

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

New York Independent System Operator, Inc.) Docket No. ER07-590-000

**REQUEST FOR PERMISSION TO RESPOND AND RESPONSE OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
TO PROTEST OF ASTORIA GENERATING COMPANY, L.P.**

On March 16, 2007 Astoria Generating Company, L.P. (“Astoria”) submitted a protest to the New York Independent System Operator, Inc.’s (“NYISO’s”) February 23, 2007 Request for Limited Tariff Waiver and Guidance (“Request”). In accordance with Rule 213(a)(2) of the Federal Energy Regulatory Commission’s (“Commission’s”) Rules of Practice and Procedure, the NYISO respectfully requests leave to respond, and responds, to Astoria’s protest.

I. REQUEST FOR LEAVE TO SUBMIT RESPONSE

The NYISO recognizes that the Commission generally discourages responses to protests. However, the Commission has allowed responses when they help to clarify complex issues, provide additional information that will assist the Commission, correct inaccurate statements, or are otherwise helpful in developing the record in a proceeding.¹ The NYISO’s response meets this standard. The NYISO’s response is submitted for the limited purpose of clarifying certain factual matters and correcting inaccurate or misleading statements in the protest, thereby assisting the Commission in its review and consideration of the issues presented in this proceeding.

¹ 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 “the NYISO’s Answer of April 27, 2000, [because it was deemed] useful in addressing the issues arising in these proceedings . . .”); *Central Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,138 at 61,381 (1999) (accepting prohibited pleadings because they helped to clarify the issues and because of the complex nature of the proceeding).

Although a NYISO filing initiated this Docket, the NYISO's representatives were inadvertently omitted from the Secretary's official service list for Docket No. ER07-590-000 and counsel to the NYISO was not aware that Astoria filed a protest until April 3, 2007.² For the foregoing reasons, the NYISO therefore respectfully requests that the Commission exercise its discretion and accept the NYISO's response.

II. RESPONSE

A. Background

The Request the NYISO filed in this Docket on February 23, 2007 seeks (1) a limited tariff waiver to excuse the NYISO from applying the real-time guarantee payment ("RTGP") impact test to a very small number of Bids³ when necessary data is not available to the NYISO's Market Information System ("MIS") and would have to be reconstructed from original or potentially imperfect sources at significant burden and expense, and (2) guidance regarding how the NYISO should apply RTGP mitigation from April 8, 2006 to the date that the going-forward RTGP impact test is implemented.

With regard to the NYISO's requested tariff waiver, the NYISO now expects to deploy software to address the tariff compliance concern identified in its Request on May 8, 2007. Hence, absent unexpected contingencies, the NYISO should only require a Tariff waiver to address this issue through May 8, 2007; not until October 31, 2007 as originally requested. The NYISO will promptly inform the Commission if the May 8, 2007 deployment of the necessary software correction is delayed for any reason.

² The NYISO checked with Astoria's counsel regarding service of Astoria's protest and was informed that counsel that submitted its March 16, 2007 pleading reviewed the Secretary's Official Service List in this Docket and served parties accordingly.

³ Capitalized terms not defined herein shall have the meaning ascribed to them in the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff").

The NYISO recently uncovered a new Tariff compliance concern and disclosed it to the Commission in a March 29, 2007 filing in Docket No. ER06-185-008. As the NYISO explained in its March 29 filing, the newly identified concern can result in undermitigation due to a rarely occurring inconsistency between the Start-Up compensation data that the NYISO uses in its Billing and Accounting System (“BAS”) and the MIS data that the RTGP impact test relies on to determine if a Generator’s Start-Up Bid was already mitigated by the NYISO’s real-time Automated Mitigation Procedures (“AMP”) that mitigate for Locational Based Marginal Price (“LBMP”) impact during the dispatch day. This concern will not affect mitigation performed from April 8, 2006 to the date that the NYISO implements its going-forward RTGP impact test (because the NYISO will screen for and correct any errors). However, until the NYISO develops a fix for this new issue, the NYISO’s going-forward mitigation process could fail to appropriately mitigate a very small percentage of Bids unless the NYISO implements a manual, after-the-fact review of Start-Up Bids to identify missed mitigation.

