

UNITED STATES OF AMERICA88 FERC ¶ 61,228
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
Vicky A. Bailey, William L. Massey,
Linda Breathitt, and Curt Hébert, Jr.

New York Independent System Operator, Inc.

Central Hudson Gas & Electric
Corporation
Consolidated Edison Company of
New York, Inc.

Long Island Lighting Company
New York State Electric & Gas
Corporation

Niagara Mohawk Power Corporation
Orange and Rockland Utilities, Inc.

Rochester Gas and Electric
Corporation

and
New York Power Pool

Docket No. ER99-3508-000

ORDER APPROVING TEMPORARY PROCEDURES, AS MODIFIED

(Issued September 15, 1999)

This order addresses proposals submitted by the Member Systems of the New York Power Pool (NYPP) (collectively Member Systems or Transmission Providers)¹ and the Independent System Operator (New York ISO or ISO) (collectively Applicants) to address market design flaws,

¹The seven public utility Member Systems are Central Hudson Gas & Electric Corporation (Central Hudson), Consolidated Edison Company of New York, Inc. (ConEd), Long Island Lighting Company (LILCO), New York State Electric & Gas Corporation (NYSEG), Niagara Mohawk Power Corporation (Niagara Mohawk), Orange and Rockland Utilities, Inc. (O&R), and Rochester Gas and Electric Corporation (Rochester G&E). The eighth Member System, the New York Power Authority, is not a public utility. For the ease of reading, rather than distinguishing repeatedly between the two, we shall refer to all eight together as Member Systems or Transmission Providers.

transitional abnormalities and severe operational difficulties which may occur when the New York ISO commences operations. The order accepts the proposals, as modified, as described below.

Background

On June 30, 1998, the Commission conditionally authorized the establishment of an ISO by the Member Systems in order to restructure the wholesale electric industry in the state of New York.² The June 30 order found that the proposal submitted by the Member Systems satisfied the 11 ISO principles enunciated in Order No. 888.³ Subsequently, the Commission issued orders approving the New York ISO Open Access Tariff, New York ISO Services Tariff and other agreements related to the implementation of the New York ISO.⁴

In the instant filing, the Applicants explain that the New York ISO plans to commence operations when it is confident that the ISO systems will operate as intended. However, because of the inability to test those systems on a real-time basis under all of the circumstances under which the systems will operate, the Applicants are proposing that the Commission approve Temporary Extraordinary Procedures and a Cutover Plan in order to provide the New York ISO authority to address unanticipated problems. These proposals are discussed further, below.

The Applicants state that approval of these procedures is in the public interest and is necessary to effectuate the transition from the NYPP to the New York ISO. They add that the application should be approved so that the ISO may begin operations to ensure non-discriminatory transmission access, to promote the efficient use of the transmission facilities in New York and to ensure the reliable operation of the Member Systems' transmission systems.

Temporary Extraordinary Procedures

²Central Hudson Gas & Electric Corp., et al., 83 FERC ¶ 61,352 (1998), order on reh'g, 87 FERC ¶ 61,135 (1999) .

³See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540, FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998).

⁴Central Hudson Gas & Electric Corp., et al., 86 FERC ¶ 61,062 (January order), order on reh'g, 88 FERC ¶ 61,138 (1999).

The Temporary Extraordinary Procedures proposed by the Applicants are designed to address unanticipated market design flaws and transitional abnormalities. Applicants state that these procedures are designed to address issues in the first ninety days of ISO operations and will permit the ISO to propose, or in emergencies impose, extraordinary corrective measures. The ISO explains that the Temporary Extraordinary Procedures track NEPOOL's Market Rule 15 which was approved by the Commission.⁵

The filing defines a market design flaw as a market structure, market design, or implementation flaw which would result in market outcomes that would not be produced in a workably competitive market.⁶ A transitional abnormality is defined as a situation in which systemic equipment malfunctions, including telecommunications failures or widespread and massive transmission or equipment outages, prevent the dispatch of the system as intended by the market rules. Moreover, the filing states that market design flaws and transitional abnormalities do not include situations in which market outcomes are a product of relative scarcity or surplus. The Applicants state that the ISO will not intervene in the markets when the market outcomes are the result of competitive conditions.

Under the proposal, in the event of an ISO declaration of a market design flaw or transitional abnormality that would impair reliability or market prices, the ISO may take extraordinary corrective actions. Extraordinary corrective actions are to be imposed only on an interim basis, and only during the time needed to address the design flaw or transitional abnormality or to develop long term solutions on a non-emergency basis. If continuation of corrective measures are needed beyond the interim period, the extraordinary corrective action must be replaced by longer-term corrective measures such as software modifications or revised procedures developed under the ISO agreement processes.

