

125 FERC ¶ 61,005
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 2, 2008

In Reply Refer To:
New York Independent System
Operator, Inc.
Docket No. ER06-185-009

Hunton & Williams LLP
1900 K Street, N.W., Suite 1200
Washington, DC 20006

Attention: Brian M. Zimmet,
Counsel for New York Independent System Operator, Inc.

Reference: Final Report of Real-Time Guarantee Payment Impact Test Results and
Request for a Limited Tariff Waiver and Confidential Treatment

Dear Mr. Zimmet:

1. On August 4, 2008, the New York Independent System Operator, Inc. (NYISO) filed a report detailing the results of its real-time guarantee payment impact test (RTGP impact test) covering the final period during which NYISO manually corrected Bid Production Cost guarantee payments (Guarantees) in order to apply Tariff-required mitigation and conform to the terms and conditions set forth in its filed rates. NYISO also requests a limited tariff waiver so that it does not have to run settlements for five transactions during August 2007 that it inadvertently missed, totaling approximately \$3,500. Finally, NYISO requests that certain information contained in the report receive confidential treatment pursuant to section 388.112 of the Commission's regulations.¹ NYISO's report is accepted for informational purposes, the requested waiver is granted, and the requested confidential treatment is granted.

2. On November 8, 2005, in Docket No. ER06-185-000, NYISO reported to the Commission that it had discovered that it had made errors in computing Guarantees going back to June 1, 2002. These errors occurred while NYISO was implementing the new mitigation measures provisions in its Market Administration and Control Area Services

¹ 18 C.F.R. § 388.112 (2008).

Tariff (Services Tariff). In brief, certain aspects of mitigation implementation did not conform to the applicable tariff requirements as they were changed from time to time. According to NYISO, the implementation errors for the most part affected Guarantee compensation of certain units in the New York City zone, which has been designated as a Constrained Area for market mitigation purposes. NYISO proposed settlement corrections to bring it into compliance with its tariff.

3. On January 6, 2006, Staff issued a data request to NYISO. The data request directed NYISO to: (1) state the total amount of money being paid to generators and the impact of such payments on load-serving entities in New York; (2) describe the discussions NYISO had with affected market participants to date and the status of those discussions; (3) describe how payments to generators will be calculated; and (4) describe NYISO's plans for preventing the recurrence of errors and to improve pricing and billing accuracy. On February 6, 2006, in Docket No. ER06-185-001, NYISO filed its answer to Staff's data request.

4. The Commission subsequently issued several separate orders. The April 2006 Order granted NYISO a tariff waiver that allowed NYISO to make stated settlement corrections and billing adjustments to Guarantee calculations and compensation for the period from June 1, 2002 through January 31, 2005. For the period from February 2005 through April 7, 2006, for which NYISO had not yet determined the net settlement charges for generation, the Commission granted NYISO's request to: (1) correct errors in its computation of Guarantees; (2) implement the mitigation measures in its Services Tariff; and (3) not recompute locational-based marginal prices (LBMPs). In addition, the April 2006 Order included a requirement that NYISO provide the Commission with details for the settlement corrections, consistent with the Staff data request.

5. The November 2006 Order accepted NYISO's compliance filing to the April 7, 2006 order for February 2005 guarantees, and NYISO's use of the RTGP Test for properly computing the Guarantees from February 2005 through April 2006.

6. The December 2006 Order denied separate requests for clarification or rehearing filed by NRG Companies (NRG)² and by NYISO. Additionally, the Commission granted NYISO's request for additional time to complete corrections to its Guarantees, conditioned on NYISO filing an informational report with the Commission on or before February 1, 2007, setting forth a specific timetable for completing all tasks associated with completing the computation and implementing the billing corrections.

² The NRG Companies are NRG Power Marketing, Inc., Arthur Kill Power, LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Owego Harbor Power LLC.

7. Subsequent orders accepted reports, and granted confidential treatment, for various time periods. These reports were accompanied by workpapers on NYISO's RTGP impact test for the various periods.

