100 FERC ¶ 61, 213
UNITED STATES OF AMERICA
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. ER00-3591-008 and
ER00-1969-009
and
Docket Nos. ER00-3591-010 and
ER00-1969-012

ORDER ON COMPLIANCE FILINGS

(Issued August 27, 2002)

1. By this order, we accept for filing, to be effective September 30, 2001, the revised tariff sheets submitted by the New York Independent System Operator, Inc. (NYISO) on December 21, 2001 in this proceeding to comply with the Commission's June 29, 2001 order[1] ("June 29 Order") implementing locational reserves pricing (LRP). We find NYISO 's proposed for determining how the Bid Production Cost Guarantee (BPCG)[2] payments will be allocated to be acceptable at this time, and that it will benefit customers by clarifying market pricing.

Background

2. In its June 29 Order the Commission accepted, subject to modification, tariff sheets submitted by NYISO to implement LRP, effective September 30, 2001. NYISO first proposed LRP as a short-term measure to improve reserves markets operations, the chief objective of which was to

[1]95 FERC ¶ 61,484.

[2]BPCG payments are the way that the NYISO guarantees suppliers that if a unit is committed, the unit will not incur a net loss, provided the unit's operation and schedule meet 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.

ensure that reserves suppliers would not be able to exercise market power to set reserves prices state-wide during constrained periods. The LRP methodology establishes three markets[3] within the NYISO control area in order to calculate prices for spinning reserves, non-spinning reserves, and 30-minute operating reserves. Reserves suppliers in each of the three markets will receive the same clearing price for periods of no constraint; during constrained periods, suppliers on Long Island, an area of high concentration, will not receive a market-clearing price higher than those cleared in the rest of the central-east area market. In that order, the Commission also accepted that Long Island customers would pay for BPCG payments made to Long Island resources to meet Long Island problems. However, the Commission agreed that the proposed tariff language for allocating BPCG payments gave NYISO too much discretion in determining when the BPCG costs would be allocated to Long Island customers and when those costs would be allocated state-wide. Therefore, NYISO was directed to file revised tariff sheets to set forth specific criteria for allocating these costs.

3. Second, the Commission found that, because LRP implementation was adequately covered in NYISO's Services Tariff, "the inclusion of detailed and complex calculations" was not necessary. Instead, the Commission ordered NYISO to reference the technical bulletin detailing LRP example calculations in its Services Tariff.[4]

4. Finally, the Commission found that NYISO need not revise its Services Tariff to make clear that if the Long Island Reserve Constraint is binding but the Central East Reserve Constraint is not binding, reserve suppliers east and west of the Central East Constraint shall receive the same payments. The Commission agreed with NYISO's clarification that this was consistent with the proposed tariff language's intent and was also satisfied with NYISO's plans to clarify the point in a technical bulletin and, subsequently, a NYISO manual.

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[3] The markets are: (1) the area west of the central-east constraint; (2) the area east thereof, excluding Long Island; and (3) Long Island.

[4] June 29th Order at 6.

Instant Filings

A. July Compliance Filing

5. On July 30, 2001, NYISO submitted revisions to its Services Tariff, Rate Schedule 4, ("July 30 Filing") in order to comply with the directives outlined in the Commission's June 29 Order. NYISO proposed a test to determine under which circumstances the costs of BPCG payments would be allocated to Long Island customers and under which circumstances these costs would be allocated to customers state-wide. (These costs consist of the net incremental BPCG payments to units on Long Island, that are committed for Energy or Operating Reserves.) NYISO proposed to identify days when locational reserve constraints cause Long Island units to be committed that otherwise would not have been committed. Incremental BPCG payments would be allocated to customers on Long Island should such commitments cause BPCG payments to increase by an amount equal to or greater than the threshold for market power mitigation of guarantee payments specified in the NYISO Market Mitigation Measures.[5]

B. December Out of Time Filing

6. On December 21, 2001, NYISO filed its Request for Leave to Submit Compliance Filing Out of Time and Compliance Filing on Locational Reserve Pricing ("December Filing"). In that filing, tariff revisions that had been inadvertently omitted from the July 30 Filing were submitted. NYISO's tariff revisions include establishing BPCG payments criteria for suppliers of 30-minute reserves to Long Island. NYISO had previously submitted revisions (in the July 30 Filing) to describe the test for ten-minute spinning and non-spinning reserves suppliers, but inadvertently omitted these tariff revisions with regard to 30-minute reserves. Also included in the December Filing were revisions to NYISO's Services Tariff to reference Technical Bulletin #80–"Locational Reserve Availability Clearing Prices"[6]–which NYISO states the Commission had directed in the June 29 Order. Technical Bulletin #80 describes NYISO's LRP calculation methodology and is based on the "LRP

[5]As formulated in section 3.2.1 of Attachment H to NYISO's Services Tariff: Mitigation Measures shall not be imposed unless conduct "substantially increases guarantee payments to participants in the New York Electric Market." The NYISO mitigation threshold for changes in guarantee payments shall be "an increase of 200 percent in guarantee payments to a Market Party for a day."

