

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

New York Independent System
Operator, Inc.

Docket No. ER04-230-023

ORDER ACCEPTING COMPLIANCE FILING

(Issued July 20, 2006)

1. On February 28, 2006, the New York Independent System Operator, Inc. (NYISO) filed a response to the Commission's January 26, 2006 Order in this proceeding. *New York Independent System Operator, Inc.*, 114 FERC ¶ 61,071 (2006) (January 26 Order). The January 26 Order directed NYISO to either: (1) meet certain deadlines for integrating demand side resources (DSRs) into its real-time ancillary services and energy markets; or (2) provide an explanation of the reasons for any necessary delay, together with an alternative schedule for accommodating DSRs in the Real Time Scheduling (RTS) software.

2. In this order, the Commission accepts for filing NYISO's compliance filing, including NYISO's plan to allow DSR participation in real-time markets in the third quarter of 2007. We find that this filing complies with the requirements of the January 26 Order.

Background

3. NYISO's February 28, 2006 filing is the latest in a series of filings wherein NYISO has reported on its progress on integrating DSRs into the RTS markets. Beginning with an order issued on August 10, 2004, the Commission expressed its support for enhanced DSR participation and required NYISO to file a report on the status

of inclusion of DSRs in the RTS markets within 120 days after NYISO's RTS markets began operation.¹

4. NYISO submitted a status report on June 1, 2005, expressing its commitment to working with stakeholders to explore methods of permitting DSR participation. Multiple Intervenors² filed comments challenging NYISO's lack of progress toward greater DSR participation in NYISO's RTS markets and on projects to integrate DSRs into NYISO's RTS markets. Multiple Intervenors requested that the Commission direct NYISO to modify its RTS software to allow DSR participation in at least a portion of NYISO's RTS markets.

5. On July 13, 2005, the Commission's staff issued a deficiency letter to NYISO requiring NYISO to provide more information on the status of demand side participation. On August 12, 2005, NYISO submitted additional information that identified several proposals that NYISO was considering to implement greater DSR participation. NYISO advised the Commission that integrating DSRs into the RTS markets would require changes to the RTS software, and committed to file a status report with the Commission by October 1, 2005, after further discussions with its stakeholders.

6. On October 3, 2005, NYISO filed a status report indicating that it had not completed the analysis required to determine a method for DSR participation. On November 2, 2005, Multiple Intervenors filed comments renewing its request that the Commission establish firm deadlines for NYISO to complete the work necessary to include DSRs in NYISO's RTS markets. Multiple Intervenors asked the Commission to require NYISO to modify the RTS software by June 30, 2006, to allow the participation of DSRs who are ready to use NYISO's existing bidding procedures, and to require NYISO to eliminate all of the RTS software barriers and make all needed tariff modifications by June 30, 2007, to allow full DSR participation.

7. The January 26 Order required NYISO to comply with the timetable suggested by Multiple Intervenors. Alternatively, the order gave NYISO the option, if it did not believe it could comply with these deadlines, to file a detailed explanation of the reasons why it was unable to comply with this schedule, together with an alternative schedule for allowing DSR participation.

¹ *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 (2004). NYISO implemented the RTS markets on February 1, 2005.

² Multiple Intervenors comprise an unincorporated association of approximately 55 large industrial, commercial and institutional end-use consumers located throughout New York State.

8. On February 28, 2006, NYISO filed a response to the January 26 Order asking the Commission to allow it to implement a DSR real-time market integration project in the third quarter of 2007. NYISO's response explains that necessary software changes would be made as part of a first set of updates to NYISO's settlement system replacement (SSR) project, the first phase of which is scheduled to be implemented in the second quarter of 2007.

9. NYISO states that the SSR project will require that the existing settlement codes be "frozen" (*i.e.*, allowing no coding changes) beginning in the early summer of 2006. NYISO claims that it would not be practical to try to complete a DSR project prior to the code freeze, and that the best option is to introduce DSR integration as soon as possible after SSR deployment.

10. NYISO further explains that, because its proposal would allow DSR participation in the real-time markets on the same terms as generators, it does not intend to provide DSR participants a selective bidding option to provide ancillary services without also participating in the real-time markets as power suppliers. According to NYISO, the implementation of an "ancillary-services only" bidding option for DSRs would require a fundamental market design change, would take substantially longer to develop, and would require NYISO to forego other major projects. NYISO also states that an ancillary-services only bidding option would reduce the efficiency of its co-optimized security-constrained economic dispatch system and of its markets. NYISO states that most of its shareholders support this conclusion. Further NYISO states that it believes that DSRs will be able to structure their supply offers in a way that does not expose them to an unacceptable risk of being required to make unwanted real-time energy reductions.

