

102 FERC ¶ 61, 096
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket No. ER03-238-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued January 30, 2003)

Introduction

1. In this order, the Commission conditionally accepts for filing proposed revisions to the Market Administration and Control Area Services Tariff (Services Tariff) of the New York Independent System Operator, Inc. (NYISO) to clarify the manner in which "Day-Ahead Margin" assurance payments will be calculated. The payments will be made to certain generators that are scheduled to run in the Day-Ahead market, but are directed by the NYISO not to run in real time due to adverse system conditions. The Commission is accepting the proposed revisions, subject to certain modifications discussed here. This action will benefit customers by providing greater clarity as to how the Day-Ahead Margin assurance payments will be administered in New York.

Background

2. On December 2, 2002, the NYISO filed tariff sheets¹ reflecting proposed revisions to its Services Tariff to clarify the manner in which "Day-Ahead Margin"² assurance payments will be calculated. NYISO states that the proposed clarification was developed with extensive market participant input and was unanimously endorsed in principle by the NYISO Management Committee.

¹See the Appendix to this order.

²The NYISO states that Day-Ahead Margin is defined in Article II of the Services Tariff.

3. The NYISO explains that it engages in various operating procedures in order to maintain a secure and reliable system. Some of these procedures involve Day-Ahead scheduling of transmission service. Generators that are scheduled Day-Ahead are paid Day-Ahead locational based marginal prices for all scheduled output, and therefore have a commitment to supply all of their scheduled output.

4. System conditions sometimes require the NYISO to reduce power flows across certain interfaces or sections of the bulk transmission system after the Day-Ahead Market closes. Similarly, system conditions may force transmission owners to ask the NYISO to reduce power flows to maintain local reliability. In such situations, the NYISO may direct On-Dispatch generators³ to reduce their output below the output they were scheduled to provide Day-Ahead. If less expensive generation has become available in real time, generators that are dispatched below their Day-Ahead schedules can procure real time energy at a lower, or "opportunity" cost and realize a profit in fulfilling their commitment.

5. Sometimes, however, it may be necessary for the NYISO to bring on more expensive real-time energy. When this happens, generators that were scheduled Day-Ahead, but are directed to reduce their output below their economic operating point, may face balancing obligations that not only erode the profit they earned Day-Ahead for that interval, but may actually cause the generator to lose money on the transaction. This can be inefficient and inequitable.

6. To avoid imposing unfair hardships and creating a perverse incentive for generators to be off-dispatch, which is undesirable from an operational and reliability standpoint, the NYISO holds generators harmless when they are dispatched below their Day-Ahead schedule for security reasons. It does this by making Day-Ahead Margin assurance payments to ensure that generators that reduce their schedules pursuant to the NYISO's instructions are not harmed when real-time locational based marginal prices are higher than Day-Ahead locational based marginal prices.

³"On-Dispatch" generators are those that are capable of responding to computer-issued ISO instructions. "Off-Dispatch" generators are those that are not capable of responding to computer-issued ISO instructions, but are capable of responding to ISO orders relayed by telephone.

7. The NYISO claims that its authority to make these payments is implicit under Section 5.4 of the Services Tariff, "Operation Under Adverse Conditions."⁴ That section, however, does not currently include explicit rules governing the calculation of such payments. The NYISO argues that it is appropriate to clarify the Services Tariff to define Day-Ahead Margin assurance payments and to precisely describe how they will be calculated.

8. The NYISO proposes to restrict Day-Ahead Margin assurance payments to instances when it: (1) de-rates a generator to maintain a secure and reliable dispatch; or (2) directs a generator to reduce its output below its Day-Ahead schedule either: (I) to maintain a secure system; (ii) to secure additional operating reserves; or (iii) at the request of a transmission owner to maintain local reliability. NYISO proposes that Day-Ahead Margin assurance payments would be net, over each hour, of any opportunity costs realized. Generators that request their own de-rate would not be eligible for Day-Ahead Margin assurance payments above their derated real time operating capacity. Also, NYISO proposes that generators that do not follow NYISO's computer generated base point signals in any given security constrained dispatch interval would not be eligible for Day-Ahead Margin assurance payments for that interval.

9. In addition, NYISO proposes that generators providing ten-minute spinning reserves would not be eligible for Day-Ahead Margin assurance payments if they also received real-time lost opportunity cost payments for the same portion of the Day-Ahead bid curve. In real-time, the NYISO may dispatch an on-dispatch generator at a point below its economic operating point in order to provide ten-minute spinning reserves. Such a generator is paid a real-time lost opportunity cost for the megawatts held in reserve. NYISO explains that real-time lost opportunity cost is the equivalent of a Day-Ahead Margin assurance payment and that no generator should receive both for the same portion of its Day-Ahead bid curve. Similarly, the NYISO is not proposing to make Day-Ahead Margin assurance payments to Class B units⁵

⁴Section 5.4 authorizes the NYISO to recover revenue shortfalls through Rate Schedule 1 when operation under adverse conditions cause the NYISO to reduce energy scheduled Day-Ahead and bring on line more expensive generation in real-time.

