

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

New York Independent System Operator, Inc.

Docket Nos. ER06-185-003
ER06-185-004
and ER06-185-006

ORDER ACCEPTING COMPLIANCE FILINGS

(Issued March 15, 2007)

1. In a series of orders, the Commission accepted a proposal by the New York Independent System Operator, Inc. (NYISO) to conduct certain real-time guarantee payment impact tests (RTGP Tests) and directed NYISO to file reports on the tests.¹ In response to these orders, NYISO made three filings with the Commission reporting on the tests.² In this order, the Commission accepts these three filings as satisfactorily complying with the Commission's orders.

¹ *New York Independent System Operator, Inc.*, 115 FERC ¶ 61,026 (April 2006 Order), *order directing further filings*, 117 FERC ¶ 61,164 (November 2006 Order), *order denying reh'g and directing further filings*, 117 FERC ¶ 61, 349 (2006) (December 2006 Order).

² In addition to filing to comply with Ordering Paragraph (B) of the April 2006 Order, NYISO's December 29, 2006 filing was made to comply with Footnote 7 of the Commission's November 2006 Order. Footnote 7 of the November 2006 Order states:

Consistent with the April 2006 Order, we will allow NYISO to revise the Guarantees for February 2005 "through the present," which would be the date of issuance of the April 2006 Order [*i.e.*, April 7, 2006]. These corrections must be completed January 1, 2007. However, the instant order does not authorize any revisions to Guarantees for transactions *after* the date of issuance of the April 2006 Order.

Background

2. On November 8, 2005, NYISO reported to the Commission, in Docket No. ER06-185-000, that it had discovered that it had made errors in computing Bid Production Cost Guarantees (Guarantees) going back to June 1, 2002. These errors occurred while NYISO was implementing the new mitigation measures provisions in its Market Administration and Control Area Services Tariff (Services Tariff). In brief, certain aspects of mitigation implementation did not conform to the applicable tariff requirements as they were changed from time to time. According to NYISO, the implementation errors for the most part affected Guarantee compensation of certain units in the New York City zone, which has been designated as a Constrained Area for market mitigation purposes. NYISO proposed settlement corrections to bring it into compliance with its tariff.

3. On January 6, 2006, Staff issued a data request to NYISO. The data request directed NYISO to: (1) state the total amount of money being paid to generators and the impact of such payments on load-serving entities in New York; (2) describe the discussions NYISO had with affected market participants to date and the status of those discussions; (3) describe how payments to generators will be calculated; and (4) describe NYISO's plans for preventing the recurrence of errors and to improve pricing and billing accuracy. On February 6, 2006, in Docket No. ER06-185-001, NYISO filed its answer to Staff's data request.

4. The Commission subsequently issued three separate orders. The April 2006 Order granted NYISO a tariff waiver that allowed NYISO to make stated settlement corrections and billing adjustments to Guarantee calculations and compensation for the period from June 1, 2002 through January 31, 2005. For the period from February 2005 through April 7, 2006, for which NYISO had not yet determined the net settlement charges for generation, the Commission granted NYISO's request to: (1) correct errors in its computation of Guarantees; (2) implement the mitigation measures in its Services Tariff; and (3) not recompute locational-based marginal prices (LBMPs). In addition, the April 2006 Order included a requirement that NYISO provide the Commission with details for the settlement corrections, consistent with the Staff data request.

5. The November 2006 Order accepted NYISO's compliance filing to the April 7, 2006 Order for February 2005 guarantees, and NYISO's use of the RTGP Test for properly computing the Guarantees from February 2005 through April 2006.

6. The December 2006 Order denied separate requests for clarification or rehearing filed by NRG Companies (NRG)³ and by NYISO. Additionally, the Commission granted NYISO's request for additional time to complete corrections to its Guarantees, conditioned on NYISO filing an informational report with the Commission on or before February 1, 2007, setting forth a specific timetable for completing all tasks associated with completing the computation and implementing the billing corrections.

7. On September 21, 2006, in Docket No. ER06-185-003, NYISO filed workpapers on its RTGP Test for March 2005, accompanied by a request for confidential treatment. On October 23, 2006, in Docket No. ER06-185-004, NYISO filed workpapers on its RTGP Test for April 2005, accompanied by a request for confidential treatment. On December 29, 2006, in Docket No. ER06-185-006, NYISO filed workpapers on its RTGP Test for May 1, 2005 to April 7, 2006, accompanied by a request for confidential treatment.