Notice of Filing and Responsive Pleadings

11. The Commission issued notice of NYISO's February 28, 2006 filing, with interventions and protests due on or before March 21, 2006. On March 21, 2006, New York Transmission Owners³ filed comments supporting NYISO's proposal. On that same date, Multiple Intervenors filed a protest. On April 5, 2006, NYISO filed an answer to Multiple Intervenors' protest, and on April 11, 2006, Multiple Intervenors filed a reply.

12. New York Transmission Owners support NYISO's request for an extension of the date when NYISO is required to implement a DSR real-time market integration project,

³ The New York Transmission Owners are comprised of: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Long Island Power Authority; New York Power Authority; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation.

and agree that introducing DSR integration after SSR deployment is the most viable option. New York Transmission Owners request that the Commission require NYISO to engage in a stakeholder process concerning the development and implementation of the DSR integration project. They recommend that the integration project's details be finalized by the third quarter of 2006 to allow a 12-month window for implementation.

13. Multiple Intervenors ask the Commission to order NYISO to: (1) require the integration of DSRs in the RTS market by no later than September 30, 2007; (2) allow full participation by all DSRs; and (3) file periodic progress reports. Multiple Intervenors agree that NYISO should be permitted to finish the SSR project before implementing a DSR program, but renew their concern that NYISO's implementation of a program that will not permit DSRs to bid selectively to provide ancillary services will exclude many DSRs from the RTS program.

14. Multiple Intervenors state that although some of its members can participate in the RTS program under NYISO's proposal, others lack the technical or human resources necessary to undertake the sophisticated bidding that would be necessary to minimize their risk of getting picked to provide energy in the RTS program. As a result, if the NYISO's position is adopted, it is likely that many DSRs would be excluded from the RTS program. Moreover, Multiple Intervenors submit that applicable reliability rules prohibit DSRs from supplying synchronized reserves or regulation service in NYISO's ancillary services market. Thus, Multiple Intervenors submit that it is unreasonable to require DSRs to bid to provide services that they lack the lawful capacity to provide.

15. In its answer, NYISO asserts that there is little support among the stakeholders for selective bidding for DSRs, and that most, with the exception of Multiple Intervenors, would prefer that NYISO expend its resources on other projects. NYISO states that it determines which resources will provide energy and ancillary services through a single integrated process, which results in a lower total cost for energy and ancillary services than would result under a non-integrated system. NYISO asserts that its approach also results in improved coordination between the day-ahead and real-time markets and fewer software interaction problems than it experienced prior to RTS.

16. NYISO challenges Multiple Intervenors' assertion that DSRs lack the technical skills to engage in the bidding proposed by NYISO. According to NYISO, the bidding option is neither sophisticated nor complicated and allows a DSR to achieve the desired selectivity by including a very low minimum generation offer price together with a high incremental energy offer price and thereby minimize the risk of being picked to provide energy in the RTS market.

Discussion

A. Procedural Matters

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to protests or an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers submitted by NYISO and Multiple Intervenors, because they have provided information that has assisted us in our decision-making process.

B. NYISO's Compliance Filing

18. In its compliance filing, NYISO states that it is committed to bringing greater DSR participation to its markets and has worked to find a solution that meets DSRs' needs without compromising the benefits of NYISO's single, co-optimized economic dispatch. NYISO states that its Price Responsive Load Working Group has met several times to review the requirements for both a RTS-based program and a possible non-RTS system that would allow DSRs to participate in a 30-minute program modeled on NYISO's Installed Capacity Special Case Resources program. However, NYISO states that stakeholders are opposed to further development of a non-RTS program and NYISO has abandoned pursuit of this project. NYISO states that it has been unable to determine a way to create a separate DSR bid without having an adverse impact on the efficiency and integration of their markets.

19. NYISO proposes a new Demand Side Ancillary Services Program (DSASP) to allow DSRs to participate in the real-time and ancillary services markets in the same way as generators do. NYISO claims that DSRs will be able to structure their offers in a way that will protect them from the risk of being required to make unwanted real-time energy reductions. NYISO proposes to integrate the development and release of DSASP with the phased implementation of SSR.

