

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

New York Independent System Operator, Inc.           )           Docket No. ER04-230-009

**MOTION OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC. FOR  
LEAVE TO SUBMIT A RESPONSE AND RESPONSE  
TO PROTESTS AND COMMENTS**

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Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213, the New York Independent System Operator, Inc. (“NYISO”), by counsel, respectfully requests leave to submit a response, and submits this response, to the protests and comments (collectively, the “Comments”) filed in response to NYISO’s March 9, 2005, Request for Expedited Action and for Waivers (“NYISO Request”).

**I. Request for Leave to Submit Response**

The NYISO recognizes that the Commission’s rules of Practice and Procedure do not permit answers to protests and that the Commission generally discourages responses to answers and protests. Here, however, the NYISO respectfully submits that this Response will help to clarify complex issues, provide additional information that will assist the Commission, correct inaccurate statements, and otherwise help in the development of the record in this proceeding. The NYISO has prepared and filed this Response for these limited purposes.<sup>1</sup> The NYISO respectfully requests that the Commission exercise its discretion and accept this Response.

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<sup>1</sup> See, e.g., *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was “helpful in the development of the record . . . .”); *New York Independent System Operator, Inc.*, 91 FERC ¶ 61,218 at 61,797 (2000) (“Initial Order”) (allowing “the NYISO’s Answer of April 27, 2000, [because it was deemed] useful in addressing the issues arising in these proceedings . . . .”);

(continued...)

## II. Response

### A. Summary of Response

As the NYISO Request pointed out, the NYISO's Standard Market Design version 2 software ("SMD2") "represents a significant enhancement in the overall efficiency of the [NYISO-administered] markets."<sup>2</sup> None of the Comments dispute this assessment. At issue in this proceeding is a limited, unavoidable process necessary to correct unanticipated errors in this highly sophisticated and otherwise effective software. These corrections are necessary not to change rates, but rather to ensure that market-based rates in NYISO-administered markets conform to the Commission-approved NYISO tariff.

The Comments effectively acknowledge that waivers are appropriate for the correction by April 15 of prices through March 7. As will be shown below, none of the Comments alleges facts that would rule out further unanticipated implementation problems in the first summer under SMD2. Thus, practical reality dictates—and no Comment provides a basis for ignoring—the need for the limited and reasonable process proposed in the NYISO Request, in order to fix errors that may come to light during the first summer of SMD2 operation.

The NYISO shares the desire of all parties and the Commission for price certainty, and submits that the SMD2 software is a significant improvement over the prior systems for determining accurate and timely market prices, notwithstanding that a few problems have surfaced in the implementation process. The NYISO respectfully requests the Commission to

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*Central Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,138 at 61,381 (1999) (accepting prohibited pleadings because they helped to clarify the issues and because of the complex nature of the proceeding).

<sup>2</sup> NYISO Request at 2.

grant the limited tariff waivers requested in the March 9 filing to ensure that prices conform to the SMD2 market improvements.

**B. The Comments Recognize that a Waiver is Appropriate for Prices Through March 7 to be Corrected and the Process Completed by April 15**

Almost all the Comments consent to, or do not oppose, the NYISO's request for authorization to complete price validations and corrections for the period through March 7 by not later than April 15.<sup>3</sup> These Comments implicitly recognize the importance of ensuring that prices conform to the NYISO's filed and approved tariffs, and that the price corrections do not involve changing or setting rates in any way, but only conforming them to the tariff specifications. Software implementation errors that affect the pricing process required by the tariffs and therefore depart from the tariff requirements create prices that are unlawful under Section 205 of the Federal Power Act and must be corrected.<sup>4</sup> Indeed, such price corrections are an important part of providing price certainty, since errors that cause prices to deviate from the prices required under the tariffs and the prevailing market conditions can only make prices less predictable.

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<sup>3</sup> Protest of the Independent Power Producers of New York, Inc. (consenting); Comments and Limited Protest of AES Eastern Energy, L.P. (consenting); Comments of PSEG Energy Resources & Trade LLC (consenting); Motion to Intervene One Day Out-of-Time and Comments of DC Energy, LLC (no objection); Motion of Coral Power L.L.C. to Intervene Out of Time and Comments (no objection); Motion to Intervene and Protest of FPL Energy LLC (no objection); Motion to Intervene of Edison Mission Energy and Edison Mission Marketing & Trading, Inc. (no position on the merits); Motion to Intervene and Comments of the New York Municipal Power Agency (no objection).