Reciprocally, as the NYISO has previously explained, it also screens the posted RTGP impact test results for potential over mitigation issues and corrects any over mitigation it identifies.⁴ From April 8, 2006 forward, the NYISO will continue to screen for potential over mitigation concerns, and will correct any over mitigation its screens identify as quickly as possible and without waiting to receive a consultation request.

⁴ See, e.g., Request for Privileged Treatment of Real-Time Guarantee Payment Mitigation Details for May 1, 2005 – April 7, 2006, filed December 29, 2006 in Docket No. ER06-185-006 at pp. 2-3; Informational Report Setting Forth Specific Timetable for Completion of Guarantee Payment Mitigation Based Bill Corrections, filed February 1, 2007 in Docket No. ER06-185-007 at p. 2.

B. The NYISO's Ongoing Efforts to Work With its Market Participants to Implement a Going-Forward RTGP Impact Test

The NYISO has held several meetings with its Market Participants to address Real-Time Guarantee Payment Mitigation. In addition to the December 6, 2006 and February 5, 2007 working group meetings identified by Astoria, meetings were held on March 28, 2007 and April 9, 2007 where draft Tariff provisions proposed by the NYISO were discussed.⁵ The NYISO has received input from several different Market Participant sectors (not just the generation owner sector) and the Public Service Commission Staff and incorporated the comments into a proposed set of tariff revisions that it is bringing to its Business Issues Committee ("BIC") for a vote on April 20, 2007. Assuming the proposed Tariff revisions pass the BIC, they must also be approved by the Management Committee on April 30, 2007 and by the NYISO's Board of Directors in May before the proposed tariff revisions may be filed with the Commission. It has been clear from the NYISO's working group discussions that some generation sector market participants, including Astoria, still take issue with certain aspects of the NYISO's proposed going-forward RTGP impact test and may vote against the NYISO's proposal and/or protest the NYISO's proposed Tariff revisions when they are submitted to the Commission. In light of Astoria's possible opposition to the proposed Tariff revisions that the NYISO is bringing to BIC for a vote, Astoria's apparent willingness to compromise on an interim arrangement is laudable.

⁵ On several occasions (including at the January 5 Market Issues Working Group meeting) generation sector market participants stated that they would draft and propose Tariff revisions to implement a different method of RTGP impact testing than that proposed by the NYISO, they have not done so. Instead, they have actively and frequently commented on the NYISO's proposed methodology and the NYISO has incorporated many of the generation sector's suggestions into the proposed tariff revisions that will be voted on at BIC on April 20, 2007.

C. Astoria’s Protest Essentially Asks the Commission to Require the NYISO to Implement Its Going-Forward RTGP Impact Test On An Interim Basis.

The NYISO interprets Astoria’s protest as asking the Commission to require the NYISO to, as an interim measure:

- (1) notify a Market Participant within two business days after Decision Support System (“DSS”) results are issued indicating that the Market Participant’s Bids may be subject to RTGP mitigation;
- (2) provide the Market Participant with 30 days to (a) request consultation and, if the Market Participant elects to engage in consultation regarding its Bids, to (b) submit information explaining why its reference levels should be adjusted, or why the Bids in question were consistent with competitive conduct; and
- (3) notify the Market Participant within 30 days (after the end of the 30 day period during which the Market Participant may submit information) (a) if RTGP mitigation is being applied to the relevant Bids, and (b) the basis for such mitigation.

The NYISO interprets Astoria’s proposal as asking that the Commission instruct the NYISO to implement its proposed “going-forward” RTGP impact test methodology, using a modified timeline, on an interim basis. With the following clarifications/qualifications, the NYISO both supports and agrees with Astoria’s proposal.

First, it clearly isn’t possible for the NYISO to, at this time, post RTGP impact test results within two business days for settlement data that was posted to DSS more than two business days ago. If Astoria’s protest is suggesting that the NYISO should not RTGP impact test and/or apply RTGP mitigation to Bids from April 8, 2006 to the date its going-forward RTGP test is activated, Astoria needs to request a waiver from the Commission to permit the NYISO to forego imposing this tariff-required mitigation. The NYISO would oppose any such waiver request. However, the NYISO does not believe that this is what Astoria means to suggest in its protest.

