

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 No. ER06-617-000

ORDER ACCEPTING REPORT OF TARIFF IMPLEMENTATION ERRORS AND  
REJECTING COMPENSATION METHODOLOGY

(Issued April 7, 2006)

1. On February 8, 2006, New York Independent System Operator, Inc. (NYISO) filed a report of tariff implementation errors, request for approval of a proposed compensation methodology, and request for limited tariff waivers. This order accepts NYISO's report of tariff implementation errors, rejects the proposed compensation methodology, and denies the request for limited tariff waivers, as discussed below.

**Background**

2. On May 1, 2004, NYISO implemented software applying two Day-Ahead guarantee payment impact tests (GP1 and GP2). When a conceptual flaw with respect to the GP2 test was discovered, NYISO disabled the GP2 test on February 1, 2005. Both tests were intended to automate the testing of guarantee payment impacts. The GP2 test, however, was discovered to be overbroad because it occasionally led to the inappropriate mitigation of certain generators. NYISO states that the generators that were mitigated solely due to the GP2 test were generators that (1) submitted uneconomic bids, (2) did not have a locational-based marginal price that warranted mitigation, and (3) absent mitigation, would not have received a Day-Ahead commitment. In other words, if the bids submitted by the generators that were mitigated based on GP2 impact alone had been left undisturbed, the generators would not have received Day-Ahead schedules and no guarantee payments would be owed to those generators, so there would not have been any need for GP2 mitigation. We refer to this category of generators hereinafter as the "GP2-mitigated generators."

**Proposal**

3. NYISO proposes to make the GP2-mitigated generators whole as follows:
- Generators that actually started in Real-Time will receive guarantee payments consistent with their unmitigated Day-Ahead market (Day-Ahead) bids;
  - Generators that did not actually start in real-time will be held harmless by voiding their Day-Ahead and Real-Time schedules, including any balancing obligations.

NYISO states that the generators that started in Real-Time ran in good faith to satisfy the Real-Time schedules that resulted from each generator's GP2-mitigated Day-Ahead schedule. NYISO notes that, while the GP2 test was in effect (during the locked-in period between May 1, 2004 and February 1, 2005), there were a total of ten instances in which generating units did not operate in Real-Time to satisfy their Day-Ahead schedules that resulted from GP2 mitigation. NYISO proposes to charge the monies needed to compensate the erroneously mitigated generators as uplift under the NYISO's Rate Schedule 1.

**Notice and Responsive Pleadings**

4. Notice of NYISO's February 8, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 9,536 (2006), with protests and interventions due on or before March 1, 2006. The New York Transmission Owners (New York TOs) and the New York Municipal Power Agency (NYMPA) filed protests. Multiple Intervenors<sup>1</sup> filed comments. On March 8, 2006, NYISO filed an answer to the protests. On March 15, 2006, NYMPA filed a reply to NYISO's answer.

5. NYMPA and the New York TOs protest the proposed compensation methodology, and ask the Commission to reject it. NYMPA asserts that the imposition of an additional uplift charge through Schedule 1 will increase charges for those who did not participate in the Day-Ahead and Real-Time markets and, therefore, did not benefit from the mistake. NYMPA argues that the proposed compensation does not adequately balance

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<sup>1</sup> Multiple Intervenors is an unincorporated association of over fifty large industrial, commercial, and institutional energy consumers in New York State.

the interests of affected generators and loads. NYMPA states that in the New England Energy Uplift Orders,<sup>2</sup> the Commission ruled that parties who do not participate in the ISO New England, Inc. (ISO-NE) energy markets, thus not benefiting from those markets, should not be required to pay the costs of energy uplift associated with the operation of those markets.

6. NYMPA maintains that NYISO's proposed compensation is contrary to Commission precedent because it will frustrate the expectations of load entities who have hedged themselves from the uncertainties of the spot market. NYMPA notes that the Commission denied a motion to stay implementation of the Standard Market Design in New England, on the grounds that, in preparation for the implementation of locational-based marginal pricing, many market participants entered into bilateral contracts to hedge their risk.<sup>3</sup> NYMPA argues that its members similarly have entered into bilateral contracts to hedge themselves from the uncertainties of the spot market, including the costs that might result from erroneous mitigation under the GP2 test. NYMPA asserts that its members are particularly adversely affected because they buy almost all of their energy through bilateral contracts and not through NYISO Day-Ahead and Real-Time markets. NYMPA believes that allocating the costs of the erroneous mitigation to those load entities would be contrary to Commission policy and would disrupt incentives to enter into such contractual arrangements.

7. NYMPA asserts that a remedy that adequately balances the interests of affected generators and loads could be implemented without requiring recalculation of clearing prices. For example, NYMPA states that NYISO could charge market participants according to the ratio of energy purchases in the Day-Ahead market for each hour or day during the 82 days in which mitigation of bids due to the GP2 test occurred.