Extraordinary corrective actions consist of the following three actions: (1) request market participants to submit bids that provide greater operating flexibility; (2) recalculate the clearing prices to the level that would have been reached if a market design flaw or transitional abnormality had not arisen; and (3) replace clearing prices with an as yet unspecified alternative, default procedure if the ISO is unable to determine the proper clearing price in (2) above.

In addition, if the ISO believes it will take an extraordinary corrective action, it will post a notice that it is considering an action, and if possible a description of the action, as soon as reasonably practicable on its OASIS and on its website. If posting in advance of the hour is not possible, within

⁵New England Power Pool, et al., 87 FERC ¶ 61,055 (1999) (NEPOOL).

⁶ Examples of market outcomes that are a result of a market design flaw are the following: (1) dispatch of higher-priced resources when lower-priced resources are available; (2) situations in which ISO procedures would create a shortage of supply in actual operations when sufficient supply would have otherwise been available; or (3) the derivation of prices that are significantly inconsistent with actual system operations.

24 hours after the hour in question, the ISO must post a notice of the action, and within 5 calendar days after the hour in question, the ISO must post a description of the action, or it must remove the notice of possible corrective action.

Moreover, in the event the ISO detects the exercise of market power, Applicants request authority to implement market power mitigation. Applicants propose that market power mitigation measures may only be imposed or continued in place under the Temporary Extraordinary Procedures until the market monitoring plan and comprehensive market power mitigation measures have been approved by the Commission.⁷

Cutover Plan

Applicants state that upon commencement of operations of the ISO, a two-week initial operating period will commence. In the event a problem of such severity arises that it warrants a shut-down of the ISO-administered markets and termination of services under the ISO, the New York ISO propose to implement the Cutover Plan. Such a shut-down will be based on the ISO's judgment that there exists unacceptable risk to reliability or unacceptable operation of the ISO administered markets. Such action would be taken by the ISO only in the event that the problem could not be addressed by less drastic measures, such as through the ISO Tariffs or the Temporary Extraordinary Procedures. Applicants state that notice of a shutdown will be posted on the ISO OASIS and website.

In addition, in the event that the ISO determines that the ISO administered markets must be shut down, the system will revert to NYPP operation as it existed prior to the commencement of ISO operations. The details of such a reversion to NYPP operation are currently being discussed with market participants and will likely include the following: (1) provision of transmission service under previously approved company OATTs; (2) transactions between NYPP members on a split-the-savings basis; (3) bilateral transactions under NYPP procedures; (4) NYPP operating procedures restored; and (5) NYPP control of NYPP assets and employees. The Applicants note that previous filings contemplated that the Member Systems' tariffs and the NYPP Agreement would be terminated when the ISO became operational. However, under the Cutover Plan, the Applicants request that those tariffs and agreements be temporarily suspended during the initial operating periods.

If the ISO temporarily shuts down the ISO markets, the Member Systems will assume responsibility for correcting the problems. Once the ISO and Member Systems determine the problems have been corrected, a new two-week initial operating period will with the same procedures followed until a successful completion of an initial operating period.

⁷ Applicants filed market mitigation measures on August 23, 1999, in conjunction with the New York ISO's market monitoring plan which was filed July 26, 1999, in Docket Nos. ER97-1523-010, et al.

Notices of Filing and Interventions

Notice of the filing was published in the Federal Register, 64 Fed. Reg. 38,903 (1999) with protests and motions to intervene due on or before July 27, 1999. Motions to intervene and protests were filed by the parties listed in the Appendix.

On August 10, 1999, the New York ISO filed an answer to the protests.

DiscussionProcedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (1997), the timely, unopposed motions to intervene serve to make the parties listed in the Appendix parties to this proceeding.

The Commission's Rules of Practice and Procedure, 18 C.F.R. 385.213 (a) (2) (1999), do not normally permit answers to protests. Accordingly, we reject the answer filed by the New York ISO.

Temporary Extraordinary Procedures

We accept in part, and reject in part, the Temporary Extraordinary Procedures proposed by the New York ISO, as discussed below. Consistent with our approval of similar procedures in NEPOOL,⁸ we agree that the New York ISO could contain unintended design flaws which may require immediate corrective actions. Like NEPOOL's Market Rule 15, the Temporary Extraordinary Procedures are intended to address such flaws, but they would be limited in duration.

