126 FERC ¶ 61,100
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 9, 2009

In Reply Refer To:
New York Independent System Operator, Inc.
Docket No. ER09-405-000

Hunton & Williams LLP
1900 K Street, NW, Suite 1200
Washington, D.C. 20006

Attention: Ted J. Murphy,
Counsel for New York Independent System Operator, Inc.

Reference: Notification of Tariff Implementation Error and Request for a Limited Tariff Waiver

Dear Mr. Murphy:

1. On December 11, 2008, the New York Independent System Operator, Inc. (NYISO) filed to: (1) inform the Commission of a system modeling error in its Security Constrained Unit Commitment (SCUC) software that affected the day-ahead market schedules and prices; (2) describe the steps taken to correct the error and prevent recurrence; and (3) request a limited tariff waiver so that NYISO will not have to retroactively change prices or settlements. The Commission will defer action on the requested waiver pending submission of further information and other actions by NYISO, as described below.

2. NYISO states that in the course of making its January 8, 2008 update to its Intelligent Source Selection program,[1] NYISO inadvertently introduced incorrect modeling values for two of the three Ramapo-Waldwick phase angle regulators (PARs). This error caused the SCUC software to underestimate the flows on the Central-East

[1] The Intelligent Source Selection program is a system that enhances the NYISO's real-time market pricing accuracy by improving the evaluation of certain metering data inputs.

interface by an average of 680 MW for twelve days, (January 11, 2008, and January 14, 2008 through January 24, 2008)[2] and set schedules and prices in the day-ahead market with an expectation of greater available transmission capacity from western New York to eastern New York than would be physically available in real-time market operations. NYISO adds that the resulting PAR settings were inconsistent with the NYISO Tariff requirements of Appendix 1 of Attachment M-1.[3] NYISO states that while the impacts on market clearing prices are difficult to determine with accuracy due to the influence of market participant behavior in reaction to prevailing market conditions, Dr. Patton, the NYISO's Independent Market Advisor, concluded that the overall effects were substantially offsetting. Dr. Patton estimated that the PAR modeling error resulted in increased uplift charges of approximately $10.9 million as a result of associated redispatch costs incurred in the real-time market. NYISO asserts that these charges were partially offset by a related reduction in transmission costs of approximately $3.5 million, for a net impact of approximately $7.4 million.

3. NYISO states that it has implemented procedures to verify the proper operation of its day-ahead and real-time markets following changes to data inputs. NYISO adds that it has also implemented improved procedures to verify accurate system modeling requirements of the operating protocol in Attachment M-1 in its daily administration of the SCUC. Finally, NYISO states that it has implemented a permanent monitoring and analysis group with responsibilities to perform a daily review and evaluation of the results of the day-ahead and real-time markets, including a review of uplift charges to identify unusual or inefficient market outcomes to quickly identify anomalous market outcomes, determine the causes, and correct.

4. NYISO requests waiver of Appendix 1 to Attachment M-1 of its Tariff so that NYISO will not have to make any retroactive price adjustments.[4] NYISO asserts that re-running its markets cannot be accurately accomplished because it requires NYISO to make assumptions about how market participants would respond to changes in market

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[2] NYISO notes that in addition to the Central-East interface, the West-Central interface flows were also underestimated by SCUC during this period.

[3] Attachment M-1 establishes the operating protocols for the planning, operation, control, and scheduling of certain PAR-controlled interconnections between the NYISO and PJM control areas pursuant to grandfathered contracts between Consolidated Edison Company of New York (Con Ed) and Public Service Electric and Gas Company. The NYISO inadvertently applied an incorrect value for contract elections submitted by Con Ed during the period at issue.

[4] NYISO's filing includes an affidavit from Dr. David B. Patton, Ph.D., recommending no retroactive changes to market clearing prices.

conditions, and it would contravene the Commission's policy of promoting market certainty and confidence. NYISO states that the underlying error was made in good faith, that it was not aware of the error during the requested waiver period, and that once it was discovered, NYISO acted to correct it promptly and informed Commission staff. Further, NYISO states that the scope of the waiver is limited to a relatively short period of time, and that NYISO has taken significant steps to prevent the recurrence of this or similar errors.

5. Public notice of NYISO's filing was issued on December 15, 2008, with an errata notice issued December 18, 2008, with interventions and protests due on or before January 2, 2009. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Consolidated Edison Company of New York, Inc., and Orange and Rockland Utilities (collectively the "Companies") and DC Energy LLC (DC Energy) filed comments. New York Transmission Owners[5] (NY Transmission Owners) and Alcoa Inc. (Alcoa) filed protests. NRG Companies[6] filed comments out-of-time.