Notice of Filing and Responsive Pleadings

8. Notice of NYISO's September 21, 2006 filing was published in the *Federal Register*, with interventions or protests due on or before October 12, 2006.⁴ NRG filed a timely protest. On October 27, 2006, NYISO filed an answer to NRG's protest. On November 8, 2006, NRG filed an answer to NYISO's answer. On November 22, 2006, NYISO filed an answer to NRG's answer.

9. Notice of NYISO's October 23, 2006 filing was published in the *Federal Register*, with interventions or protests due on or before November 13, 2006.⁵ The New York Transmission Owners, Inc. (NY Transmission Owners) filed a timely protest. On November 15, 2006, NRG filed a protest out-of-time.

10. Notice of NYISO's December 29, 2006 filing was published in the *Federal Register*, with interventions or protests due on or before January 19, 2007.⁶ NY Transmission Owners filed a timely protest.

³ The NRG Companies are NRG Power Marketing, Inc., Arthur Kill Power, LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Owego Harbor Power LLC.

⁴ 71 Fed. Reg. 59,100 (2006).

⁵ 71 Fed. Reg. 65,486 (2006).

⁶ 72 Fed. Reg. 1,505 (2007)

NRG's Protests

11. NRG's two protests assert that the billing adjustments in NYISO's filings are not corrections of errors, but rather adjustments resulting from the application of a new computerized program that applies an additional level of mitigation. NRG states that NYISO's tariff recognized that NYISO ultimately would enhance its computer capability, and instructed the Market Monitor Unit to consult with the Market Advisor to use the "best available data and such models and methods as they deem appropriate." NRG states that NYISO did not perform the conduct and impact tests of the March 2005 bids based on the best available data and other models and methods deemed appropriate at the time, but instead went back and applied its new computerized mitigation retroactively.

12. NRG also objects that, at the time it submitted its March 2005 bids, it did so with no prior notice that NYISO would later evaluate those bids based on tests developed after-the-fact. NRG argues this procedure is fundamentally inconsistent with competitive markets and the filed-rate doctrine.

13. Finally, NRG argues that NYISO's use of tests developed after-the-fact is inconsistent with the April 2006 Order, which only authorized NYISO to make corrections for the past period, and to review those for the post-February 1, 2005 period with the caveat that those corrections must conform to the Services Tariff.

NYISO's Reply

14. NYISO observes that NRG does not contest any of the details of the settlement corrections, nor does it seek to show that the settlement corrections were based on erroneous data or calculations. Thus, NYISO concludes that NRG's protests are a collateral attack on the Commission's April 2006 Order. NYISO emphasizes that NRG does not raise issues responsive to the NYISO filing at issue here, but rather seeks to resurrect issues as to NYISO's authority to impose the corrections, and the compliance of those corrections with NYISO's tariff, which issues were decided in the April 2006 Order.

15. NYISO states that it is not proposing any rate changes, but instead is seeking to correct its failure to compute Guarantee compensation in accordance with the filed rate schedule due to software implementation errors. Thus, NYISO argues it is not making retroactive rate changes, but instead is attempting to ensure that final bills, as far as possible, conform to its filed rate schedules.

16. NYISO contests NRG's contention that the Guarantee mitigation described in NYISO's filings is inconsistent with section 3.2.2(b) of the Market Power Mitigation Measures (MMM) and thus involves a change in rates after the fact. NYISO asserts that NRG Companies are seeking to benefit from the inadequacies of the methods available

earlier, and that is not what its tariff contemplates. NYISO observes that NRG cites to NYISO's November 8, 2005 filing, where NYISO expected that Guarantee impact test software would be developed in the near future and that Guarantee payments can be computed in the billing and settlement process on a unit-by-unit basis. However, NYISO observes that the very next sentence in the filing (omitted by NRG) states that NYISO expected "that software development requirements for calculating Real-Time [bid production cost guarantee] impacts, and a schedule for implementing the software, can be developed during the first quarter of 2006, with [bid production cost guarantee] payments redetermined prior to the final billing and settlement process for the period from February 2005 forward." NYISO states that its RTGP test is precisely the type of mitigation the April 2006 Order posits that NYISO would be implementing, and is fully consistent with NYISO's MMM.

17. Finally, NYISO states that the mitigation standards it is applying in its filing are not the "additional level of mitigation" NRG contends, but rather the conduct and impact tests for Guarantee mitigation long specified in the Services Tariff. NYISO states that it is fulfilling its obligations to consult with the affected Market Participants, including the NRG Companies. NYISO states that it notified NRG and all other potentially affected generators that their March 2005, Real-Time bid production cost guarantee mitigation data was available in NYISO's data warehouse, and asked all those notified to contact their NYISO Customer Relations representative if they desired to schedule a consultation regarding the proposed mitigation.

