UNITED STATES OF AMERICA 99 FERC ¶ 61,126
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc. — Docket Nos. ER00-3591-009, ER00-1969-010, and ER00-3038-005

New York State Electric and Gas Corporation
v.
New York Independent System Operator, Inc. — Docket No. EL00-70-006

ORDER ACCEPTING COMPLIANCE FILING SUBJECT TO CONDITIONS AND DENYING MOTION FOR CLARIFICATION

(Issued April 29, 2001)

In this order, we accept for filing, subject to modifications, revisions to the New York Independent System Operator, Inc.'s (NYISO's) Open Access Transmission Tariff (OATT) and its Market Administration and Control Area Services Tariff (Services Tariff) to implement the hybrid fixed block pricing rule approved by the Commission by order issued July 16, 2001 (July 16 Order).[1] We also deny NYISO's motion for clarification wherein NYISO seeks clarification that it may keep in effect its current pricing method for fixed block resources in the day-ahead market rather than implement the pricing method approved in the Commission's July 16 Order. Our actions in this order will benefit customers by leading to more accurate calculations of the Locational Based Marginal Prices (LBMPs),[2] to ensure accurate price signals in NYISO's markets. Our action further requires compliance with our prior orders and procedures and therefore, maintains the integrity of the Commission's rules, practices and procedures.

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[1]New York Independent System Operator, Inc., 96 FERC ¶ 61,080 (2001).

[2]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.

I. Background

In a complaint filed April 24, 2000, in Docket No. EL00-70-000, the New York State Electric & Gas Corporation (NYSEG), among other things, challenged the NYISO's fixed block pricing methodology. NYSEG complained that it was inappropriate for a fixed block unit to set LBMPs, when a more economic unit had to be backed down to accommodate it, and for the backed-down unit to be paid its lost opportunity costs.

In an order issued July 26, 2000, (July 26 Order),[3] which addressed the fixed block pricing issue and various other issues, the Commission directed NYISO to revise the method by which it sets the price of energy with respect to the dispatch of fixed block units.[4] The Commission cited NYISO's Services Tariff, wherein LBMP was defined as:

> A pricing methodology under which the price of Energy at each location in the NYS Transmission System is equivalent to the cost to supply the next increment of Load at that location (i.e., short-run marginal cost). [5]

Based on this definition, the Commission concluded that fixed block generation resources should be allowed to set the market price for energy so long as that resource reflects the marginal cost of supplying one more unit of energy. However, the Commission found that its tariff was clear in situations when fixed block resources are dispatched and other generation resources, with bid prices less than the fixed block resource, are backed down out of merit order to make room for the fixed block resource. The Commission concluded that in these cases the marginal cost of supplying the next increment of load is equal to the bid price of the least expensive unit that has been backed down.

The Commission went on to conclude that if the price is set in this manner, there should be no need to pay generators that are backed-down any opportunity costs, and the

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[3]New York Independent System Operator, Inc., 92 FERC ¶ 61,073 (2000).

[4] Fixed block units are generation resources that can only be dispatched in one of two states, i.e., they must be either turned completely off or turned on and run at their maximum capacity. For example, the majority of individual gas turbine generating units in the New York Control Area are fixed block units.

[5]NYISO Services Tariff at Original Page 22.

fixed block resource can have its costs covered through the Bid Production Cost Guarantee (BPCG)[6] payments that has been approved by the Commission for NYISO.

On August 25, 2000, NYISO submitted a request for partial rehearing of the July 26 Order (Rehearing Request) asking the Commission to allow NYISO to implement a "hybrid" fixed block pricing rule that would combine the best features of the revised pricing rule ordered by the Commission and NYISO's proposed pricing policy. In its Rehearing Request, NYISO agreed that there were situations where the NYISO's original fixed block pricing rule would result in LBMPs being set at levels above the actual market clearing level, which would be inconsistent with NYISO's market design. NYISO concluded that in these instances, the Commission's proposed pricing rule would be superior. However, NYISO explained that the Commission's proposed fixed block pricing rule would likely have a number of unintended adverse effects that the NYISO's original rule would avoid in certain situations. NYISO explained that under certain conditions, the Commission's proposed rule would artificially depress prices.[7]

Therefore, NYISO in its Rehearing Request, asked that the Commission allow it to implement a hybrid fixed block pricing rule. Under the hybrid pricing rule, NYISO explained that it would be more efficient to use the Commission's pricing rule to calculate all day-ahead LBMPs and real-time prices when fixed block units were not actually required to meet load, but were operating due to minimum run time constraints or similar inflexibilities. However, NYISO concluded it would be more efficient to use its pricing rule when the operation of fixed block units was economic and necessary, i.e, when they were actually needed to: (i) meet load; (ii) avoid the operation of higher cost units; or (iii) satisfy NERC reserve targets.