⁵ Class B generators are those that do not participate in the nominal five (5) minute

except when they are directed to move off their Day-Ahead schedule for security reasons or to enable the NYISO to procure operating reserves.

SCD dispatch, but offer to provide spinning reserves to the NYISO.

Description of Proposed Tariff Changes

10. The NYISO proposes to add Section 2.36a to the Services Tariff to define the term "Day-Ahead Margin" as that portion of the Day-Ahead location based marginal price that represents the difference between a supplier's accepted bid price and the Day-Ahead location based marginal price during a given interval.

11. The NYISO proposes to amend Section 4.18C, which describes a supplier's settlement obligations when its real-time energy injections are less than the energy injections scheduled Day-Ahead, to add language governing supplemental Day-Ahead Margin assurance payments. A generator's Day-Ahead Margin would be assured when its actual energy injections are reduced below the energy injections scheduled Day-Ahead in order to maintain system security.

12. The NYISO is proposing a precise formula for calculating Day-Ahead Margin assurance payments in a new Attachment J to the Services Tariff. The formula included in Attachment J provides for an hourly netting of Day-Ahead Margin assurance payments and "opportunity costs" realized for each generator. The proposed new Attachment J also specifies that assurance payments shall not be made: (1) to generators that fail to respond or lag behind their base point signals; (2) to certain generators scheduled to provide ten-minute spinning reserves; or (3) to any Class B generator (unless it has been taken off its Day-Ahead schedule for security reasons or to permit the procurement of operating reserves).

13. The NYISO states that the tariff revisions proposed herein were approved, in concept, by the Management Committee at its August 8, 2002 meeting. Pursuant to the Management Committee's approval motion, the proposed tariff amendments were approved by the Tariff Review Subcommittee with the advice of the Scheduling and Pricing Working Group. The requested effective date is January 31, 2003.

Notice of Filing, Interventions and Protests

14. Notice of the NYISO's filing was published in the Federal Register, 67 Fed. Reg. 76,394 (2002), with motions to intervene and protests due on or before December 23, 2002. Timely motions to intervene were filed by Dynegy Power Marketing, Inc.; the New York Power Authority; KeySpan Ravenswood, L.L.C.; Reliant Resources, Inc. (Reliant); NRG Companies (NRG), and the New York Transmission Owners (NY Transmission Owners).⁶ Reliant filed comments, NRG filed a protest, and the NY Transmission Owners filed a limited protest. The issues raised in the comments and protests are discussed below. The NYISO filed an answer to the protests.

⁶The New York Transmission Owners include Central Hudson Gas & Electric Corp., Consolidated Edison Company of New York, Inc., LIPA, New York Power Authority, New York State Electric & Gas Corp., Orange and Rockland Utilities, Inc.,

Discussion

Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), the timely, unopposed motions to intervene, listed above, serve to make the entities that filed them parties to this proceeding. While the Commission's regulations do not permit answers to protests,⁷ the Commission may, for good cause, waive a rule.⁸ The Commission will allow the answer here because it contains information that has aided the Commission in understanding the issues.

Commission Analysis

16. Upon review, the Commission finds that the proposed revisions to the NYISO's Services Tariff to clarify the manner in which "Day-Ahead Margin" assurance payments will be calculated, appear to be reasonable and have not been shown to be unjust, unreasonable, or unduly discriminatory. Further, the Commission supports the efforts of the NYISO to avoid imposing unfair hardships on generators. However, the Commission finds merit in the issues raised by Reliant, NRG, and the NY Transmission Owners. Accordingly, the Commission is accepting the proposed tariff revisions, subject to the modifications discussed below.

Rochester Gas and Electric Corp., and Niagara Mohawk Power Corp., all of which are members of the Transmission Owners Committee of the Energy Association of New York State.

⁷See 18 C.F.R. § 385.213(a)(2) (2002).

⁸See 18 C.F.R. § 385.101(e) (2002).

Reliant's Comments

17. Reliant complains that, on past occasions, it utilized the Day-Ahead schedule, but was not called upon by the NYISO to operate, and was subsequently forced to buy back very expensive power. Yet Reliant's request for Day-Ahead Margin assurance payments was denied because its units were considered to be "off dispatch" units that were ineligible for such payments. Reliant comments that it has discussed this situation with the NYISO, and that it is Reliant's understanding that the NYISO agrees that Reliant should receive Day-Ahead Margin assurance payments if Reliant's gas turbines have a Day-Ahead schedule, but are not called upon to run in real time and the prices in the NYISO market spike above Reliant's bid value.