8. The New York TOs state that, all generating units, whether correctly or erroneously committed, are subject to the provisions of the Services Tariff, which *requires* the mitigation of Guarantee bids in cases where those bids cause Guarantee payments made to those generators to increase beyond a threshold level. The New York TOs state that, since these bids caused Guarantee payments made to these units to rise above this threshold level, they should have been mitigated, and the Guarantee payments

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<sup>2</sup> The Energy Uplift Orders include: *ISO New England, Inc.*, 91 FERC ¶ 61,227 (2001); *ISO New England, Inc.*, 91 FERC ¶ 61,311 (2000); *ISO New England, Inc.*, 95 FERC ¶ 61,384 (2001); *ISO New England, Inc.*, 98 FERC ¶ 61,173 (2002), *order on reh'g, New England Power Pool*, 100 FERC ¶ 61,029 (2002), *order on reh'g, ISO New England, Inc.*, 100 FERC ¶ 61,245 (2002) (Energy Uplift Orders).

<sup>3</sup> *New England Power Pool*, 102 FERC ¶61,248, at P 17 (2003).

made to these generating units should be based upon those mitigated bids. The New York TOs conclude that, as long as the correct reference bids were used in the mitigation process, no additional compensation to these generating units is necessary and, in any event, would not be authorized by the terms and conditions of NYISO's filed rate schedule (the Service Tariff).

9. The New York TOs also assert that while the GP2-mitigated generators should not have been committed, they were in fact committed. The New York TOs aver that NYISO has the obligation under its Market Power Mitigation Measures (Mitigation Measures)<sup>4</sup> to ensure that generators that are committed, and receive Guarantee payments, cannot submit inflated minimum generation and start-up bids that cause those Guarantee payments to increase above the levels permitted by the thresholds specified in the Mitigation Measures. In such cases, NYISO is obligated to mitigate those minimum generation and start-up bids, according to the New York TOs. The New York TOs argue that the NYISO's Market Administration and Control Area Services Tariff (Services Tariff), specifically, the Mitigation Measures, provides no exceptions for this mitigation, whether the generators were properly or mistakenly committed. To the contrary, the New York TOs contend, the Services Tariff *mandates* mitigation of minimum generation and start-up bids that cause an increase in the Guarantee payments that exceed the threshold values stated in the Mitigation Measures. The New York TOs state that NYISO is mistaken that an exception should be made here; the GP2-mitigated generators should not be permitted to inflate their Guarantee payments with impunity merely because they were committed mistakenly. In short, the New York TOs state that, while the GP2 impact test resulted in the inappropriate commitment of some generators, it appropriately mitigated their minimum generation and start-up bids when they were committed, so there should be no change in the Guarantee payments made to these generators.

10. The New York TOs counter NYISO's assertion that NYISO's proposal is intended to ensure that the GP2-mitigated generators are not financially harmed. The New York TOs continue that, if the minimum generation and start-up reference bids have been properly calculated, the GP2-mitigated generators have not been harmed, since their bids permitted them to recover their full costs. The New York TOs assert that NYISO has provided no evidence that the reference bids would not permit full cost recovery.

11. The New York TOs further object to NYISO's proposed compensation methodology as being contrary to the Services Tariff. The New York TOs state that NYISO fails to demonstrate why the GP2-mitigated generators should be treated differently than others, since all generators are subject to the Services Tariff.

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<sup>4</sup> NYISO FERC Electric Tariff, Original Volume No. 2, Attachment H (ISO Market Power Mitigation Measures).

12. In its answer, NYISO replies that, in New York, all loads that take service under both the NYISO's Open Access Transmission Tariff (OATT) and its Services Tariff, including NYMPA loads, are required to pay uplift associated with Day-Ahead and Real-Time Bid Production Cost Guarantee (Guarantee) payments. NYISO states that granting NYMPA's protest effectively would change New York's standard allocation of Guarantee-related uplift on a one-time basis and would disrupt settled market expectations in New York. NYISO states that, if NYMPA believes this method needs to be changed, it should raise the issue within the NYISO's governance process, rather than seeking a single-case exception.

13. NYISO states that NYMPA's reliance on the Energy Uplift Orders is misplaced. NYISO states that ISO-NE has a cost allocation method substantially different from NYISO's, as suppliers in New England apparently are responsible for paying guarantee-related uplift under a broader set of circumstances.

14. In addition, NYISO disputes NYMPA's claims that the proposed remedy will "frustrate the expectations of load entities who have hedged themselves from the uncertainties of the spot market" by entering into bilateral contracts, stating that hedging was not based on a realistic expectation that they would be insulated from Guarantee-related uplift costs. NYISO states that loads that take service under both the NYISO Services Tariff and the OATT have been held responsible for Guarantee-related uplift since the earliest days of NYISO. Additionally, NYISO states that it performed a review that indicates that NYMPA loads, at multiple locations, took service as "physical loads" in the NYISO Day-Ahead market, indicating that NYMPA, in fact, participates in the NYISO Day-Ahead market.

