

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION  
103 FERC ¶ 61,374

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

New York Independent System Operator, Inc.

Docket No. ER03-810-000

ORDER ACCEPTING TARIFF FILING, AS MODIFIED

(Issued June 30, 2003)

1. In this order, we accept for filing, subject to modification, revised tariff sheets submitted by the New York Independent System Operator, Inc. (NYISO) to revise its Market Administration and Control Area Services Tariff (Services Tariff) to make certain changes to its previously approved Incentivized Day-Ahead Economic Load Curtailment Program (Program).<sup>1</sup> This program is commonly known as the Day-Ahead Demand Reduction Program (DADRP). Under the Program, DADRP participants are permitted to submit day-ahead demand reduction bids, which are treated as a functional equivalent of traditional bids to sell energy into the Day-Ahead market by the ISO's Security Constrained Unit Commitment analysis. The NYISO requests July 1, 2003 as the effective date. This action will benefit customers by providing greater opportunities for participation in the program by eligible demand reduction providers.

**I. Filing**

2. On May 2, 2003, as corrected on May 6, 2003, the ISO submitted for filing tariff revisions to its Services Tariff, which would revise the Program in certain respects. Under the Program, qualified demand reduction providers are permitted to submit bids signaling their willingness to reduce demand at certain price levels. Demand reduction is achieved by either curtailing load or activating local generators. Demand reduction bids are treated as a functional equivalent of bids by suppliers to sell energy so they are subject to similar bidding requirements. Demand reduction providers that are selected are paid the greater of the day-ahead hourly Locational Based Marginal Price (LBMP)<sup>2</sup> or their demand reduction bid including their curtailment initiation costs.

3. The proposed revisions: (1) would allow "Demand Bid Aggregators" to become Demand Reduction Providers for the first time, and thus enable them to submit Demand

Reduction bids into the NYISO-administered markets; (2) reform a financial settlement provision to hold LSEs financially harmless when Demand Reduction Providers in their zone fail to meet their day-ahead schedules; (3) remove a penalty multiplier applicable to Demand Reduction Providers that fail to meet their day-ahead Demand Reduction schedules that has proven to be unnecessary; (4) exclude on-site non-diesel Local Generators from DADRP participation;<sup>3</sup> and (5) specify new creditworthiness requirements for Demand Reduction Providers that participate in the DADRP to protect against the risk of nonpayment.

## **II. Notice, Intervention, and Comments**

4. Notice of the filing was published in the Federal Register, 68 Fed. Reg. 25,599 (2003), with comments, protests, or interventions due on or before May 23, 2003. Timely motions to intervene were filed by entities listed in Appendix to this order, and NXEGEN, Inc., a Connecticut-based energy services company filed a limited protest.

## **III. NXEGEN'S Limited Protest**

5. NXEGEN states that it is supportive of the NYISO's proposed revisions, which are intended in part to expand the scope of the ISO's DADRP by permitting "Demand Reduction Aggregators" to participate in the DADRP as DRPs. This, NXEGEN states, will facilitate NXEGEN's participation in the New York market as a DRP.

6. However, it contends that the revisions do not cure a significant flaw in the New York demand response program. Specifically, the DADRP bars demand resources from the market during hours in which the clearing price is below a \$50/MWh "floor." This limitation, it contends, precludes the realization of revenues that would make a difference between a profitable investment and an unprofitable one. NXEGEN asserts that the efficacy of the instant NYISO proposal is greatly reduced by the continued presence of an arbitrary limitation on the ability of demand response providers to participate in the market. NXEGEN argues that the Commission must address in an expeditious fashion the "floor" limitations imposed by the DADRP, which, it maintains, greatly hinder investment in and the development of demand resources.

7. In this filing NYISO has proposed certain creditworthiness requirements in Attachment L. The first part is a specific formula that requires collateral equal to a product of: (1) the DRP's projected monthly average of MWh of accepted DR bids; (2) the average Day-Ahead LBMP at the NYISO Reference Bus during the prior summer Capability Period; (3) twenty percent (20%); and (4) a factor of four (4). NXEGEN states that it does not object to this requirement.<sup>4</sup>

8. NXEGEN does object to the second part of the proposed creditworthiness

requirements which provides that:

Notwithstanding the above, the NYISO may require a Demand Reduction Provider to provide additional Unsecured Credit and/or collateral if, in the NYISO's discretion, the Demand Reduction Provider's bidding and scheduling activities require such additional security.