<sup>4</sup> See, e.g., *NRG Power Marketing, Inc. v. New York Independent System Operator, Inc.*, 91 FERC ¶ 61,346 at 61,166 (2000).

The Temporary Extraordinary Procedures (“TEP”) in the NYISO’s tariffs provide the procedural means for correcting Market Implementation Errors.<sup>5</sup> The only intervenor to oppose the waiver of the TEP procedures to permit the initial period of price corrections by April 15 is the Mirant Parties.<sup>6</sup> The Mirant Parties’ repeated assertions that the TEP are part of the tariff begs the question of whether a limited waiver of the tariff requirements is appropriate during the initial implementation of the SMD2 software—a highly complex new information, scheduling and dispatch system. The issue, therefore, is *not* whether the TEPs are or are not part of the tariff. Rather, it is whether a temporary waiver of a limited portion of certain TEP provisions is appropriate. The NYISO Request demonstrated the need for this limited waiver, and the Mirant Parties come forward with no facts showing the contrary.

**C. A Limited Extension of the Deadline for SMD2 Price Validation and Correction During the Coming Summer is Appropriate**

Allowing additional time for price validation and correction for the period through March 7 is appropriate given the unexpected nature of the implementation errors that surfaced for the first time once SMD2 was placed into actual operation. No Comment shows that the implementation errors could have been anticipated. Many of the comments object to the requested waiver to extend the normal time period for price corrections through the Summer 2005 Capability Period. None of them, however, addressed the problems for which the waiver was intended.

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<sup>5</sup> “Market Implementation Error” is defined as “a flaw in the design or implementation of software that results in LBMPs or other calculated prices that do not accurately reflect the application of the [rules and procedures for the operation of the NYISO markets].” NYISO Market Administration and Control Area Services Tariff (“Services Tariff”), Attachment E § A, OATT Attachment Q § A.

<sup>6</sup> See Protest of the Mirant Parties.

None of the Comments shows facts that would rule out the potential for the stresses of high load operations in the coming Summer Capability Period to reveal additional implementation errors in the SMD2 software.<sup>7</sup> More generally, the Comments do not come to grips with the unprecedented sophistication of the SMD2 software, its simultaneous optimization of several energy and ancillary services markets, its extensive interaction with other systems, and the need to gain experience with those interactions as they affect the price validation and correction process, particularly in the first summer under SMD2. The Comments do not recognize that a critical and potentially time consuming part of the price correction process is the identification of prices that may need correction, and determining whether an error in fact occurred. This price validation process is particularly critical in periods, such as in the summer, when prices can reach legitimately high levels that should not be corrected. The Comments simply do not provide any reason to conclude that it will always be possible to identify prices that may need correction, and make all necessary price corrections, during the upcoming summer within the normal five day period. Thus, the Comments do not contradict the prudence of a limited extension of the period for correcting Real-Time Market prices during the coming summer.

Similarly, as noted in the NYISO Request, certain forecasting errors were encountered shortly after the SMD2 system started, which in turn required the operators to make compensating “load bias” adjustments in order to minimize Area Control Error (ACE) deviations. The effects of any such adjustments need to be understood and taken into account in the price validation and correction process. It is difficult if not impossible to say today what

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<sup>7</sup> Unless otherwise specified, capitalized terms used herein have the meanings specified in the NYISO’s Services Tariff.

complications may arise in the price correction process if unexpected problems during the high-stress summer months result in similar operator interventions.

The foregoing concerns are all compounded by the fact that price validation and correction under the innovative and far-reaching SMD2 improvements do not benefit from the accumulated experience gained in dealing with price verification under the less sophisticated pre-SMD2 regime. None of the Comments deny that SMD2 is novel and highly complex, and that NYISO's accumulated price validation and correction experience under the legacy system is of limited usefulness under SMD2. Moreover, while some experience was gained in the market trials last summer, the final software was not then in place, and the market trials did not and could not replicate actual market conditions.