[6]In the June 29 Order Acting on Compliance Filing, the Commission agreed with NYISO that the posting (on its website) of a technical bulletin based on a LRP White Paper was preferable to including "detailed and complex calculations in the tariff"(page 6). This was based on the assumption that the tariff sufficiently describes the manner in which LRP will be implemented.

White Paper," filed as Attachment IV in NYISO's "Combined Compliance Filing and Report" submitted September 1, 2000 in Docket Nos. ER00-1969-000, et al.

Notice of Filings, Interventions, Comments and Protests

7. Notice of NYISO's filing, in Docket Nos. ER00-3591-008 and ER00-1969-009 et al., was published in the Federal Register, 66 FR 41,868, with interventions, comments or protests due on or before August 20, 2001. Motions to intervene and comment were timely-filed by New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation and Niagara Mohawk Power Corporation (collectively the "Companies"), and by the Members of the Transmission Owners Committee of the Energy Association of New York State (Member Systems).

8. Notice of NYISO's filing in Docket Nos. ER00-3591-010 and ER00-1969-012 et al., was published in the Federal Register, 67 FR 580, with interventions, comments or protests due on or before January 11, 2002. A Motion to intervene was timely-filed by Reliant Resources, Inc. ("RRI") and protests were timely-filed by Member Systems and the Companies.

9. On February 15, 2002, NYISO submitted a limited answer to the Companies' motion (of January 11th) to intervene and protest out of time. On February 28, 2002, the Companies filed an Opposition to the Request of NYISO for Leave to Submit Limited Answer Out of Time to the Companies Motion to Intervene and Protest. According to the Companies, NYISO's answer is defective because: it is untimely; merely restates NYISO's case, and is inconsistent with the objective of the changes to ensure that BPCG payments made to Long Island resources to meet Long Island-specific problems would be recovered from Long Island customers exclusively.

10. Protests, comments, and answers in both proceedings are addressed below.

Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[7] the timely, unopposed motions to intervene submitted by RRI, the Companies and Member Systems to make them parties to the proceeding(s) in which they intervened.

[7] 18 C.F.R. § 385.214 (2001).

12. Rule 213 (a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.213 (a)(2) (2000), prohibits the filing of an answer to a protest unless otherwise permitted by the decisional authority. We find NYISO's limited answer to the Companies' motion to intervene and protest neither contributes any new information nor adds substantively to the discussion. Therefore, the Commission rejects NYISO's limited answer.

B. Criteria for Allocating BPCG to Long Island Customers

13. The Companies assert that NYISO has failed to comply with the Commission's directive regarding the BPCG payments in that NYISO's proposed tariff language failed to properly allocate costs associated with BPCG payments for Long Island locational operating reserves problems exclusively to Long Island customers. The Companies argue that, in the June 29 Order, the Commission did not grant to NYISO the license to develop a method of allocating costs that "bore no relationship to cost causation." The Companies argue that when Long Island locational operating reserve problems are the cause of a material price effect or change in BPCG costs (to Long Island suppliers), those costs should be covered solely by Long Island customers. The Companies argue that NYISO's proposal, without explanation, links BPCG costs to "an unrelated market mitigation threshold."[8] Companies conclude by requesting that the Commission reject the proposed tariff changes and direct NYISO to incorporate explicit language stating that Long Island customers would cover costs to meet Long Island-specific operating reserves problems except where NYISO was able to: (1) justify, on a case by case basis, an alternative allocation methodology; (2) quantify the costs; and (3) provide an opportunity to comment to those who will bear the costs. Essentially, the Companies are primarily concerned with non-Long Island costumers subsidizing Long Island-specific BPCG costs.

14. With regard to NYISO's Second Compliance Filing, the Companies argue, as they did in their initial intervention of August 20, 2001, that NYISO has not complied with the Commission's directive that only Long Island customers bear the costs of BPCG payments made to suppliers meeting Long Island-specific problems.

Commission Ruling

[8] Motion to Intervene and Comment (Aug. 20, 2001) at 5.

15. The June 29 Order directed NYISO to file revised tariff sheets setting forth the criteria for when BPCG costs will be allocated exclusively to Long Island customers and when they will be allocated to all customers.[9] NYISO's proposal to allocate BPCG costs exclusively to Long Island customers when commitments of Long Island units cause BPCG payments to increase by an amount equal to or greater than the existing threshold for market power mitigation contained in NYISO's tariff complies with the Commission's directive. The Commission did not order a "case by case" approach as the Companies contend. Moreover, we find NYISO's proposal to link the allocation of BPCG costs to Long Island customers based on whether such costs exceed the mitigation threshold to be reasonable. The purpose of the LRP proposal is to ensure that reserve suppliers, especially those in Long Island, would not be able to exercise market power to set reserves prices state-wide during constrained periods.[10] Therefore the proposal reasonably links the allocation of BPCG to Long Island-only customers when such costs exceed the existing market mitigation threshold. Therefore, we approve NYISO's proposal.