6. NY Transmissions Owners request that the Commission defer acting on NYISO's waiver request at this time, and direct NYISO to conduct, with stakeholder involvement, a full analysis of the impact of the error, and whether any course of restitution is feasible, and to report the results of that investigation back to the Commission. According to NY Transmission Owners such an analysis should consider the cause of the error, the impact of the error on various aspects of NYISO's market including energy prices, Transmission Congestion contracts payments and congestion revenue allocations, as well as the corrective action that NYISO contends will prevent a recurrence of similar errors. NY Transmission Owners assert that NYISO should be directed to provide full price estimates, interface flows, schedules and limits, and related information to market participants. NY Transmission Owners further assert that NYISO should be directed to provide a daily breakdown of Dr. Patton's estimated $7.4 million loss. NY Transmission Owners state that despite the difficulty associated in assessing how market participants'

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[5] New York Transmission Owners in this proceeding are: Central Hudson Gas & Electric Corporation, Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, and Rochester Gas and Electric Corporation.

[6] NRG Companies in this proceeding are: NRG Power Marketing LLC, Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Oswego Harbor Power LLC.

actions would have changed if the error had not occurred, it is not appropriate to conclude, without stakeholder review and discussion, that the only appropriate remedy is for NYISO to unilaterally state that it will not make similar mistakes in the future.

7. NY Transmission Owners state that they are troubled by the length of time it took NYISO to notify market participants (almost a year) and the absence of stakeholder involvement in the analysis of the error and the development of corrective actions. NY Transmission Owners note that NYISO's delay prevented market participants from providing input at any point during the intervening period. NY Transmission Owners state that it is essential that NYISO immediately inform market participants when it discovers a modeling error that has an impact on the NYISO markets. They add that an early notification should be timely followed by a more detailed explanation to the appropriate stakeholder committee of the cause and resulting impact of the errors.

8. NY Transmission Owners assert that granting waiver at this point would signal to NYISO the acceptability of waiting a year before notifying parties of a problem, and the acceptability for loads (through uplift) to pay for NYISO errors. NY Transmission Owners state that the Commission has granted requests for waiver of tariff provisions in cases of an unintentional error or where the moving party has shown the following: (1) the underlying error was made in good faith; (2) the waiver was of limited scope; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences such as harming third parties.[7] NY Transmission Owners state that NYISO's waiver request does not meet the Commission's standards for granting waiver, particularly because there has been harm, and the waiver should not be granted without knowing the full impact of the harm.

9. The Companies, like the NY Transmission Owners, state that they are concerned about the length of time it took NYISO to notify market participants of this error. They assert that NYISO should improve its processes in order to let market participants know when there is an error and to provide information about the error in a timely manner even if all the details are not fully known.

10. Alcoa protests the waiver request as premature, asserting that the error requires at least further investigation, and at worst remedial action by the Commission. Alcoa states that this is NYISO's second filing increasing uplift costs in January 2008, the first being the July 21, 2008 filing in Docket No. ER08-1281, seeking to eliminate scheduling transactions via certain scheduling paths because of potential exploitation by certain participants of NYISO's transmission tariff structure to avoid congestion charges. Alcoa

[7] *Citing ISO New England Inc.*, 117 FERC ¶ 61,171, at P 21 (2006).

notes that the Commission's enforcement staff is still investigating this matter.[8] Alcoa states that this latest tariff anomaly should be added to the NYISO uplift charge matters already under investigation by enforcement, particularly to consider why it took almost 11 months to investigate and publicly report the error, given the uplift charge anomalies previously reported in Docket No. ER08-1281, and whether there are other aspects in uplift charges yet to be reported.

11. Alcoa urges the Commission to compel NYISO to provide complete data on the effects of the error on particular charges to individual market participants, for each day in which the SCUC error was utilized in the day-ahead market and for each day thereafter in which the independent market advisor calculated that it affected the operation of the market. Alcoa asserts that the Commission must investigate sufficiently to assure that all causes of market dysfunction resulting in dramatic increases in uplift charges have been identified, and that appropriate changes have been implemented to prevent recurrence.

12. Alcoa states that NYISO's argument that the overcharged uplift amount is small makes little sense. Alcoa asserts that the Commission must determine whether refunds should be made based on striking a balance to achieve fairness and equity among buyers and sellers in the market. According to Alcoa, the Commission cannot let stand market outcomes that are clearly the result of errors simply because markets cannot be reconstructed with complete accuracy.

13. DC Energy states that, despite the financial harm to itself from this error, it supports NYISO's recommendation to not re-state prices from the modeling error, because of the importance of price certainty and how retroactive price corrections create uncertainty and undermine market confidence. DC Energy states that it alerted NYISO, through its analysis of publicly available data, about the error, and notes that it took 10 months and much effort on its part to convince NYISO that the error was a problem. DC Energy urges greater transparency in the ISO/RTO market, and more responsiveness to stakeholders. DC Energy requests that the Commission condition granting of the waiver on the requirement that NYISO submit a compliance filing within a reasonable time which addresses measures to achieve greater transparency and responsiveness to market participant concerns.