Dozens of Market Participants participate in the NYISO's governance process. Yet, the Mirant Parties are alone in claiming that the extension requested by the NYISO requires a tariff revision filing rather than a request for a waiver. This ignores the limited nature of the NYISO's request. SMD2 implementation does not require a permanent change in the TEP procedures, but only a limited extension of the normal TEP price correction period for the 2005 Summer Capability Period. Thereafter, price validation and correction under the TEP process would revert to the normal five day time period. Given that the Summer Capability Period begins May 1 and ends on September 30, and the limited nature of the NYISO's requested relief, a tariff waiver rather than a tariff revision is appropriate in these circumstances.

Several Comments suggest that any extension of time for SMD2 price corrections should be the subject of case-by-case requests for waivers filed during the normal five day price

correction period.<sup>8</sup> As a practical matter, this procedure would serve to create further price uncertainty. First, a decision whether to seek such a waiver would have to be made within the five day window, with the NYISO as a practical matter having to err on the side of filing a waiver request even though completion of the validation process may show that a correction is not needed. The NYISO would be under an imperative to file for a waiver before it could determine whether a correction is necessary. Second, the probability of additional waiver filings would give rise to an open-ended, uncertain, and protracted administrative process. By contrast, NYISO proposes a certain, ten day period for completing price corrections. It is important to note that NYISO intends to complete as many SMD2 price corrections as possible in five days or fewer, as has indeed been the case with most price corrections since March 7. Under these circumstances, the NYISO respectfully submits that setting a specified and certain extension for the SMD2 price validation and correction during the coming summer is the preferable course.

**D. The NYISO will Continue to Consult with the Stakeholders and Request Necessary Authorizations from the Commission**

As noted in the NYISO Request, the NYISO is fully aware of, and shares, the Market Participants' desire for price certainty. At the same time, the Comments implicitly if not explicitly recognize that there is a need for prices to conform accurately to the tariffs, and that there is a balance that needs to be struck between price certainty and price accuracy. The need to strike the right balance makes it imperative that there be a continuing dialog between the NYISO and the stakeholders on price correction issues, and the NYISO is committed to seeing that this

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<sup>8</sup> Protest of the Mirant Parties, at 11-13; Comments of PSEG Energy Resources & Trade LLC, at 2; Protest of Independent Power Producers of New York, Inc.; Motion to Intervene and Protest of FPL Energy, LLC; Comments and Limited Protest of AES Eastern Energy, L.P., at 2, 11; Motion of Coral Power, L.L.C. to Intervene Out of Time and Comments, at 5-7; Motion to Intervene One Day Out-of-Time and Comments of DC Energy, LLC, at 5-8.

takes place. In the meantime, the limited adjustment in the balance between price certainty and accuracy proposed in the NYISO Request is appropriate in the circumstances facing the NYISO, the stakeholders and the New York markets this first summer under SMD2.

#### **E. The NYMPA Comments Are Not Relevant to This Proceeding**

NYMPA says that it does not oppose the NYISO Request, but then goes on to raise issues that go well beyond the SMD2 price correction waivers raised by the NYISO. Those issues are outside the scope of this proceeding and should be dismissed.

### **III. Request for Waiver of Paper Service Requirements**

The NYISO also seeks waiver of the paper service requirements described in 18 C.F.R. § 385.2010 (2004). The NYISO is electronically serving a copy of this filing on the official representative of each of its customers, on each participant in its stakeholder committees, on the New York State Public Service Commission, and on the electric utility regulatory agencies of New Jersey and Pennsylvania. In addition, the complete filing has been posted on the NYISO's website at [www.nyiso.com](http://www.nyiso.com). The NYISO will also make a paper copy available to any interested party that requests one.

Good cause exists to grant this waiver because it is urgent that the Commission be able to act quickly. Use of electronic service will get copies to all stakeholders faster than any other method. Moreover, the NYISO has now used electronic service methods a number of times, and there have been no complaints from stakeholders. Electronic service is also consistent with the Commission's notice of proposed rulemaking on electronic service methods.<sup>9</sup>

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<sup>9</sup> See *Electronic Notification of Commission Issuances*, Notice of Proposed Rulemaking, 107 FERC ¶ 61,311 (2004).

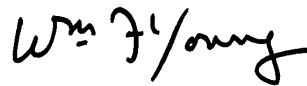


**IV. Conclusion**

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission grant the waivers requested in the NYISO Request.

Respectfully submitted,

NEW YORK INDEPENDENT  
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April 5, 2005

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