16. The Commission is approving NYISO's allocation proposal in part because during the September 30, 2001 - June 10, 2002 period NYISO examined, NYISO invoked the mechanism during only one hour to allocate costs to Long Island.[11] NYISO should report back to this Commission in 90 days from the date of issuance of this order to state its state-wide BPCG costs during this summer period, the BPCG payments made to Long Island generators, and whether it has allocated costs to Long Island, and if so, when and what costs. NYISO should also provide data and workpapers concerning the timing and amount of the BPCG costs incurred to meet Long Island requirements. If substantial costs are allocated under this mechanism, that would indicate that substantial costs are being incurred to provide Long Island customers with electric service that are not being recovered from Long Island customers. If this occurs, NYISO should, together with its report, file a revised mechanism that ensures that costs incurred to provide reserves for Long Island customers are allocated to them since they cause the incurrence of such costs. The Commission's initial approval of NYISO's mechanism was based on NYISO's statements that costs incurred to provide

[9] See New York Independent System Operator, Inc. 95 FERC ¶ 61,484, page 5.

[10] See New York Independent System Operator, Inc 91 FERC ¶ 61,218.

[11] See NYISO's June 20, 2002 and July 17, 2002 responses to staff's data request.

service to Long Island would be minimal. If they become significant, NYISO's LRP cost recovery mechanism should be revised.

C. References to Technical Bulletin #80

17. In its December Filing NYISO proposes tariff modifications in order to reference Technical Bulletin #80 in its tariff.

18. Member Systems protest these modifications and Member Systems contend that, by referencing Technical Bulletin #80, NYISO is in fact incorporating the Technical Bulletin into its Services Tariff–an action the June 29 Order did not authorize–and giving the Technical Bulletin the "same force and effect as any other provisions" of the Service Tariff. Member Systems explain that this incorporation is changing NYISO's tariff and thus should have be made in a "separate filing under Section 205 or 206 of the Federal Power Act." Member Systems are concerned that NYISO would have the ability to amend or modify the bulletin, and therefore the Services Tariff, without complying with NYISO, Commission or FPA requirements. Member Systems also argue that the proposed changes were not reviewed through NYISO's governance process.

19. The Companies argue that Technical Bulletin #80 fails to describe how BPCG payment costs are allocated to customers. According to the Companies, in the bulletin, NYISO presents overly simplified examples and provides no formula to allocate costs, which, according to the Companies, affords NYISO too much discretion in allocating costs. The Companies suggest that though the Commission (in the June 29 Order) did not require NYISO to include such a formula in its OATT, the Commission "must have intended" such a result, which should now be included in the technical bulletin. The failure to produce a more robust technical bulletin was seen by the Companies as NYISO "continuing to use its subjective discretion."

Commission Ruling

20. The June 29 Order directed NYISO to update its tariff sheets to reference the technical bulletin, and subsequent manual, regarding LRP example calculations. The Commission finds that the language concerning Technical Bulletin #80 in the revised tariff sheets does not meet the directive in the June 29 Order. As Member Systems assert, rather than simply reference Technical Bulletin #80, NYISO proposes to incorporate into its tariff that technical bulletin. The examples described in that technical bulletin should not be in NYISO's tariff. With regard to the concerns of the Companies regarding the content of the bulletins, the Commission did not intend in the June 29 Order for the technical bulletin to be revised to cover BPCG payment cost allocation, as the Companies argue. Rather, the Commission required a change in NYISO's tariff but did not require changes to the technical bulletin. As stated in the June 29 Order, the referenced technical bulletin is only intended to "describe the operation of LRP rules" for how reserve prices are determined when constraints are binding.

21. Further, the Commission believes that, with the adoption of the tariff language proposed by NYISO in the subject compliance filings (as revised by this order above), NYISO's Services Tariff contains the required complete statement of NYISO's rates, and terms and conditions of service concerning this matter. Such language, as opposed to examples of how the provision would operate, are properly set forth in NYISO's tariff rather than in Technical Bulletin #80. As proposed in its compliance filings, NYISO's Services Tariff[12] would state, with regard to the allocation of BPCG costs, that

> On any day that Long Island reserve constraints are binding, the NYISO shall allocate to Long Island customers the net incremental bid production cost guarantee charges for Long Island units that have been committed for either Energy or Operating Reserves, if it is determined that a Long Island Reserve constraint caused those units to be committed, and the commitment of those units resulted in an increase in bid production cost guarantee payments by an amount equal to or greater than the threshold for market power mitigation of guarantee payments specified in Section 3.2.1(2) of Attachment H to this Services Tariff.

The proposed tariff language provides a complete statement of how to allocate costs and does not leave NYISO with excessive discretion concerning how to implement this tariff provision. In addition, the Companies have not specified why an additional formula is required to allocate these costs. Accordingly, the Commission will not require either NYISO's tariff or Technical Bulletin #80 to be modified as requested by the Companies.

The Commission orders:

(A) The Commission accepts the tariff sheets tendered by NYISO in its December filing to be effective September 30, 2001 as proposed.

(B) Within 90 days of the date of issuance of this order, NYISO shall file the report and any additional filing, as discussed in the body of this order.

(C) Within 15 days of the date of issuance of this order, NYISO shall file revised tariff sheets to reflect the changes required, as discussed in the body of this order.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,

[12] At section 4.0 of Schedule 4.

Deputy Secretary.