By order issued November 8, 2000 (November 8 Order), the Commission among other things, stated that it believed there was merit in the hybrid proposal and set the issue

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[6]BPCG payments is the way that NYISO guarantees suppliers that if a unit is committed, the unit will not incur a net loss, provided the unit's operation and schedule meets the qualifying criteria. BPCG is comprised of the Energy Bid, Minimum Generation cost, and start-up cost less the net Ancillary Services Margin. The BPCG payment made to suppliers is a daily settlement. In order to receive a BPCG payment, the sum of all hourly loss/profit values must result in a net loss. [http://www.nyiso.com/services/relations/frequently-asked-ques/index.html]

[7]NYISO stated that use of the Commission’s rule could discourage real-time imports from external resources that had been scheduled in the day-ahead market and impede the development of price -responsive real-time loads in New York.

for discussion at the technical conference the Commission was convening, so that the parties that did not have a chance to respond to NYISO's Rehearing Request could be heard. The issue was discussed at the technical conference held on January 22-23, 2001 and initial and reply comments were filed by interested parties.

Subsequently, as a result of further discussions with market participants, NYISO made further refinements to the hybrid fixed block pricing proposal and on March 20, 2001, it filed a motion requesting the Commission's permission to implement the proposed hybrid pricing rule that would apply when operating a fixed block unit requires a less expensive unit to be backed down.

By order issued April 26, 2001 (April 26 Order),[8] the Commission granted NYISO's motion for permission to implement the hybrid fixed block pricing rule and declared NYISO's request for partial rehearing of the July 26 Order moot given that the Commission granted NYISO's motion to implement the pricing rule. However, the April 26 Order directed NYISO to file revised tariff sheets describing this rule. In particular, the April 26 Order required that NYISO specify explicitly in its tariff how it will treat fixed block units in setting the LBMP.

In the July 16 Order addressing on NYISO's May 7, 2001 compliance filing, the Commission found that NYISO's proposed tariff revisions did not adequately explain the fixed block pricing rule and its use in the day-ahead and real-time markets, nor did it adequately explain the multi-pass process to be used for determining when a fixed block unit is economic and necessary and thus would set the LBMP, all as required by the Commission's April 26 Order. Therefore, the July 16 Order directed NYISO to file revised tariff sheets to clearly indicate that fixed block units that force more economic units to be backed down: (i) will never set day-ahead LBMPs; (ii) will not set real-time LBMPs when they are scheduled solely due to their minimum run-time requirements or other inflexibilities; but (iii) can set real-time LBMPs when their operation is economic and necessary, i.e., when they were actually needed to meet load, displace higher cost units, or satisfy NERC reserve targets.[9] The July 16 Order also stated that NYISO's tariff must also explain, as proposed by NYISO, that during the periods when the fixed block units are precluded from setting the LBMP, the marginal cost of the most economical unit backed down to accommodate a fixed block unit shall set the LBMP. NYISO was

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[8] New York Independent System Operator, Inc., et al., 95 FERC ¶ 61,121 (2001).

[9] See NYISO's Motion for Permission to Implement Hybrid Fixed Block Pricing Rule, Docket No. ER00-3591, et al., at 10 (March 20, 2001).

directed to file revised tariff sheets to reflect the revisions described above within 15 days of the date of issuance of the July 16 Order.[10]

II. Instant Compliance Filing and Motion for Clarification

On September 6, 2001, NYISO filed its compliance filing directed by the July 16 Order. [11] NYISO states that it has made the revisions required by the July 16 Order with regard to the real-time aspect of its hybrid fixed block pricing rule. The compliance filing does not, however, include the revisions to NYISO's tariff related to the day-ahead component as directed by the Commission. In this regard, NYISO states it is contemporaneously submitting a Motion for Clarification Out-of-Time (September 6 Motion) as to the revisions the Commission directed regarding the day-ahead component of its hybrid fixed block pricing rule.

In its September 6 Motion, NYISO seeks clarification of the Commission's requirement that NYISO's tariff explicitly state that, "fixed block units that force more economic units to be backed down will never set day-ahead LBMPs." NYISO proposes, instead, that it continue to use its existing pricing rule applicable to fixed block units to set day-ahead prices, rather than adopt the Commission's rule, as it had previously agreed to do. Accordingly, NYISO seeks clarification that its current day-ahead pricing methodology is appropriate and should be continued.

NYISO explains that the circumstances which led the NYISO not to seek rehearing of the day-ahead component of the Commission's fixed block pricing rule have changed. NYISO states, since the filing of its Rehearing Request, recent market design enhancements and software modifications have substantially reduced the likelihood that NYISO's existing methodology will set day-ahead LBMPs at the bid price of an incremental unit that is not needed to meet load.

