case, due to the nature of the issues and in order to have a more complete record on which to base our decision").

²³ See Sithe at 6.

also implies that the NYISO's software vendor has already developed software for use in Michigan that could solve the combined-cycle modeling problem.

These allegations are unfounded and false. The NYISO has offered a good faith assessment of the time needed to introduce the fifteen-minute scheduling option in light of other project commitments. The NYISO is already deeply immersed in work on these commitments, many of which are not related to RTS. Most of them have been approved by the NYISO's stakeholders and/or mandated by the Commission. They were established at a time when the NYISO was expecting to develop a fifteen-minute scheduling in the timeframe discussed in the RTS filing, rather than coincident with RTS implementation as the RTS Order required. It is not a simple undertaking to make the adjustments necessary to accelerate fifteen-minute scheduling without creating serious problems elsewhere, including in the overall RTS implementation timetable.

Neither Sithe nor Mr. Younger have the information, or the knowledge of the RTS software, that they would need to credibly second guess the NYISO's estimate. The NYISO does not have the surplus staff or technical resources that Sithe claims and cannot do the work faster than it has estimated given its competing commitments. Introducing the fifteen-minute scheduling option will not be a simple matter. Implementing it properly will involve both extensive technical work and stakeholder consultations to ensure that seemingly minor design decisions do not have unintended effects. Time must also be allowed for testing and training.

Finally, while the software that the NYISO's vendor has developed for use in Michigan appears to have many features that could be used to implement enhanced combined-cycle modeling in New York, it is unrealistic to think that the Michigan software provides an instant answer. To the best of the NYISO's knowledge, no other electricity market in the world

currently uses combined cycle modeling software as sophisticated as Sithe would require. Moreover, the Michigan software and any further changes that would be required to meet the NYISO's needs must still be integrated into the New York version of the vendor's Security Constrained Unit Commitment and RTS software. Furthermore, the new modeling will create numerous new bidding parameters that will necessitate many changes to the NYISO's Market Information System (MIS), Energy Management System displays, Market Monitoring tools, and the Billing and Accounting (BAS) system. These changes will in turn necessitate additional training and testing time. The Michigan software may well inform the development of suitable software for New York, but is clearly not an "off the shelf" solution.

B. Sithe's "Self-Directed Out-of-Merit Generation" Proposal Is Unworkable

As discussed above, Mr. Younger has introduced a new price-chasing alternative for the first time in this compliance proceeding that would permit off-dispatch generators to be treated as self-directed out-of-merit generation. Even if this option is not rejected on procedural grounds (see above), it should be rejected on the merits because it is not a viable alternative to price-chasing.

As an initial matter, the new proposal ignores the fact that the existing out-of-merit generation mechanism is a reliability tool. It was never intended to address economic or pricing issues and is ill-suited to do so because it is a manual entry application that was designed to allow operators to manage a relatively few out-of-merit units at any given time. 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. At a minimum use of such an approach would require software changes to more fully automate the application. It is uncertain how much time and

resources would be required to make such changes, but undoubtedly it would require redirecting resources away from ongoing support of RTS deployment or that might otherwise be available to begin work on fifteen-minute scheduling. This clearly would take more time than introducing a fifteen-minute scheduling option.

Furthermore, this proposal may also have significant negative impacts on the market as it would allow the scheduling decision on an off-dispatch generator to be made by the generator after the Real-Time Commitment software has already made economic commitment decisions on quick start internal supply and external transactions. This can lead to sub-optimal commitments of gas turbine units and to inefficient external transaction scheduling that would result in increased uplift, increase costs, and create new gaming opportunities.²⁴ A fundamental objective in the design of RTS has been to achieve price consistency across the scheduling timeframes. Mr. Younger's proposal increases the potential for the occurrence of inconsistencies that the NYISO has worked hard to eliminate. In short, the proposal may benefit a few market participants, by giving their units greater flexibility, but only at the expense of all others.

Finally, the proposal 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. This would clearly make it more difficult to maintain reliability on the already constrained New York grid and might force the NYISO to respond by making other changes, *e.g.*, increasing the amount of regulating capacity carried on

²⁴ Specifically, Sithe's proposal would invite market manipulation by generators seeking to drive real-time prices up in order to extract real-time uplift revenues. Foreclosing these opportunities could require major market power monitoring and mitigation changes that the NYISO would prefer not to make.

the system. The NYISO does not believe that the benefits of Mr. Younger's proposal justify these risks and costs.²⁵

C. The NYISO Did Not Ignore Price-Chasing Alternatives in the RTS Filing

Sithe also claims that the NYISO did not deal honestly with the fifteen minute scheduling option until Sithe itself raised the issue. This is false. In the RTS Filing, the NYISO clearly proposed to introduce a fifteen-minute scheduling option as a future enhancement.²⁶ The NYISO was planning to address it before Sithe called the price-chasing issue to the Commission's attention.

D. The NYISO Did Not Ignore the Other Options Presented by Sithe

Finally, Sithe claims that the NYISO ignored the possibility of restoring price-chasing or adopting its first proposed price-chasing alternative. This claim is belied by the NYISO's compliance filing, which clearly explained why the NYISO preferred the fifteen-minute scheduling option.²⁷ To reiterate, the other choices are inferior to the fifteen-minute scheduling option and cannot be implemented more quickly. There is no reason to impose them on the NYISO.

²⁵ See *Policy Statement on Matters Related to Bulk Electricity Reliability*, 107 FERC ¶ 61,052 at P 37 (April 19, 2004) (stating that the Commission will take into account reliability implications in its decision-making to ensure that reliability is not harmed).

²⁶ See RTS Filing Letter at 35.

²⁷ See NYISO Compliance Filing at 4.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission accept this answer for filing and reject the protest addressed above.

Respectfully submitted,

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April 20, 2004

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in the above-captioned proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2003).

Dated at Washington, D.C., this 20th day of April, 2004.

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