For periods prior to the implementation of the going-forward RTGP impact testing software, it will not be possible to notify Market Participants of RTGP mitigation within two days of posting settlement data that includes RTGP impact test results to DSS because when the NYISO corrects past months to include RTGP mitigation, the NYISO needs to manually screen the data after it is processed by the NYISO's settlement systems and posted to DSS. The NYISO performs quality assurance screens on RTGP impact test results to identify and correct inaccurate results, including the Start-Up Bid mitigation concern described above. If an over mitigation issue is identified, the NYISO corrects the RTGP results without waiting for Market Participants to engage in consultation regarding their data. This screening process is the reason RTGP impact test results were "preliminarily" posted for the period from February, 2005 to April 7, 2006 before the NYISO actually invited potentially impacted Generators to initiate consultation regarding their Bids.

In addition, the NYISO does not see the same value in immediate notification following posting for past months RTGP impact test results as it does for up-to-date RTGP impact test results because mitigation of past periods is not likely to prompt an immediate change to a Market Participant's current bidding behavior. Rather, the key when applying RTGP mitigation to past periods is to ensure that there is adequate time for the Generator to review and, where appropriate, initiate consultation regarding its Bids before the relevant bills are scheduled for their final review prior to being closed out. Therefore, the NYISO proposes to continue to follow its Tariff-mandated billing schedule for these months.

Second, DSS (settlement) results are posted multiple times for each generating unit at various stages of the settlement adjustment and close-out process. Under normal conditions, the first posting of settlement data to DSS occurs approximately 36 hours after the end of the

relevant market day. This posting is ordinarily referred to as the “advisory invoice.” However, at minimum, DSS results are also posted (a) when the monthly invoice is posted, (b) when revised metering data is submitted in accordance with Section 7.4.2A(i) of the Services Tariff, (c) at the four-month true-up, and (d) at the six month final bill. Because adjustments may cause Bid Production Cost Guarantee (“BPCG”) payments to change at these times (coincident with all other aspects of a generator’s settlement), the NYISO’s going-forward RTGP impact test software re-tests for RTGP impact every time a daily bill is re-run and may either apply mitigation or retract a prior determination that mitigation was appropriate, in accordance with the then-current settlement (DSS) data. The NYISO believes the re-application of the RTGP test when new or corrected data enters the settlement process is appropriate because (1) RTGP impact should be tested using the most accurate data available, (2) the entire settlement will likely change when (for example) revised metering data is submitted for a particular Generator, or a tariff-compliant price correction is made; it would not be appropriate to make the RTGP impact determination the only “static” aspect of the settlement process,⁶ and (3) from an implementation perspective, it would actually be quite difficult and costly (in terms of time and limited NYISO IT resources) to program the NYISO’s settlement software not to permit changes

⁶ Some of the NYISO’s generation-sector Market Participants (including Astoria’s representatives) have argued that the RTGP impact determination that is issued with the initial invoice (approximately 36 hours after the market day) should be the only RTGP impact test performed. While there is an argument to be made in favor of finality, the NYISO believes the generators’ position would produce an unduly preferential or prejudicial result when applied to the RTGP impact test. If the initial metering data reported to the NYISO is inaccurate, or if a tariff-compliant price correction is required and, as a result, the RTGP impact test of the initial invoice settlement data fails to identify impact (but the test would have found impact had accurate data been available), then some generation sector Market Participants are proposing that the NYISO should not be permitted to apply RTGP mitigation when the revised settlement data flows through and changes (potentially) all other aspects of the affected Generator’s settlement. However, if the erroneous data causes the NYISO to over-mitigate a Generator’s Bid(s), the Generator would have the opportunity to consult with the NYISO pursuant to Section 3.3 of the Market Mitigation Measures and to have the RTGP impact test re-run using corrected/accurate data. Under these conditions “finality” would clearly favor suppliers and disadvantages loads because the NYISO’s erroneous decision not to mitigate would be final, but the NYISO’s erroneous decision to mitigate would be subject to review and revision via the consultation process.

to settlement inputs to modify the results of the RTGP test in the same manner that changed inputs “roll through” the rest of the NYISO’s settlement process.