NYISO states that neither the Commission ordered pricing rule, nor the existing NYISO pricing rule produce perfect short-run incentives for generators to operate in all cases. NYISO states it believes the correct pricing approach, therefore, is one that produces appropriate incentives most of the time and causes less severe adverse

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[10]By the Commission's August 8, 2001 Notice of Extension of Time, NYISO was permitted an extension of time to submit its compliance filing up to and including September 4, 2001.

[11]Request of New York Independent System Operator, Inc. To Submit Compliance Filing Two-Days Out-of-Time Regarding the Hybrid Fixed Block Pricing Rule.

consequences when it cannot. NYISO states its view has always been that it is preferable to continue to calculate LBMP prices using the current logic in circumstances where the marginal fixed block gas turbine (GT)[12] is required to meet bid-in load.[13] In these situations the Commission's pricing rule would send inefficient price signals. On the other hand, there are now far fewer situations in which the Commission pricing rule would provide a better short-run price signal in the day-ahead market. In the few pricing situations when the Commission pricing rule would send a better price signal, it is quite likely that any bid price differential between the uneconomic GT and the increment of dispatchable steam it displaces will be insignificant. These changed circumstances lead NYISO to conclude that the potential harm it had identified from use of the NYISO pricing model when it filed its Rehearing Request has substantially lessened.

NYISO states that several factors explain this development. First, the introduction of day-ahead price responsive load and virtual transactions add new supply resources to the day-ahead solution which further reducing the likelihood that higher-priced GTs would be chosen and turn uneconomic in the ideal dispatch. Second, NYISO states that an improved methodology for implementing forecast load and local reliability commitments has also reduced the quantitative difference between bid-load and forecast load, thereby reducing the frequency of the need to commit additional resources in the forecast pass. Taken together, NYISO states that these enhancements have significantly decreased the likelihood that uneconomic GTs will be committed to meet bid load and be eligible to set the day-ahead LBMP. In addition, in any hour in which transmission constraints into New York City limit the ability to meet load with western dispatchable units, the bid prices of the New York GTs are capped in the day-ahead market by the terms of the Commission approved New York City mitigation measures provisions. NYISO notes that the vast majority fixed block gas turbines operated by the NYISO are in New York City. Therefore, the Commission's recent extension of this bid cap to all

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[12]The issue of fixed block pricing is a significant one in New York because most of the GTs in the New York Control Area are fixed block units, i.e. approximately 3300 MW of fixed block capacity is concentrated predominantly in New York City and Long Island (See NYISO's March 20, 2001 Motion for Permission to Implement Hybrid Fixed Block Generation Pricing Rule, pages 2-3).

[13]Pursuant to Section 4.6 of NYISO's Services Tariff, Customers must submit bids to purchase energy in the day-ahead market indicating, in MW, the hourly quantities to be purchased at the point of withdrawal. NYISO's Security Constrained Unit Commitment (SCUC) software calculates day ahead prices and makes dispatching decisions to meet the bid-in load at least cost pursuant to a multi-step process (See NYISO's September 6, 2001 Motion for Clarification Out of Time on Hybrid Fixed Block Pricing Rule, pages 3-6).

generators located electrically within New York City, not just those divested by Con Ed further decreases the potential that bid price differences between GTs and steam units in the day-ahead market will be significant.[14]

Therefore, NYISO requests the Commission allow it to continue to employ its proposed pricing rule in the day-ahead market. Under NYISO's day-ahead pricing rule, fixed block units that force more economic units to be backed down would not be eligible to set day-ahead LBMPs unless they were committed to meet load, displace higher cost units, or satisfy NERC reserve targets.

III. Notice of Filings, Comments, Interventions and Protests

Notice of this filing was published in the Federal Register, 66 Fed. Reg. 48,448 (2001), with protests, answers, and motions to intervene required to be filed on or before September 27, 2001.

On September 27, 2001, a joint motion to intervene, comment and answer to NYISO's out-of-time motion for clarification and NYISO's compliance filing, was filed by New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, Niagara Mohawk Power Corporation, Central Hudson Gas & Electric Corporation, LIPA, Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (Member Systems).[15]

First, Member Systems contend that NYISO has made a compliance filing that fails to comply with the Commission's directives. Member Systems state that there is nothing ambiguous about the Commission's July 16 Order. The Commission specifically directed NYISO in no uncertain terms to file tariff language that expressly provides, among other things, that: "...fixed block units that force more economic units to be backed down: (i) will never set day-ahead LBMPs;..."