18. Notwithstanding the NYISO's supposed agreement with Reliant's position, Reliant contends that the proposed tariff language would not permit Reliant to receive a Day-Ahead Margin assurance payment under the circumstances outlined above (i.e., under the NYISO filing, "off dispatch" units running in the real time market would not be eligible for Day-Ahead Margin assurance payments). Reliant states that while it believes that the NYISO intends to make such payments under the outlined circumstances, Reliant fears that the proposed tariff language would not necessarily operate to do so. To alleviate its concerns, Reliant requests that the Commission require the NYISO to modify the tariff language so that it more clearly reflects the NYISO's intention to pay the Day-Ahead Margin assurance payments under the outlined circumstances.

19. The NYISO has not explained why it would limit Day-Ahead Margin Assurance payments to only "Off-Dispatch" gas turbine generators, such as Reliant's, and not other "Off-Dispatch" generators. While NYISO states, in its answer, that Reliant's units qualify because all thirty minute gas turbines, including Reliant's, are considered to be on-dispatch and thus are eligible for Day-Ahead Margin assurance payments, it is not clear why all off-dispatch generators should not be eligible to receive Day-Ahead Margin assurance payments if they are ordered to reduce their generation below their Day-Ahead schedule. Accordingly, we will direct the NYISO to explain, within 15 days of the date of this order, why Reliant's off-dispatch generators would qualify for the Day-Ahead Margin assurance payments, but other off-dispatch generators would not qualify. The Commission may issue a further ruling based on the explanation.

NRG's Protest

20. NRG protests the proposed methodology for calculating the Day-Ahead Margin assurance payment. Specifically, NRG protests that the payment formula does not compensate generators for costs they may incur as a result of a NYISO security instruction to operate at a level below the generator's Day-Ahead scheduled level. NRG contends that although NYISO states that its proposal would hold these generators harmless, such is not the case. Rather, such generators could be subject to significant costs, with no assurance of compensation.

21. NRG explains that when the Day-Ahead schedule is established and made available by the NYISO, a generator whose bid for its natural gas-fired unit is scheduled in the Day-Ahead market nominates and purchases natural gas the day before the generator is scheduled to operate. If NYISO then instructs the generator to operate its gas-fired unit at a lower level than it was scheduled, the generator does not just lose anticipated revenues, but also would be subject to substantial gas balancing penalties for the fuel that was no longer needed. Specifically, NRG claims that the unused scheduled natural gas must be sold back at between 20 percent to 50 percent less than the purchase price.⁹ NRG states that the NYISO's Day-Ahead Margin assurance payment does not compensate for these costs, or other costs associated with operating at below the Day-Ahead scheduled level. Thus, rather than being held harmless, generators will, despite the proposed margin assurance payments, be exposed to significant costs as a direct result of a NYISO instruction to back down in real time from the accepted Day-Ahead schedule.

22. NRG argues that without an appropriate cost recovery mechanism associated with the Day-Ahead Margin assurance payments, a generator that has incurred costs due to NYISO's security instruction has no option but to attempt to receive compensation for these costs from the NYISO Discretionary Acts Committee, and that the recovery of costs incurred due to NYISO security instructions, such as gas balancing penalties, should be automatic, not discretionary. NRG further argues that without the automatic ability to recover such costs, NYISO's proposed assurance payment formula is unjust and unreasonable.

⁹ For example, the price NRG's Arthur Kill Power unit is eligible to receive in a sell-back to the supplier is based on the percentage deviation from the nominated quantity of gas. If the underburn is more than 20 percent of what was nominated to fulfill Arthur Kill Power's Day-Ahead schedule, Arthur Kill Power can only sell back the natural gas at half price. If the underburn is greater than 2 percent but less than 10 percent, Arthur Kill Power can sell back the natural gas at a 20 percent discount from the original purchased price.

23. To remedy the above concerns, NRG requests that the Commission order NYISO to revise its proposed Day-Ahead Margin assurance payment formula to include an adder for gas balancing penalties to which generators are subject as a result of NYISO instructions.

24. The Commission finds that there may be merit in both NRG's and the NYISO's arguments. It is not clear that NYISO should guarantee recovery of NRG's cost of selling previously nominated but unused natural gas when the NYISO instructions require NRG to reduce generation in order to maintain the security and reliability of the transmission system. As NYISO points out, the intent of the Day-Ahead Margin assurance payment is not to hold generators harmless, but rather to make them whole for any purchases required by the generator in the real-time market as a result of the NYISO having to reduce generation in the Day-Ahead market. That is, the proposed payment provides that a generator will receive the same margin that it would have received if the generator had fulfilled its Day-Ahead schedule in real time. NRG, however, questions whether NYISO, as a result of its instructions to the generator for reliability reasons, should hold the generator harmless from risks such as fuel price risk.

