

96 FERC ¶ 61, 112
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 25, 2001

New York Independent System Operator, Inc.
Docket No. ER01-2251-000

Hunton & Williams
Attn: Mr. Ted J. Murphy
Attorney for New York Independent
System Operator, Inc.
1900 K Street, N.W.
Washington, D.C. 20006-1109

Dear Mr. Murphy:

By letter dated June 6, 2001, you submitted for filing with the Commission, on behalf of New York Independent System Operator, Inc. (NYISO), **revisions to NYISO's Market Administration and Control Area Services Tariff (Services Tariff) to: (1) modify its Regulation and Frequency Response market design; (2) modify rules governing uninstructed overgeneration; and (3) establish a new charge designed to discourage persistent undergeneration.** Your submittal is accepted for filing, subject to NYISO filing within 30 days the modifications and explanations discussed below, effective July 25, 2001, as requested.

NYISO requests waiver of the 60-day notice requirement, provided for in 18 C.F.R. § 35.3 (2000), in order to make this filing effective on July 25, 2001. The waiver is granted pursuant to Central Hudson Gas & Electric Corporation, 60 FERC ¶ 61,106, reh'g denied, 61 FERC ¶ 61,089 (1992).

Notice of the filing was published in the Federal Register, 66 Fed. Reg. 33,065 (2001), with comments, protests, or interventions due on or before June 28, 2001. Pursuant to 18 C.F.R. § 385.214 (2000), the filing of a timely motion to intervene makes the movant a party to the proceeding, provided that no answer in opposition is filed within 15 days. The following entities are made parties to this proceeding, as they have filed timely motions to intervene that have not been opposed: Dynegy Power Marketing, Inc.; H.Q. Energy Services (U.S.), Inc.; Member Systems; Mirant Companies; Niagara Mohawk Energy Marketing, Inc.; PG&E National Energy Group, PG&E Generating and PG&E Energy Trading-Power, L.P. (collectively, PG&E); Sithe/Independence Power

Partners, L.P. Given the lack of undue prejudice and the parties' interests, we also find good cause to grant pursuant to 18 C.F.R. 385.214(d) (2000) the unopposed, untimely motion to intervene filed by Keyspan-Ravenswood, Inc.

In their motion to intervene, the Mirant Companies express support for NYISO's proposal and urge the Commission to accept it. They argue that NYISO's proposed tariff revisions will create incentives for suppliers to increase the amount of available supply in New York energy markets.

PG&E filed comments (1) supporting the NYISO's stated grounds for the proposed motion seeking permission to waive Regulation penalties ; (2) stating that the NYISO should not use this tariff filing to undercut the terms of Commission-approved settlements that provide for a broader waiver of Regulation penalties ; and (3) urging the Commission to direct NYISO to modify its proposal to subject re-institution of performance charges to the Commission's approval and to provide that such re-institution will be made based upon criteria that are approved by the Commission.

NYISO's filing proposes to exempt certain generators from the persistent undergeneration charge and the current regulation penalties if these are reimposed. The proposed exemptions apply to:

- 1) generators providing energy under contracts (including PURPA contracts), executed and effective on or before November 18, 1999,¹ in which the power purchaser does not control the operation of the supply source but would be responsible for payment of the persistent undergeneration charge;
- 2) existing generators in operation on or before November 18, 1999 producing electric energy resulting from the supply of steam to the district steam system, or their replacements, up to a maximum total of 365 MW of such units; and
- 3) existing intermittent renewable resource generators in operation on or before November 18, 1999, plus up to an additional 500 MW of such generators.

¹November 18, 1999 is the date NYISO began operations.

We are concerned that NYISO has not fully explained why certain generators are being exempted from the persistent undergeneration charges and the potential reimposition of regulation penalties. We expressed similar concerns regarding a prior proposal to exempt certain generators from regulation penalties.² Therefore, we will approve the exemptions on an interim basis, subject to NYISO providing justification for these exemptions within 30 days. In its compliance filing, NYISO should fully explain the reasons for the specific exemptions. NYISO's explanation should identify the generators that would be eligible for the exemptions. It also should explain why generators in operation on November 18, 1999, are exempt but new generators that have similar operating characteristics would be subject to the charges.

PG&E challenges NYISO's request for authority to unilaterally re-institute the current regulation penalties upon seven days notice. PG&E proposes to make the re-institution of the regulation penalties subject to Commission approval. We agree with PG&E that the unilateral re-institution of regulation penalties is unacceptable. However, we will permit NYISO to re-institute regulation penalties without a separate filing as long as the criteria for such action are clearly specified in the tariff. We therefore direct NYISO to file with the Commission revised tariff sheets setting forth criteria for invoking the right to reestablish the regulation penalties.

PG&E is concerned that if NYISO seeks to re-institute the current regulation penalties, it do so in a way that is consistent with Commission-approved settlements. Specifically, PG&E claims that in a prior settlement, NYISO agreed to waive these penalties for Selkirk's old and new qualifying facilities. In its compliance filing NYISO should explain how its proposal is consistent with its existing Commission-approved settlement agreements.

NYISO is also directed to file tariff revisions to define the factor K_{pi} included in Section 4.0 of its Services Tariff. This factor is used to calculate an availability payment to suppliers of regulation service and thus is part of the rate and must be on file with the Commission.

By direction of the Commission.

Linwood A. Watson, Jr.,

²New York Independent System Operator, Inc. et al., 90 FERC ¶ 61,015 (2000).

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Acting Secretary.