Second, Member Systems contend that NYISO's motion for clarification is really a request for rehearing out-of-time that the Commission is required to reject by statute and regulation. Member Systems contend that the Commission's regulations state that a request for rehearing does not, in and of itself, stay a Commission order. (18 C.F.R. § 385.713(3)(2001)). Therefore, they claim the clarification does not justify its decision

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[14]The Commission subsequently allowed the expanded in-city mitigation to expire. See Consolidated Edison Company of New York, Inc., 97 FERC ¶ 61,241 (2001).

[15]The New York Power Authority has not joined in this filing.

not to make a complete compliance filing. Furthermore, Member Systems state the Commission's regulations require that all requests for rehearing be filed with the Commission not later than 30 days after issuance of a final order (18 C.F.R. § 385.713(b) (2001). They state that the Commission has long held that "it lacks the authority to consider requests for rehearing filed more than 30 days afer issuance of a Commission order." New England Power Pool, 89 FERC ¶ 61,022 (1999). In New England Power Pool, the Commission noted that "the courts have repeatedly recognized that the time period within which a party may file an application for rehearing of a Commission order is statutorily established at 30 days by section 313(a) of the FPA and that the Commission has no discretion to extend that deadline." Member Systems note that NYISO's clarification was filed on September 6, 2001, 52 days after the date the July 16 Order was issued and 22 days after the statutory deadline for a request for rehearing. Consequently, they claim, the Commission must reject NYISO's clarification on procedural grounds.

Third, Member Systems contend that even if the Commission reviewed the request on the merits, it would find nothing new that warrants the continued application of an existing pricing rule that perpetuates high prices. Member Systems contend that in addition to the procedural defects noted above, NYISO has not offered any substantive reasons (or supporting documentation) that would warrant rehearing or clarification of the Commission's decision in the July 16 Order. Member Systems state that essentially, NYISO is arguing that recent changes in market design and software modifications have reduced the frequency of harm that is caused by the existing pricing rule and, therefore, the current pricing rule should remain in effect. The Member Systems state that they disagree with this logic and state there is no question that the existing pricing rule can result in large price increases in the day-ahead market. They state the Commission agreed with NYSEG in its complaint and directed NYISO to revise its current pricing rules to be revised. While the Commission accepted the hybrid proposal, it required that fixed block units not set the LBMPs in the day-ahead market, consistent with NYISO's proposal at that time.

In conclusion, Member Systems respectfully request that the Commission (a) reject the NYISO's compliance fling; (b) direct NYISO to make a compliance fling within 15 days that complies with every aspect of the July Order; (c) direct NYISO to effect as expeditiously as possible any software changes needed to implement the Commission's directives; and (d) reject NYISO's out-of-time request for clarification.

IV. Discussion

1. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[16] the timely, unopposed motions to intervene submitted by the Member Systems to this order make them parties to the proceedings in which they intervened.

2. Commission Ruling

The Commission has treated timely requests for clarification as requests for rehearing when warranted.[17] However, in this instance, the FPA limits the time in which a party may file a rehearing request. Therefore, in this case, as the Member Systems point out, the request was filed 22 days after the statutory deadline. Accordingly, we deny the request for clarification, which in effect is a request for rehearing of the July 16 Order.

We find that NYISO has not complied with the directives set forth in the July 16 Order. Specifically, NYISO has failed to revise its tariff to provide that a fixed block unit that forces more economic units to be backed down will never set day-ahead LBMPs. NYISO has complied with the directives of the order in other respects. Accordingly, we accept the compliance filing to be effective May 1, 2001, subject to NYISO refiling revised tariff sheets to comply with the directive regarding day-ahead pricing for fixed block units, within 15 days of the date of this order.

Moreover, NYISO has not made its case here that continuation of the Commission's fixed block pricing rule in the day-ahead market will have an adverse effect on prices. NYISO itself states that neither the Commission ordered pricing rule, nor NYISO's existing pricing rule produce perfect short-run incentives for generators to operate in all cases.

Our action here is without prejudice to NYISO filing under Section 205 of the FPA, a proposal for calculating LBMPs for fixed block units in the day-ahead market as proposed in NYISO's clarification for prospective application, due to the changed circumstances NYISO identifies. In such a filing, NYISO should present evidence that supports its conclusion that the Commission's pricing rule has an adverse impact on the day-ahead market. At that time, should NYISO make such a filing, the Commission will review the proposal on the merits after parties have had opportunity to comment.

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[16] 18 C.F.R. § 385.214 (2001).

[17] American Electric Power Service Corp., 98 FERC para. 61,156 (2002).

The Commission orders:

(A) NYISO's request for clarification is denied based on the reasons set forth in this order.

(B) NYISO is hereby directed to file revised tariff sheets to reflect the revisions discussed in the body of this order, to be effective May 1, 2001, within 15 days of the date of issuance of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.