20. NYISO recognizes that changes to the reliability rules established by the New York State Reliability Council (NYSRC) and the Northeast Power Coordinating Council (NPCC) are necessary to permit DSRs to provide Ten-Minute Synchronized Reserves (TMSR) and Regulation Service in NYISO's markets. NYISO states that it has discussed this issue with Multiple Intervenors and has pledged to do everything it can to persuade the NYSRC and the NPCC to change their reliability rules so that DSRs may provide TMSR and Regulation Service in NYISO-administered markets.

21. NYISO reiterates its concern that it not be held to a firmly established timetable and urges the Commission to not adopt the Multiple Intervenors' recommendations. Alternatively, NYISO requests that, if the Commission decides to alter NYISO's market design to allow selective bidding, the Commission should allow NYISO and its

stakeholders to work out the details and develop a timetable for moving forward. Finally, NYISO requests that it not be burdened with filing monthly progress reports, as requested by Multiple Intervenors. NYISO avers that it will work diligently to implement DSR integration in whatever form is adopted. NYISO states that it will keep its stakeholders fully informed about the progress of this project and, if they are not satisfied, they can bring their concerns to the Commission's attention. However, NYISO asks that, if the Commission determines that reporting is needed, reports be filed on a quarterly, and not a monthly, basis.

22. Multiple Intervenors reply that they recognize that changes must be made to the reliability rules and RTS software before DSRs can provide TMSR and Regulation Services. However, Multiple Intervenors ask the Commission to order NYISO to amend its tariffs now so that the necessary tariff requirements will be in place as soon as changes to the reliability rules are made and as soon as the RTS software is modified to permit DSR participation.

23. The Commission will not, at this time, establish a date certain by which NYISO must integrate DSRs into its real-time energy and ancillary services markets. Rather, we will accept NYISO's plan to provide for DSR participation in real-time markets in the third quarter of 2007. The Commission agrees with NYISO that it should first complete the SSR project, the first phase of which is scheduled to be implemented in the second quarter of 2007, before it implements DSR participation. In this regard, we will require NYISO to file a status report in this proceeding by September 29, 2006, along with quarterly updates thereafter, informing the Commission of the expected date of completion of the SSR project and on its progress in achieving that result. These status reports must provide a detailed explanation of the reasons for any delay. These status reports are to be filed with the Commission for informational purposes only and will not be viewed as requiring any Commission action.

24. While we are sympathetic to Multiple Intervenors' desire to have the ability to bid selectively, we agree with NYISO that this should not come at the expense of compromising the benefits of the single co-optimized economic dispatch available under RTS. NYISO has committed to continue working to find a solution that meets the needs of DSRs and notes that, until it does, its current bidding procedures should allow DSRs to participate in the RTS markets and also provide them with the ability to greatly reduce the chances that they would be required to provide energy if they do not wish to do so.⁴ While this approach may not resolve all of Multiple Intervenors' concerns with regard to selective bidding, we find this option to be reasonable in the interim, as it will allow participation in the markets by DSRs without compromising the benefits of RTS.

⁴ NYISO has offered to assist DSRs in using the bidding strategy. NYISO Answer at 6.

25. The Commission finds Multiple Intervenors' request that NYISO be ordered to amend the tariff language now to reflect future changes to reliability rules and its RTS software to be premature. NYISO cannot be expected at this time to know what tariff changes may be necessary as a result of future reliability and software changes, and Multiple Intervenors have not made the requisite showing that NYISO's existing tariff is unjust and unreasonable and therefore warrants such changes. We remind NYISO, however, that it will need to file all necessary tariff changes to integrate DSRs into its markets, including those relating to synchronized reserves and regulation, at least 60 days prior to their proposed effective date.

26. Accordingly, we find that NYISO's February 28, 2006 compliance filing satisfactorily complies with our directive in the January 26 Order, and we will accept it for filing. As explained above, we are requiring NYISO to make an informational filing by September 29, 2006 reporting the expected date when the SSR project will be implemented, with detailed quarterly reports thereafter, reporting NYISO's progress on its efforts to integrate DSRs into the RTS markets, and explaining any slippage in the schedule.

The Commission orders:

(A) NYISO's February 28, 2006 compliance filing is hereby accepted for filing.

(B) NYISO is hereby directed to make an informational filing on the implementation of its settlement system replacement, to be filed by September 1, 2006, along with detailed quarterly updates thereafter until such time as NYISO has successfully integrated DSRs into the RTS markets, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.