8. This filing reflects the revised mitigation determined by NYISO for transactions during the April 7, 2006 to October 31, 2007 time period. NYISO states that it inadvertently missed mitigating five transactions during August 2007, totaling approximately \$3,500 in aggregate, the largest of these instances resulted in \$1,386.89 of missed mitigation. NYISO states that all of the revised data has been shared with the affected generators, and those generators have had a full opportunity to consult with NYISO on the revised mitigation.

9. NYISO requests waiver of its tariff to excuse it from having to rerun the settlements for these five transactions. Citing our standard in *ISO New England*,³ NYISO asserts the waiver request is (1) in good faith, (2) of limited scope, (3) remedying a concrete problem, and (4) free from undesirable consequences. In support, NYISO states (1) "its failure to apply guarantee payment mitigation to five transactions over an eighteen month period was entirely inadvertent," (2) "would apply only to five transactions, and to mitigation totaling only \$3,500," (3) "would allow the NYISO to bring the transactions during the period April 7, 2006 to October 31, 2007 to a close, and focus its limited resources on proper implementation of mitigation measures for prospective transactions," and (4) because of the small dollar figure, waiver "would not unduly harm third parties."⁴

10. NYISO also requests, "pursuant to section 388.112 of the Commission's regulations ... that the Commission treat as privileged and confidential Generator reference levels and daily and hourly details of proposed RTGP mitigation."⁵ NYISO states, "[r]evealing either a Generator's reference levels or its RTGP mitigated Bids would allow competing Market Participants to determine a Generator's marginal costs," which would "cause competitive harm to that Generator." "Reference levels and mitigation data," NYISO asserts, generally "have been designated by Market Participants and by the NYISO as confidential."⁶ Given this understanding that Generator reference levels and the details of RTGP mitigated Bids are sensitive information, NYISO asserts

³ See *ISO New England, Inc.*, 117 FERC ¶ 61,171, at P 21 (2006).

⁴ NYISO August 4, 2008 Filing at 4.

⁵ *Id.* at 3, citing 18 C.F.R. § 388.112.

⁶ *Id.* at 3.

that it is mandated by the definition of confidentiality in section 2.8 of the NYISO Market Monitoring Plan,⁷ the provisions of Article 6 of the Services Tariff,⁸ and the specific Code of Conduct rules in section 4, Attachment F of the NYISO Open Access Transmission Tariff to keep this information confidential.

11. Public notice of NYISO's filing was issued on August 6, 2008 with interventions and protests due on or before August 25, 2008. Notice of the filing was published in the *Federal Register*, 73 Fed. Reg. 47,146 (2008). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. No protests or adverse comments were filed.

12. The Commission grants NYISO a limited waiver to excuse it from having to rerun the settlements for the five transactions referred to in the filing, and NYISO's report is accepted for informational purposes.

13. The Commission grants NYISO's request for confidentiality. However, we remind NYISO that, as required by section 6.3 of NYISO's Services Tariff,⁹ certain Bid

⁷ "Protected Information shall mean information that is confidential, proprietary, commercially valuable or competitively sensitive or is a trade secret, and that has been designated as such in writing by the party supplying the information to the NY ISO or by the NY ISO." NYISO Market Monitoring Plan § 2.8.

⁸ NYISO states that Article 6 of its Service Tariff provides, in relevant part, that NYISO "shall not publish, disclose or otherwise divulge Confidential Information to any person or entity without the prior written consent of the party supplying such Confidential Information." Confidential Information is defined in Services Tariff section 2.25 as information "that has been designated by a Customer to be proprietary and confidential, provided that such designation is consistent with the ISO Procedures, the ISO Services Tariff, and the ISO Code of Conduct."

⁹ Section 6.3 of NYISO's Services Tariff states: "Pursuant to Commission requirements, the ISO shall make public Bid information from the Energy, Capacity and Ancillary Services markets (but not the names of the bidders making these Bids) six-months after the Bids are submitted. The ISO shall post the data in a way that permits third parties to track each individual bidder's bids over time. Prior to such disclosure, Bid information submitted to the ISO by Market Participants shall be considered Confidential Information."

information (but not the names of the bidders) must be made public six months after the bids were submitted.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.