NY Transmission Owners' Protest

18. NY Transmission Owners protest NYISO's requests for confidential treatment for the April 2005 and May 2005–April 7, 2006 Guarantees filed in Docket Nos. ER06-185-004 and ER06-185-006. NY Transmission Owners state that there is no demonstrated need to continue to mask supplier bid information once a period of six months has passed, noting that the data filed in ER06-185-004 was over a year old at the time NYISO submitted it. NY Transmission Owners note that section 6.3 of NYISO's Services Tariff provides that:

NYISO shall make public Bid information from the Energy, Capacity and Ancillary Services markets (but not the names of the bidders making these Bids) six-months after the Bids are submitted. NYISO shall post the data in a way that permits third parties to track each individual bidder's bids over time. Prior to such disclosure, Bid information submitted to NYISO by Market Participants shall be considered Confidential Information.

NY Transmission Owners assert that the bidders' identities should remain masked, but that historic bid information be made public to the extent that it is consistent with NYISO's effective tariff provisions.

19. NY Transmission Owners assert that disclosure of specific Market Participant transaction data may assist interested stakeholders in making an evaluation of whether market manipulation or other forms of market power, such as economic withholding, has occurred. Accordingly, NY Transmission Owners request that the Commission (1) deny NYISO's request for privileged treatment of certain of the RTGP mitigation details in the April 2005 request; and (2) order NYISO to disclose bid information in all subsequent filings detailing the results of NYISO's RTGP Test for successive months, to the extent that it is consistent with Section 6.3 of the Services Tariff.

Discussion

A. Procedural Matters

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept NYISO's October 27 answer because it has provided information that assisted us in our decision-making process. However, we are not persuaded to accept NRG's November 8 answer to NYISO's answer, nor NYISO's November 22 answer to NRG's answer and, therefore, will reject these pleadings.

B. NYISO's Compliance Filings

21. Importantly, NRG makes no attempt to challenge the filed corrections, nor does NRG argue that the mitigation being applied is incorrect. Instead, NRG merely argues that the tests now being used were developed after its bids were submitted.⁷ The Commission finds nothing in NYISO's tariff that prohibits it from applying new software before the end of the billing settlement process, which is the case in the instant dockets. The Commission reaffirms its decision in the previous orders in this proceeding, where we found that NYISO failed to compute Guarantee compensation in accordance with the filed rate schedule's rates, terms, and conditions due to software implementation errors. Thus, rates are not being changed retroactively, but rather NYISO is attempting to ensure that final bills, as far as possible, conform to its filed rate schedules. Therefore, we find NRG's latest objection to NYISO's billing corrections, which makes no attempt to argue that the revised Guarantee compensation is inconsistent with NYISO's tariff, unpersuasive.

⁷ NRG previously sought, and failed, to demonstrate retroactive mitigation. Its new objection is that the current mitigation procedure would not have been possible at the time its bids were submitted.

22. Accordingly, we will accept for filing NYISO's compliance filings submitted on September 21, 2006 (in Docket No. ER06-185-003), October 23, 2006 (in Docket No. ER06-185-004), and December 29, 2006 (in Docket No. ER06-185-006).

C. NYISO's Claims of Confidentiality

23. As to the arguments raised by the NY Transmission Owners, challenging NYISO's filing of its workpapers under a claim of confidentiality as inconsistent with NYISO's tariff, the Commission agrees with the NY Transmission Owners that section 6.3 of NYISO's Services Tariff (quoted above) provides that NYISO must make public certain Bid information from the Energy, Capacity and Ancillary Services markets (but not the names of the bidders making these Bids) after six months.

24. As NYISO is already required by its Services Tariff to make this information public six months after the bids are submitted, and, in each instance, this six months had elapsed before it made its filing with the Commission, there was no basis for it to request confidential treatment for any of the information required by its tariff to be publicly disclosed. We trust that NYISO will comply with its tariff and make this information available to the public, including NY Transmission Owners.⁸

25. The Commission did not require NYISO to file the names of the bidders, and on future filings the Commission will not require the names of bidders, so that, in the future, if the information is more than six months old, protective status will be unnecessary.

The Commission orders:

NYISO's compliance filings submitted on September 21, 2006 (in Docket No. ER06-185-003), October 23, 2006 (in Docket No. ER06-185-004), and December 29, 2006 (in Docket No. ER06-185-006) are hereby accepted for filing.

By the Commission.

(S E A L)

Philis J. Posey,
Acting Secretary.

⁸ Since NYISO's tariff already provides that the information at issue be publicly disclosed by NYISO, we need not at this time initiate procedures under 18 CFR § 388.112 (2006) for Commission disclosure of these materials. Nor is this remedy requested by NY Transmission Owners.