

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

H.Q. Energy Services (U.S.), Inc.,)	Docket Nos. EL01-19-002
)	EL01-19-003
v.)	
)	
New York Independent System Operator, Inc.)	
)	
PSEG Energy Resources & Trade LLC)	EL02-16-002
)	EL02-16-003
v.)	
)	
New York Independent System Operator, Inc.)	

**RESPONSE OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
TO REQUEST FOR CLARIFICATION OF NOTICE GRANTING EXTENSION
OF TIME OF INDEPENDENT POWER PRODUCERS OF NEW YORK, INC.**

Introduction

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) hereby submits its limited answer to the Request for Clarification of Notice Granting Extension of Time and Answer of Independent Power Producers of New York, Inc. in Opposition to Motions for Stay, filed in these dockets on April 12, 2005 (“IPPNY Filing”). The IPPNY Filing seeks affirmative relief from the Commission. The Commission’s Rules of Practice and Procedure therefore permit the NYISO to respond to those portions of the IPPNY Filing.²

¹ 18 C.F.R. §§ 385.212 and 385.213 (2004).

² Rule 213(a)(3) of the Commission’s Rules of Practice and Procedure allows an answer to filings seeking affirmative relief from the Commission. 18 C.F.R. § 385.213(a)(3).

To the extent that the NYISO's limited answer is not expressly permitted under Rule 213, the NYISO respectfully requests leave to submit a limited answer to provide information that will be useful to the Commission in response to the IPPNY Filing, and to correct certain inaccuracies in the IPPNY Filing.³

Background

On April 4, 2005, the Commission granted the NYISO's request for an extension of time⁴ to file the refund report required by the Commission's March 4, 2005, Order on Remand in the above dockets.⁵ The NYISO's request for an extension of time made clear that the extension was necessary in order to determine revised prices for May 8 and 9, and that those prices would then have to be processed through the NYISO billing system to determine refunds.⁶ The IPPNY Filing

requests the Commission clarify that although an extension of time was granted (i) the NYISO must issue refunds based on recalculated prices on or before June 2, 2005, in addition to issuing its refund report, (ii) that only those price corrections that were previously identified in May, 2000 by the NYISO as necessary can be applied to derive the recalculated prices, and (iii) that if the NYISO is unable to perform these price corrections in a manner consistent with

³ 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) (allowing "the NYISO's Answer of April 27, 2000, [because it was deemed] useful in addressing the issues arising in these proceedings . . ."); *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).

⁴ *H.Q. Energy Services (U.S.), Inc. v. New York Independent System Operator, Inc.*, Notice of Extension of Time, Docket EL01-19-002, *et al.* (Apr. 4, 2005).

⁵ *H.Q. Energy Services (U.S.), Inc. v. New York Independent System Operator, Inc.*, 110 FERC ¶ 61,243 (2005).

⁶ Motion of the New York Independent System Operator, Inc. for Extension of Time to Submit Refund Report, at 3 and n.8.

the software and market rules in effect in May, 2000 and in time to issue refunds and file a refund report by June 2, 2005, the Commission should require the NYISO to issue refunds in time to file a refund report by June 2, 2005, based on the original clearing prices that were posted on May 8 and 9, 2000.⁷

As discussed further below, relief requests (i) and (iii) are neither feasible nor appropriate, and relief request (ii) is moot. Therefore, the IPPNY Filing should be denied.

A. Issuing Refunds On or Before June 2, 2005 Is Not Feasible

As the IPPNY Filing acknowledges, the Commission has granted an extension of time to June 2, 2005, to file a refund report setting forth restated prices for May 8 and 9, 2000. Once those prices have been determined, it would not be possible to do some kind of simple manual calculation of refunds, as IPPNY seems to imply. Refund determinations would at a minimum include calculation of revised energy revenues, redetermination of any opportunity costs payments based on energy prices, redetermination of Bid Production Cost Guarantee Payments, calculation of interest, and netting out of payments already made based on the ELR ECA prices. The only way correct refunds can be determined is to reprocess invoices at the corrected prices through the billing system. After invoices are issued, the Market Administration and Control Area Services Tariff ("Services Tariff") specifies that amounts payable to the NYISO are due on the first business day after the 15th of each month, and any amounts payable by the NYISO are to be transferred on the first business day after the 19th of each month.⁸

Well before June 2, 2005, the billing system will be fully engaged in processing invoices for May, 2005, in order to meet the June 7 target for distributing those invoices. Thus, the earliest that refunds could be processed in the ordinary course of business, subject to the pending

⁷ IPPNY Filing at 2.