9. NXEGEN asserts that as framed, this requirement is unjust and unreasonable. NXEGEN argues that the potential scope of the "creditworthiness" obligation that could be imposed on a DRP by the NYISO under this provision is unlimited, since NYISO's discretion is not tied to any objective standard or other criteria.

#### **IV. Discussion**

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), each timely unopposed motion to intervene serves to make the filing entity a party to this proceeding.

11. The Commission accepts the proposed revisions, subject to modification. The proposed revisions represent incremental changes to the DADRP, primarily associated with allowing non-LSE aggregators to submit bids within the program. The proposed revisions will increase the flexibility of the DADRP program, reduce financial liabilities of Load-Serving Entities when demand reduction providers fail to meet their schedules, and provide greater opportunities for customer participation in the DADRP program.

12. Although NXEGEN requests that the Commission consider the "floor limitation," it concedes that the \$50/MWh floor has not been placed at issue in this filing. Moreover, as NXEGEN states, this limitation is also in place in similar programs in New England. As we stated in our approval of this provision in the March 21, 2003 Final Order on NYISO demand response programs, the \$50/MWh floor "will encourage reduced consumption during peak periods when demand is high relative to supply and when energy prices rise. We also believe that it is reasonable to limit payment, as an incentive for reducing demand, when supply is ample, relative to demand."<sup>5</sup> Accordingly, we will deny this part of NXEGEN's protest.

13. However, we find merit in NXEGEN's objection to the unlimited discretion requested by the NYISO to set additional credit or collateral requirements on Demand Reduction Providers. NXEGEN contends that since NYISO states that the formula included in Attachment L "provides an appropriate measure of the protection against risk of nonpayment attributable to Demand Reduction Providers without creating a barrier to entry to this important new program," Transmittal Letter at 5, NYISO has not provided

any reason for the need for the second part of the creditworthiness requirements. In this connection, NXEGEN points out that during 2002, total payments for DADRP curtailments were only about \$110,000, roughly half of the previous year's level. Thus, it argues, realistically, even with a modestly expanded participation in the program, the NYISO's potential incremental credit risk in the DADRP is in the range of hundreds of thousands of dollars, not hundred of millions of dollars.

14. The Commission agrees with NXEGEN that the NYISO has not shown why the additional discretion is necessary. Consequently, we will require the NYISO to remove the final sentence in Attachment L.

The Commission orders:

(A) The tariff sheets filed in Docket No. ER03-810-000 are hereby accepted for filing, as modified, effective July 1, 2003, as discussed in the body of this order.

(B) NYISO is hereby directed to file with the Commission, within 30 days of issuance of this order, a revised Attachment L removing the last sentence, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

## APPENDIX

### INTERVENTIONS

#### New York Independent System Operator, Inc. Docket No. ER03-810-000

1. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA, New York Power Authority, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, and Niagara Mohawk Power Corporation, a National Grid Company, ("New York Transmission Owners").
2. NRG Power Marketing, Inc., Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Oswego Harbor Power LLC, ("NRG").

<sup>1</sup> New York Independent System Operator, Inc., 95 FERC ¶ 61,223 (2001).

<sup>2</sup> LBMP is a pricing methodology under which the price of energy at each location in the New York transmission system is equivalent to the cost to supply the next increment of load at that location.

<sup>3</sup> According to the NYISO the benefits afforded to non-diesel Local Generators under the NYISO's Zonal Price-Cap Load Bidding program are identical to those available under the DADRP. (Transmittal Letter at 4)

<sup>4</sup> These creditworthiness requirements may be subject to further refinement as part of the NYISO's comprehensive Financial Assistance Program.

<sup>5</sup> See New York ISO, Inc., 102 FERC ¶ 61,313 at P 23, and New England Power Pool and ISO New England, Inc., 101 FERC ¶ 61,344 at P 44 (2002), clarification requested.