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[8] *See New York Independent System Operator, Inc.*, 124 FERC ¶ 61,174, at P 32 (2008) ("The Commission's Office of Enforcement began a non-public investigation under Part 1b of the Commission's regulations in May of this year into the scheduling of flows over the circuitous paths such as those that are addressed in the instant order. The Commission will determine what further action may be appropriate with respect to the above described claims after it considers the results of the staff investigation.").

14. NRG Companies state that they generally support NYISO's waiver request and add that because the reported error likely impacted bidding behavior and resource commitment decisions, resettlement of the market is not practical here.

15. NYISO's filing informs the Commission of an error it made in the inputs used to update its Intelligent Source Selection program and the estimated effects of such error, and asks the Commission to waive the requirements of Appendix 1 to NYISO's Attachment M-1 so that it will not have to attempt to revise market outcomes or make any retroactive price adjustments. However, as discussed below, we will defer acting on NYISO's requested waiver at this time, and instead direct NYISO to take certain actions, submit further reports, and provide information as directed below.

16. NY Transmission Owners and Alcoa state that additional information is needed before the assessment of harm can be determined, and request that waiver not be granted until further investigation is completed. Based on the record presented to us, we cannot, at this time, find that good cause exists to grant the requested waiver and will, for that reason, defer action on the request. In the past, for good cause shown, the Commission has granted case-specific, one-time waivers of tariffs to correct (or leave uncorrected, as the facts may warrant) prior errors by Independent System Operators, including NYISO, or other entities. For example, although not an exhaustive list of the factors the Commission will consider in such cases, the Commission has granted tariff waivers where it was shown that: (1) the underlying error was made in good faith; (2) the waiver was of limited scope; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.[9] In the instant case, that the first two factors are met is undisputed. However, a grant of the requested waiver will not result in a remedy for the error that occurred and, in that respect, would have an undesirable consequence. NYISO has provided expert testimony which estimates the overall net financial impact of the error, which is significant. However, NYISO proposes that we not order it to retroactively change prices or settlements and, thus, not require a remedy. NYISO asserts that given the logistics of NYISO's market, recalculation of settlement prices would likely not produce accurate real-world results, as such a calculation would depend (at several points) on predictions of how other market participants would have responded under changed circumstances.[10] While we generally

[9] *See, e.g.*, *New York Indep. Sys. Operator, Inc.*, 115 FERC ¶ 61,026, at P 54 & n.20 (2006); *PSEG Power Connecticut LLC*, 126 FERC ¶ 61,062, at P 10-12 (2009); *ISO New England Inc.*, 125 FERC ¶ 61,230, at P 7 (2008); *Waterbury Generation LLC*, 120 FERC ¶ 61,007, at P 31 (2007). *See also ISO New England Inc.*, 117 FERC ¶ 61,171, at P 21 (2006) (considering the above four factors to evaluate a request for a temporary change to ISO-New England's tariff).

[10] December 11, 2008 Filing at 9.

agree, and in certain circumstances have not required NYISO to reconstruct market prices,[11] we are mindful that the fact that we might not be able to reconstruct exactly what would have occurred in the market had the error not occurred may not excuse the Commission from seeking a reasonable estimation of such effect in order to permit some type of remedy. ISOs have been required in some cases to calculate a remedy despite the potential difficulty in resettling markets.[12] Moreover, it is clear that NYISO has the ability to correct for market errors and has, on occasion, done so.[13] Here, although Dr. Patton's affidavit indicates that NYISO has run simulations correcting for the original error, NYISO has not provided the details of those simulations.

17. Accordingly, we will not rule on whether to grant or deny the requested waiver at this time and will instead require NYISO to provide the data requested by the protestors to its market participants, including its analysis of the effect on prices, interface flows, schedules and limits, and related information for the period affected by the error, as well as all the information regarding what the erroneous inputs were, and the results of its simulations with the corrected inputs. NYISO should also discuss with its market participants whether any course of restitution is feasible. NYISO must provide the information required by this order to interested market participants within 30 days of this order, and report the results of its stakeholder discussions to the Commission within 90 days of the date of this order. The Commission will then take further action on NYISO's waiver request and issue further orders as necessary.

18. Further, although NYISO asserts that it fixed the erroneous inputs on January 25, 2008,[14] it was approximately ten and one half months later that NYISO formally reported the error to the Commission. This lengthy delay concerns the Commission. In its filing, NYISO states that "once it discovered the error, it promptly corrected it and informed Commission staff."[15] However, informal staff contact, if any, does not substitute for

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[11] *See, e.g., New York Indep. Sys. Operator, Inc.*, 115 FERC ¶ 61,026, at P 55-57 (2006).

