

114 FERC ¶61,071  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

January 26, 2006

In Reply Refer To:  
New York Independent System Operator  
Docket Nos. ER04-230-010,  
ER04-230-014 and ER04-230-019

New York Independent System Operator, Inc.  
Attn: Mollie Lampi  
Assistant General Counsel  
290 Washington Avenue Extension  
Albany, NY 12203

Reference: Amendment to Compliance Filing

Dear Ms. Lampi:

1. On August 10, 2004, the Commission issued an order accepting revised tariff sheets submitted by the New York Independent System Operator, Inc. (NYISO) to implement new real-time scheduling (RTS) software, and related market rules.<sup>1</sup> The August 10 Order also required the NYISO to file a report on the status of the inclusion of demand side resources (DSR) in the RTS,<sup>2</sup> no later than 120 days after the NYISO's RTS begins operation.<sup>3</sup> In addition, the report was to include the status of the implementation in the RTS software of certain DSR provisions or the actual implementation of the provisions themselves, if this occurred. While the August 10 Order recognized the existence of certain impediments to enhanced demand side participation beyond the

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<sup>1</sup> *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 (2004) (August 10 Order).

<sup>2</sup> As we explained in the August 10 Order, 108 FERC ¶ 61,188 at P 29, "RTS" is shorthand for the NYISO software enhancements that will upgrade its Real-Time Market software and better align it with the Day-Ahead Market software. It does not refer to any particular market or product.

<sup>3</sup> 108 FERC ¶ 61,188 at P 30 & Ordering Paragraph (E).

NYISO's control, the order encouraged the NYISO to work with market participants to expedite the inclusion of demand side enhancements that RTS software can accommodate.

2. The NYISO submitted its status report on June 1, 2005. On June 24, 2005, Multiple Intervenors filed comments expressing concern that the NYISO's filing indicated that little or no progress had been made toward the goal of integrating DSRs into the NYISO's RTS or toward integrating DSR participation in the NYISO's RTS markets. Further, Multiple Intervenors alleged that the lack of progress on allowing DSRs to bid into the NYISO's non-synchronized Operating Reserves markets has had detrimental impacts on consumers. Multiple Intervenors requested that the Commission direct the NYISO to make the modifications to its RTS software and tariffs to allow DSR participation in at least some of the NYISO's RTS markets.

3. On July 13, 2005, the Commission's staff issued a letter advising the NYISO that its June 1 filing was deficient and requiring the NYISO to provide additional information regarding the status of its DSR discussions with stakeholders. On August 12, 2005, the NYISO submitted additional information that identified several proposals that the NYISO states it is pursuing.<sup>4</sup>

4. The NYISO determined that reaching the goal of DSR participation in the NYISO's RTS markets will require changes to its RTS software to integrate DSR into the existing RTS design and committed to file a status report with the Commission by October 1, 2005 on the scope of any needed RTS software changes and any RTS design changes, after it discusses these issues with its stakeholders.

5. On October 3, 2005, the NYISO filed a status report.<sup>5</sup> The report states that the NYISO has continued to work with stakeholders to better define the modifications needed to its RTS software. The NYISO states that it will complete this analysis in

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<sup>4</sup> The August 12 filing reports that the NYISO was considering three options. The first option would have the NYISO integrate DSR into RTS markets using the current RTS software design. The NYISO reports that it found this option infeasible. The second option would require the NYISO to modify the RTS software to allow the integration of DSR into the RTS markets. The third option would have the NYISO develop separate market systems for DSR.

<sup>5</sup> The NYISO explained that it was filing its report on the first business day after October 1, 2005, which fell on a Saturday.

October and will then begin to also evaluate non-RTS programs.<sup>6</sup> The NYISO states that when the results of stakeholder discussions are complete, it will file any appropriate tariff changes with the Commission on any consensus proposals agreed upon by the NYISO and its stakeholders.

6. On November 2, 2005, Multiple Intervenors filed comments on NYISO's October 3 status report renewing its request that the Commission establish firm deadlines for the NYISO to complete the software changes that are necessary to include DSRs in the NYISO's RTS markets. Multiple Intervenors state that the NYISO's tariffs for ancillary services do not have to be changed to accommodate DSRs, and that some market participants have indicated they are ready to use the NYISO's existing bidding procedures, without modification. Multiple Intervenors request that the Commission order the NYISO to modify the RTS software by June 30, 2006, to allow these DSRs to bid into the NYISO's RTS ancillary services markets. Further, Multiple Intervenors request that the Commission order the NYISO to eliminate all of the RTS software barriers and make all needed tariff revisions by June 30, 2007, so that all DSRs can participate in all the RTS markets by then.

### **Discussion**

7. Almost two years have elapsed since the Commission issued an order (on February 11, 2004),<sup>7</sup> which expressed support for DSR participation in the RTS markets. In the August 10 Order, the Commission again expressed its support for the incorporation of DSR into the RTS markets and ordered the NYISO to report on the status of its inclusion of DSR provisions or the actual implementation of the provisions themselves within 120 days after the implementation of RTS.<sup>8</sup>

8. The NYISO's June 1, 2005 filing proposed no specific timetable for DSR implementation. Instead, it suggested delaying a decision until a cost-benefit analysis of implementing market changes to allow DSR participation was conducted. The June 1 filing promised that the analysis would be provided to the Commission by October 1,

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<sup>6</sup> Although the Commission's orders were solely concerned with integrating DRS into the RTS software, the NYISO response states that it is also considering developing a role for DSR outside of the RTS framework. The NYISO states that, rather than developing markets that fully integrate with RTS, it may be possible to develop separate market systems for DSR participation.

<sup>7</sup> *New York Independent System Operator, Inc.*, 106 FERC ¶ 61,111 at P 66 (2004) (February 11 Order).

<sup>8</sup> 108 FERC ¶ 61,188 at P 30.

2005. To date, no such report has been provided. The NYISO's October 3 submittal fails to propose a timetable for integration of DSR into NYISO's RTS markets; it provided only an indefinite statement that, after completion of stakeholder deliberations, the NYISO expects to deliver tariff changes to the Commission, if any, that represent the view of the NYISO and its stakeholders.

9. We find that the NYISO has not responded adequately to the Commission's directives to expeditiously integrate DSRs into its RTS markets. Based on the information supplied by the NYISO in its June 1, August 12, and October 3, 2005 status reports, it does not appear that it plans to implement any RTS changes in the foreseeable future. This is despite the fact that, as Multiple Intervenors have stated, at least some of NYISO's market participants are ready and able to participate in the ancillary service markets once certain identified software problems are resolved. Therefore, consistent with our prior directives, the Commission is requiring the NYISO to comply with the timetable suggested by Multiple Intervenors, *i.e.*, the NYISO must: (1) implement the necessary modification of its RTS software by June 30, 2006 to allow DSR participation by those DSRs prepared to bid into the NYISO's RTS ancillary service markets under the NYISO's existing tariffs; and (2) open all of its RTS markets to DSR participation by June 30, 2007. If the NYISO does not believe that it can comply with these deadlines, it must, within 30 days of the date of this order, file a detailed explanation of the reasons it believes it cannot comply, along with its own proposed schedule for accommodating DSRs in the RTS markets.

By direction of the Commission.

Magalie R. Salas,  
Secretary.