25. As discussed above, we agree in concept with the NYISO's proposal to compensate generators for purchases they are required to make in the real-time as a result of decisions made by the NYISO in the Day-Ahead market to reduce generation for security and reliability reasons. Further, while we believe that NRG raises some legitimate business issues, it is not clear that a generator should be further compensated.¹⁰ We believe that the issue of whether additional compensation as requested by NRG is necessary and appropriate should be taken into consideration through direct discussion by all market participants and in consideration of all markets and market rules. Accordingly, the Commission will direct the NYISO to investigate potential solutions for the issue raised by NRG through its stakeholder process and to file tariff revisions, as appropriate.

NY Transmission Owner's Protest

26. Attachment J in the NYISO filing contains a formula for determining the Day-Ahead Margin assurance payment. This formula utilizes the term "average 6-second ramped [Security Constrained Dispatch (SCD)] basepoint." The NY Transmission Owners claim that it is not obvious from the current tariff or proposed revisions as to how the NYISO would calculate the average 6-second ramped SCD basepoint. The NY Transmission Owners protest that the tariff should clearly define the inputs that are utilized to perform the calculation. The NY

¹⁰Generators, for example, could be able to manage fuel price and other business risk through their bidding strategies.

Transmission Owners request that the Commission require the NYISO to provide more clarity on this issue. The NY Transmission Owners argue that mere reference to the calculation in the performance tracking system software would be insufficient. The NY Transmission Owners state that it has discussed this issue with the NYISO, but a resolution has not yet been reached.

27. The NY Transmission Owners also note that proposed language in Section II.1.2 of Attachment J states that units “may be” eligible for certain payments. The NY Transmission Owners protest that this language is unclear, and leaves open the question as to how the NYISO would determine whether or not such units were eligible. The NY Transmission Owners state that this matter has been discussed with the NYISO, and that the NYISO does not object to clarifying that this language is intended to prevent double payment, and not to grant discretion to the NYISO as to a unit’s eligibility. The NY Transmission Owners state that the NYISO has indicated a willingness to clarify this issue in a compliance filing.

28. Next, the NY Transmission Owners state that its discussions with the NYISO have revealed that the NYISO has been making the functional equivalent of Day-Ahead Margin assurance payments to generators that are backed down from their Day-Ahead schedules but which were supplying operating reserves, because the existing software did not differentiate between generators that are entitled to such payments and generators that are supplying, and being compensated for, operating reserves. The NY Transmission Owners state that the NYISO has indicated that it will correct the billing and payments and provide refunds of all erroneous double payments.

29. With regard to the NY Transmission Owners' concerns about the calculation of the "average 6-second ramped SCD basepoint" the Commission agrees that it is important for markets to be well defined so as to promote efficiency and certainty for market participants. In its answer, the NYISO states that there is no ambiguity as to how it will calculate this value, and that procedures for setting and sending basepoint signals are already set forth in the NYISO operating manuals. However, the NYISO does not reference such procedures in its tariff (or in its answer). The Commission concludes that the NYISO should continue to work with the NY Transmission Owners to clarify the details of the calculation and include such details in the tariff, either explicitly or by reference to the operating manuals. NYISO is directed to file revised tariff sheets to reflect the results of this discussion.

30. Similarly, with respect to the protested language in proposed Section II.1.2 of Attachment J, we conclude that the intent of the provision is to prevent double payment, not to grant discretion to the NYISO as to a unit’s eligibility. We direct the NYISO to clarify this intent in its compliance filing.

31. Finally, with respect to the NY Transmission Owners' concerns regarding payment of both Day-Ahead Margin assurance payments and compensation for operating reserves, the NYISO is directed to make refunds to the extent that the software erroneously resulted in double compensation in contravention of the provisions of the tariff.

The Commission orders:

(A) The NYISO's filing is hereby conditionally accepted to become effective January 31, 2003, subject to Ordering Paragraphs (B), (C) and (D) below.

(B) The NYISO is hereby ordered to submit a compliance filing within 60 days of the date of this order reflecting the modifications discussed in the body of this order.

(C) The NYISO is hereby directed to expeditiously initiate a stakeholder process to ensure prompt resolution of the concerns and protests raised by NRG and the NY Transmission Owners, as discussed above.

(D) The NYISO is hereby ordered to submit, within 15 days of the date of this order, an explanation as to why Reliant's off-dispatch generators would qualify for the Day-Ahead Margin assurance payments, but other off-dispatch generators would not qualify.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix

New York Independent System Operator, Inc.
Docket No. ER03-238-000

FERC Electric Tariff, Original Volume No. 2

Tariff Sheets Accepted Effective January 31, 2003

Second Revised Sheet No. 33A

Fifth Revised Sheet No. 102

Original Sheet No. 486

Original Sheet No. 487

Original Sheet No. 488

Original Sheet No. 489