15. NYISO states that its proposed compensation methodology for GP2-mitigated generators is designed to comport with the Commission's instruction that "if the NYISO subsequently determines that the bid [that was erroneously mitigated] was not an attempt to assert market power, the generator will be paid its full bid."<sup>5</sup> NYISO states that, while it is possible that some of the GP2-mitigated bids were submitted to economically withhold the unit from commitment, NYISO can state that (a) none of the bids at issue here had a substantial impact on locational-based marginal prices, and (b) none of the generators in question would have been committed, absent the GP2 mitigation. NYISO states that, for these reasons, it assumed that it should compensate these generators as proposed; however, if instructed by the Commission, NYISO will leave the GP2-mitigated bids in place.

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<sup>5</sup> *New York Independent System Operator, Inc.*, 95 FERC ¶ 61,471, at 62,690 n.9 (2001).

16. NYISO further states that it is not proposing to socialize net costs to loads in order to fund its proposal to “zero out” the ten GP2-mitigated generators, but rather, on a net basis, to recoup approximately \$50,000 in balancing payments made to these generators. NYISO notes that none of the affected generators has protested its filing.

17. Multiple Intervenors, while taking no position on the filing, agree with the Commission’s policy that mitigation measures not include any retroactive recalculation of market-clearing prices.

## **Discussion**

### **Procedural Matters**

18. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

19. 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 to an answer unless otherwise ordered by the decisional authority. We will accept NYISO’s answer because it has provided information that assisted us in our decision-making process. We are not persuaded to accept NYMPA’s answer to NYISO’s answer and will, therefore, reject it.

### **Commission Determination**

20. As we explain below, the Commission agrees with New York TOs and rejects NYISO’s proposed compensation methodology because (1) the compensation methodology is not authorized by the NYISO Services Tariff and (2) we find that no further compensation is necessary since the generators received their reference bids, which reflect the generators’ actual costs of operation.<sup>6</sup>

21. The Commission agrees with the New York TOs’ view that, although (in retrospect) the GP2-mitigated generators should not have been committed, they were nonetheless committed and properly mitigated according to the terms and conditions of the NYISO Services Tariff, and also were not financially harmed by being erroneously mitigated. The NYISO Services Tariff does not provide for compensation of generators that were erroneously committed. Thus, there is no tariff authority for NYISO’s proposed compensation methodology. NYISO essentially concedes this point when it

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<sup>6</sup> By contrast, in the order in Docket Nos. ER06-185-000 and ER06-185-001, we allow NYISO to recompute the Guarantees at issue there because they were not properly computed in accordance with the terms and conditions of NYISO’s Services Tariff.

states that, as precedent for its proposal, it is relying on an order in which the Commission accepted NYISO's Automated Mitigation Procedures for the summer capability period of 2001, and required NYISO to pay a generator its full bid if it was subsequently determined that the bid that was mitigated was not an attempt to assert market power.<sup>7</sup> However, these circumstances do not occur here.

22. Rather, what happened here is that the GP2 test resulted in the commitment of the wrong generators. However, these mistakenly-committed generators – the GP2-mitigated generators – were nonetheless appropriately – and adequately – compensated pursuant to the terms and conditions of the NYISO Services Tariff. Now, the NYISO proposes to make the GP2-mitigated generators “whole” by paying the full bid to those generators that actually ran in Real-Time or by voiding the Day-Ahead and Real-Time schedules of generators that did not actually start in Real-Time, and holding these generators harmless for any balancing obligations. However, the Commission finds that no further compensation is necessary for these generators, nor is such compensation provided for under the Services Tariff. Consistent with the Services Tariff, these erroneously committed GP2-mitigated generators received their reference bids, which are intended to reflect the generators' actual cost of operation. Indeed, there is no evidence that the GP2-mitigated generators that ran did not have their costs covered, or that those that did not run should be liable for any obligations they incurred. While NYISO states that it stands to recoup approximately \$50,000 in balancing payments made to the GP2-mitigated generators, the New York TOs state, and the Commission agrees, that if the GP2-mitigated generators' failure to meet their Day-Ahead schedules caused them to incur losses because Real-Time prices were above Day-Ahead prices, they should bear such losses; likewise, if they realized gains, they should retain such gains.<sup>8</sup>

23. Because we deny NYISO's proposed compensation methodology, we will also deny its related request for limited tariff waivers, to preclude any obligation to retroactively restate market-clearing prices.

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<sup>7</sup> New York Independent System Operator, Inc., 95 FERC ¶ 61,471 (2001).

<sup>8</sup> NYISO's Services Tariff provides for compensation when NYISO uses the wrong reference price to mitigate a generator. That is not the case where, as here, the mitigation was based not on the incorrect reference price, but rather based on an incorrect application of the impact test, and thus, the generators should not have been committed.

The Commission orders:

(A) NYISO's report of tariff implementation errors is hereby accepted, as discussed in the body of this order.

(B) NYISO's proposed compensation methodology is hereby rejected, as discussed in the body of this order.

(C) NYISO's request for limited tariff waivers is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.