Third, the NYISO presently lacks the ability to automatically screen for, identify and RTGP mitigate certain Start-Up Bids submitted by 10- and 30-minute start Generators within its going-forward RTGP mitigation process.⁷ The NYISO requires at least seven business days to identify missed mitigation related to conduct-failing Start-Up Bids submitted by 10- and 30-minute start generator located in New York City. Each missed mitigation would then need to be programmatically inserted into the settlement results by the NYISO’s IT personnel; the NYISO has not yet determined how long this task will require. Finally, all Market Participant bills would have to be re-spun for the entire market day to get the necessary information posted to DSS.

Because this issue affects a very limited number of Bids, is expected to have a relatively minor market impact,⁸ and each corrected Bid will require significant processing time to correct, the NYISO hereby commits to file a proposed method of resolving this concern within 30 days of the date of this filing (earlier, if possible). The NYISO’s proposed method of resolving this concern may include (1) a request for a temporary tariff waiver seeking Commission authorization not to correct missed mitigation of Start-Up Bids, or (2) an extended timeline for (a) informing bidders of missed RTGP Start-Up (including any related Minimum Generation and incremental energy) mitigation, (b) inviting the Bidder to consult with the NYISO regarding its Bid(s), and (c) specifying when settlement results will be adjusted to reflect the mitigation.

⁷ As explained on page 2 of the NYISO’s March 29, 2007 Identification of Additional Real-Time Guarantee Payment Mitigation Issue in Docket No. ER06-185-008, it is possible that failing to mitigate a Start-Up Bid could also cause the NYISO to miss mitigating conduct-failing Minimum Generation and incremental energy Bids.

⁸ The NYISO’s March 29, 2007 filing identified up to \$75,508 in possible additional RTGP mitigation over an 11 month period.

Other solutions are also possible. Any proposed Tariff waiver or request to extend the timeline for identifying missed Start-Up mitigation will apply from the date that the going-forward RTGP impact test is activated until a date by which the NYISO expects it will be able to implement new software to correct the undermitigation of Start-Up Bids.

Fourth, in order for the consultation process to be successful, Generators have to identify specific, concrete concerns and to provide relevant/requested data for the NYISO to analyze as quickly as possible. The NYISO has the authority under Section 6.2 of its Market Monitoring Plan to request data from Market Parties and will do so at any point after the Generator submits its consultation request (the NYISO will not wait for its evaluation period to commence). If the NYISO is not provided the necessary information, or is otherwise not able to timely obtain adequate information to support reversing a determination of RTGP impact, the impact determination will stand. Generators that wait until 30 days after DSS posts to initiate consultation may place themselves at risk of running out of time to complete the consultation process (especially if they submit minimal or no supporting data with their consultation request).

Fifth, it is not clear to the NYISO what Astoria means when it asks the Commission to require the NYISO to notify the Market Participant of the basis for RTGP mitigation. The basis for this mitigation is set forth in the NYISO's Market Mitigation Measures; in particular Sections 3.1.2 and 3.2.1 thereof. The NYISO will inform Generators that request consultation of its decision regarding the Generator's consultation request by the end of the NYISO evaluation period.

Finally, if the Commission is to instruct the NYISO to implement Astoria's proposal, as modified by the NYISO's recommendations, it must be clear and understood that there will not be any after-the-fact claims by Generators that the mitigation that the NYISO is imposing is

impermissible because it is “retroactive.” The Commission has decided that issue several times in the past and the NYISO expects that it will be filing tariff revisions to clarify areas that are of concern to the generation sector Market Participants later this year.

III. CONCLUSION

WHEREFORE, for the reasons set forth above and in the NYISO’s Request for Limited Tariff Waiver and Guidance, the NYISO respectfully requests that the Commission (a) accept this response, (b) grant Astoria’s requested relief as modified and/or clarified by the NYISO’s above recommendations, and (c) grant the NYISO the limited Tariff waiver requested in its March 16, 2007 Request For Limited Tariff Waiver and Guidance.

Respectfully submitted,

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Dated: April 19, 2007

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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 lists compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated at Rensselaer, New York this 19th day of April, 2007.

/s/ Alex M. Schnell _____
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