

103 FERC ¶ 61, 043  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

New York Independent System Operator, Inc.

Docket Nos. ER03-238-001  
ER03-238-002

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued April 11, 2003)

1. On January 30, 2003, the Commission issued an order<sup>1</sup> conditionally accepting for filing revisions to the Market Administration and Control Area Services Tariff of the New York Independent System Operator, Inc. (NYISO), clarifying the manner in which "Day-Ahead Margin" Assurance payments will be calculated. That order required NYISO to submit an explanation relating to the eligibility of certain generators to receive such payments. That order also directed NYISO to initiate a stakeholder process to ensure prompt resolution of concerns and protests raised by the NRG Companies (NRG) and the New York Transmission Owners (NY Transmission Owners) and to file tariff revisions as appropriate.
2. On February 14, 2003, NYISO submitted a compliance filing with the explanation required by our January 30, 2003 order. NRG filed a timely request for rehearing of the January 30, 2003 order. This order denies the request for rehearing and accepts the compliance filing. This action will benefit customers by providing greater clarity as to how the Day-Ahead Margin Assurance payments will be administered in New York.

---

<sup>1</sup>New York Independent System Operator, Inc., 102 FERC ¶ 61,096 (2003).

**I. NRG's Rehearing Request (Docket No. ER03-238-001)**

3. NRG argues that our January 30, 2003 order erred in not requiring NYISO to compensate generators for natural gas imbalance penalties. NRG states that these penalty costs are incurred by NRG's generators when they respond to NYISO's instructions to operate at a lower level than the generator's Day-Ahead schedule. NRG argues that recovery of costs such as gas imbalance penalties should be automatic, not discretionary.

4. NRG requests that the Commission either: (1) direct NYISO to revise its proposed Day-Ahead Margin Assurance payment formula to include an adder for gas imbalance penalties incurred by generators in response to NYISO security instructions, or (2) require NYISO to complete the stakeholder process directed in the January 30, 2003 order and file any tariff provisions, or a report explaining why none are required, by May 1, 2003.

5. Consolidated Edison Company (ConEd) filed an answer to NRG's request for rehearing. We will reject ConEd's answer as an impermissible answer to a request for rehearing.<sup>2</sup>

6. The Commission is not persuaded that recovery of gas imbalance penalty costs should be automatic, as NRG contends. This argument ignores the fact that various imbalance management services, such as park and loan services and imbalance trading services, may be available to companies for the purpose of reducing imbalance penalties, and otherwise managing imbalances. It is not clear to us whether NRG has pursued these alternatives. It is also not clear whether automatic recovery of such penalties provides proper economic signals to the NYISO market. We continue to believe therefore, that the issue of penalty recovery is best explored through the NYISO stakeholder process. Accordingly, the Commission will not require a revision of NYISO's proposal at this time.

7. With respect to NRG's request for a May 1, 2003 deadline for the filing of any tariff provisions which may be required, the Commission declines to impose such a deadline because it is not clear from the record in the proceeding whether such a deadline would be reasonable. However, to insure a timely completion of the stakeholder process, the Commission will require NYISO to file a status report within thirty days of the date of this order. The status report must include a reasonably soon estimated completion date for the stakeholder process. NRG's request for rehearing is denied.

---

<sup>2</sup>See 18 C.F.R. § 385.713(d) (2002).

## II. Compliance Filing (Docket No. ER03-238-002)

### A. Details of the Filing

8. Our January 30, 2003 order required NYISO to explain why Reliant Resources, Inc.'s (Reliant) Off-Dispatch generators would qualify for the Day-Ahead Margin Assurance payments, but other Off-Dispatch generators would not qualify.<sup>3</sup>

9. NYISO's compliance filing explains its policy with respect to the eligibility of the Off-Dispatch generators for Day-Ahead Margin Assurance payments. NYISO states that Reliant's thirty-minute gas turbine units were "Off-Dispatch"<sup>4</sup> and were treated the same as other Off-Dispatch units during the relevant time periods.

10. NYISO states further that On-Dispatch and Off-Dispatch units are eligible for Day-Ahead Margin Assurance payments under almost all of the same circumstances. They are both eligible for payments if the NYISO takes them off of their Day-Ahead schedules for security reasons or to permit the procurement of operating reserves. NYISO explains that, unlike On-Dispatch units, which increase or decrease production only in response to the NYISO's Real-Time dispatch signals, Off Dispatch units have the ability to change their level of production based on their assessment of the way prices are likely to move. If an Off-Dispatch generator has "chased prices down" only to find that Real-Time LBMPs are climbing faster than the unit can increase its output, it may find itself "behind the ramp" and exposed to an expensive balancing obligation. NYISO states that it would be inappropriate to insure Off-Dispatch units against Real-Time price spikes in these circumstances when they are free to reap the profits from such spikes. To do so would give all generation owners an incentive to not place units on-dispatch, undermining the NYISO's ability to reliably operate the system.

11. NYISO further states that it has discussed with Reliant specific instances, alluded to in Reliant's original protest, in which Reliant did not receive Day-Ahead Margin Assurance payments, and that these discussions have confirmed that Reliant's units were

---

<sup>3</sup>Id. at P 19.

<sup>4</sup>The compliance filing explains that in the NYISO system, an "Off-Dispatch" unit is a unit that opts to accept hourly scheduling changes instead of Real-Time schedule changes every five minutes from the NYISO. An "On-Dispatch" unit is a unit willing to change its output pursuant to real-Time instructions that the NYISO sends every five minutes.

Off-Dispatch and were treated the same as other Off-Dispatch units. NYISO states that it is continuing its discussions with Reliant to ensure that this assessment is accurate in every case. NYISO states that it will take appropriate action if it concludes that there was an instance in which Reliant should have received a Day-Ahead Margin Assurance payment, but did not.

## **B. Notice of Filing**

12. Notice of NYISO's compliance filing was published in the Federal Register, 68 Fed. Reg. 12063 (2003), with motions to intervene and protests due on or before March 17, 2003. A timely motion to intervene was filed by the NY Transmission Owners.<sup>5</sup>

## **C. Discussion**

13. In our January 30, 2003 order, we stated that it was not clear to us why all Off-Dispatch generators would not be eligible to receive Day-Ahead Margin Assurance payments if they were ordered to reduce their generation below their Day-Ahead schedule. Our concern, though not specifically stated, was to avoid a result that could be unduly discriminatory. NYISO's compliance filing alleviates that concern, since NYISO explains that both On-Dispatch and Off-Dispatch units are eligible for Day-Ahead Margin Assurance payments if the NYISO takes them off of their Day-Ahead schedules for security reasons or to permit the procurement of Operating Reserves. Accordingly, we will accept the compliance filing.

---

<sup>5</sup>The NY Transmission Owners include Central Hudson Gas & Electric Corp., Consolidated Edison Company of New York, Inc., LIPA, New York Power Authority, New York State Electric & Gas Corp., Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corp., and Niagara Mohawk Power Corp., all of which are members of the Transmission Owners Committee of the Energy Association of New York State. NY Transmission Owners were already parties to this proceeding by virtue of their timely, unopposed motion to intervene filed on December 23, 2002. Accordingly, we need not address the second motion to intervene.

The Commission orders:

- (A) NRG's request for rehearing is hereby denied.
- (B) The NYISO is hereby instructed to submit a status report on the stakeholder process required in this proceeding within 30 days of the date of this order.
- (C) NYISO's compliance filing in Docket No. ER03-238-002 is hereby accepted.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.