[12] *See, e.g., KeySpan-Ravenswood, LLC v. FERC*, 474 F.3d 804 (D.C. Cir. 2007); *Exelon Corp. v. PPL Electric Utilities Corp. & PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,065 (2005).

[13] *See e.g., Black Oak Energy, LLC v. New York Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,261, at P 18 (2008) (stating that NYISO used the best available data to correct real-time prices following a software error).

[14] *See* December 11, 2008 Filing, Attachment 1 at 9.

[15] December 11, 2008 Filing at 5.

formal notification; the Commission is unaware of any formal contact by NYISO, other than the instant filing informing the Commission of this error. Therefore, the Commission will require NYISO to file a report within 30 days of the date of this order, explaining: (1) when and how the error was discovered; (2) why NYISO did not self-report the error to the Commission's Office of Enforcement; (3) whether NYISO notified its market monitor of the tariff violation (and when), or if the market monitor was otherwise aware of it; and (4) the steps NYISO took in informing its market participants, stakeholder committees, and this Commission of the error.

19. In addition, NY Transmission Owners, the Companies, Alcoa, and DC Energy all express concern about the length of time it took NYISO to inform market participants of this error, and the absence of stakeholder involvement in the analysis of the error and the development of corrective action. The Commission agrees with the protestors on the importance of NYISO promptly informing market participants when it discovers a modeling error that has an impact on the NYISO markets, and of the nature of its corrective action. Therefore, we direct NYISO to develop procedures for: (1) early notification of stakeholders and stakeholder committees of possible errors affecting its markets; (2) timely follow-up and detailed explanations regarding errors; and (3) greater transparency and heightened responsiveness to the stakeholders and appropriate committees. NYISO should begin this process within 30 days of the date of this order, and file with the Commission within 180 days of the date of this order either proposed tariff changes, or a status report on the development of such procedures.

20. Finally, Alcoa contends that this is the second filing by NYISO relating to an increase in uplift costs in 2008. It asserts that NYISO also identified such an increase in its filing in Docket ER08-1281 (Exigent Circumstances Filing),[16] in which NYISO requested the prohibition of certain transactions into, from, and through NYISO.[17] The Commission observed in its August 21, 2008 Order in the Exigent Circumstances Filing that "[t]he Commission's Office of Enforcement began a non-public investigation under Part 1b of the Commission's regulations in May of this year into the scheduling of flows over the circuitous paths such as those that are addressed in the instant order."[18] Alcoa

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[16] New York Indep. Sys. Operator, Inc. July 21, 2008 Filing, Docket No. ER08-1281-000.

[17] Alcoa January 2, 2009 Filing at 5.

[18] *New York Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,174, at P 32 (2008) (August 21, 2008 Order).

requests that the "latest tariff anomaly" identified in the instant filing be added to "the NYISO uplift charge matters already under investigation by Commission's enforcement staff."[19]

21. Alcoa misapprehends the subject matter of the referenced investigation. While certain uplift charges may be implicated in staff's analysis of circuitous schedules, the subject matter of the non-public investigation is not designed to be a comprehensive exploration of all forms and sources of uplift. Alcoa has not shown how the software input error in the instant proceeding is in any way related to the ongoing investigation in Docket No. ER08-1281, and the mere fact that both may have resulted in uplift charges is not sufficient reason to include the matters in the instant proceeding in the ongoing Enforcement investigation. Therefore, we decline to include the matters described by NYISO in this case in the ongoing proceeding in Docket No. ER08-1281.

<u>The Commission orders</u>:

(A) NYISO is hereby directed to file a report within 30 days of the date of this order, explaining when and how the error was discovered; why NYISO did not self-report the error to the Commission's Office of Enforcement; whether NYISO notified its market monitor of the tariff violation (and when), or if the market monitor was otherwise aware of it; and the steps NYISO took in informing its market participants, stakeholder committees, and this Commission of the error, as discussed in more detail in P 18 in the body of this order.

(B) NYISO is hereby directed to file a report with the Commission within 180 days of the date of this order either proposing tariff changes, or updating the Commission on the development of procedures for stakeholder involvement in the analysis of errors and the development of corrective action, as discussed in more detail in P 19 in the body of this order.

(C) NYISO is hereby directed to provide market participants with its full analysis of the impact of the error, including the data requested by the protestors and whether any course of restitution is feasible, within 30 days of the date of this order, and

[19] Alcoa January 2, 2009 Filing at 5.

to report the results of its stakeholder discussions concerning the error that is the subject of this filing to the Commission within 90 days of the date of this order, as discussed in more detail in P 17 in the body of this order.

By direction of the Commission. Commissioner Kelliher is not participating.

Kimberly D. Bose,
Secretary.