⁸ Services Tariff §§ 7.2(B) and (C).

requests for a stay of refunds, would be in the invoices to be distributed on July 8, with transfer of any refund payments on July 20.

IPPNY's request would require extraordinary and unwarranted acceleration of the billing and settlement process, which is belied by the procedural history of this proceeding. The Commission's March 4 Order on Remand arises from a complaint filed by PSEG Energy Resources & Trade some 18 months after May 8 and 9, 2000.⁹ In addition, entities receiving refunds will presumably be entitled to interest on the refunded amounts at the interest rates set by the Commission. Thus, there is no reasonable basis for imposing an artificial and burdensome processing schedule for the ELR ECA refunds.

B. The May 2000 Memo Identified by IPPNY Lists the Necessary Price Corrections for May 8 and 9

The IPPNY Filing acknowledges that (a) a May 16, 2000, memo from Scott Harvey and Andrew Hartshorn, consultants to the NYISO, identifies a series of corrections that should be applied to the prices for May 8 and 9, 2000, including the ELR ECA price correction, and (b) if the ELR ECA price correction is removed from the list, the other corrections should be made.¹⁰ Without conceding that the May 16 memo is somehow controlling of the corrections that could be made to the May 8 and 9 prices, the NYISO can confirm that the May 16 memo lists the corrections that the NYISO, in consultation with its consultant for price corrections, LECG, LLC, has determined are necessary for the intervals at issue on May 8 and 9, 2000.¹¹ Accordingly, request for relief (ii) in the IPPNY Filing is moot.

⁹ *H.Q. Energy Services (U.S.), Inc. v. New York Independent System Operator, Inc.*, 97 FERC ¶ 61,218 at 61,966 (2001).

¹⁰ IPPNY Filing at 4-5.

¹¹ Messrs. Harvey and Hartshorn are currently employed by LECG, LLC.

C. Basing Refunds on Erroneous Prices is Neither Permitted Nor Warranted

Given the procedural history of this matter, along with the availability of interest on refunds, IPPNY has not shown any urgent need for refunds that would necessitate ignoring price corrections that IPPNY itself acknowledges in its request (i) are appropriate. IPPNY's acknowledgement is a tacit recognition that the corrections are necessary for the May 8 and 9 prices to conform to the NYISO's filed rate. It is well-established that: "To comply with the provisions of the tariff, the [LBMP] formula must be applied as intended using the correct inputs. Any other result is not an approved rate. . . . [C]onsistent with the filed rate doctrine, the ISO has the authority, and is required, to correct all prices that do not reflect operation of the ISO market rules (which are the filed rate)."¹² The IPPNY Filing provides no basis for the NYISO or the Commission to depart from the filed rate in calculating prices for May 8 and 9, 2000.

In addition, IPPNY's request (iii) suffers from the same defect as request (i), in that it is based on the assumption, wholly unsubstantiated, that refunds could be determined outside the billing process, and that refunds for May 8 and 9, 2000, could be processed by the billing system and payable on or before June 2, 2005. Finally, request (iii) is plainly a collateral attack on the extension of time that the Commission has already provided to make the very price corrections that IPPNY now claims should be ignored. Thus, IPPNY's request (iii) has no reasonable basis and should be denied as well.

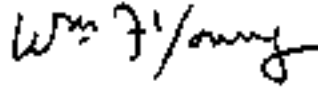
Conclusion

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully requests that the Commission deny the IPPNY Filing in all respects.

¹² *NRG Power Marketing, Inc. v. FERC*, 91 FERC ¶ 61346 at 62165 and 62166 (2000).

Respectfully submitted,
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April 27, 2005

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service lists compiled by the Secretary in Docket Nos. EL01-19-002, EL01-19-003, EL02-16-002, EL02-16-003, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 2010.

Dated at Washington, D.C., this 27th day of April 2005.



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