Several intervenors object to the Temporary Extraordinary Procedures on the ground that the proposal lacks specificity. For example, PG&E, Sithe and Citizens Power⁹ state that the corrective actions are too broad and too vague, create uncertainty and provide the ISO with sweeping, unchecked authority. Intervenors also complain that the procedures were not drawn up through a collaborative process, and therefore, should be rejected.

We reject these claims and find that, generally, the Applicants' proposal is a reasonable way to address potential problems that could occur when the New York ISO becomes operational. We are satisfied that the limited duration and the circumstances under which the procedures will be invoked

⁸87 FERC at 61,223.

⁹PG&E Protest at 3-5; Sithe Protest at 8; Citizens Protest at 11-14.

together offer protection to the concerns of the intervenors. Moreover, in NEPOOL, the Commission concluded that any rule changes to correct design flaws over the long run would need to be filed with, and would need to be reviewed by, the Commission in advance of their implementation.¹⁰ Consistent with this determination, we will impose the same requirement on the New York ISO and require that the New York ISO file any longer-term changes with the Commission and receive Commission approval, before they implement the changes.

Moreover, various intervenors urge the Commission to reject the filing and delay the start-up of the ISO, arguing that the implementation of emergency procedures is indicative that the system is not ready to operate.¹¹ We disagree. We believe that these procedures, submitted to address unanticipated startup problems, reflect a reasonable course of action and should be in place at the time operations commence (regardless of when that date is, see supra note 11).

PG&E objects to changing prices by any means, and argues that the possibility for price recalculations creates risks and uncertainty for market participants.¹² PG&E states that the Applicants provide no information regarding the assumptions and procedures that would be used to recalculate prices.

We will accept the ISO's proposal to recalculate prices to the level that would have been reached in the absence of a market design flaw or transitional abnormality. We find this approach reasonable, as the recalculated prices are intended to reflect the prices that would have resulted from the market design we have already approved.¹³

The ISO has not yet specified a particular alternate default procedure for recalculating prices in the event it is unable to determine a market-clearing price. While we believe that the New York ISO should be given flexibility in designing an alternate default procedure for calculating prices which best fits the circumstances as they unfold, we do not agree that the ISO should develop such procedures

¹⁰87 FERC at 61,223-24.

¹¹We note that since the date that interventions were filed, the ISO itself has approved a delay in commencement of operations. Presumably, this delay will allow the ISO to conduct further testing of the system and software prior to commencement of operations, thereby lessening the potential for implementation of any emergency procedures.

¹²PG&E Protest at 7.

¹³We note, however, that the New York ISO has not yet commenced operations and therefore does not have a reference price to aid in its calculation of a market-clearing price. Cf. 87 FERC at 61,223, 61,224 (NEPOOL's Market Rule 15's alternate default procedure – a reference price – to calculate the market clearing price).

without input from market participants. Accordingly, we direct the ISO to consult with market participants as soon as possible in a collaborative process to develop alternative default procedures to be used in the event a market clearing price cannot be determined. In addition, we will require the ISO to post these procedures on its website prior to implementation.¹⁴

As noted earlier, the New York ISO is requesting authority to implement interim market mitigation measures if it detects the exercise of market power.¹⁵ Various intervenors (e.g., IPPNY, Sithe, Citizens Power) object to the ISO's proposal to impose mitigation measures to respond to market power concerns. While we commend the ISO's desire to prevent the exercise of market power, the New York ISO requests authority in this filing to implement market mitigation measures which have not yet been reviewed and accepted by the Commission. We agree with intervenors that approval of unreviewed and unaccepted market mitigation measures at this time may result in the New York ISO implementing unjust, unreasonable and unduly discriminatory measures which may be harmful to market participants. Therefore, at this time, we will reject the ISO's proposal to implement market mitigation measures in response to the exercise of market power; we will not approve the implementation of market mitigation measures until they have been reviewed, and accepted, by the Commission.

Several intervenors also express concern that scarcity may be construed as a market design flaw or transitional abnormality, thereby allowing the ISO to impose corrective actions in a situation where such actions should not apply. We agree with intervenors it may be difficult to determine the difference between market outcomes that result from design flaws, and those that result from scarcity or surplus conditions. We expect that the ISO will take great care to determine the difference in these situations, and will institute corrective actions only in the case of market design flaws or transitional abnormalities. However, to provide market participants some assurance in this regard, we direct the ISO to post on its OASIS and its web site an explanation as to why any corrective actions taken are the result of a market design flaw or transitional abnormality, rather than scarcity or surplus in the market.

Lastly, several intervenors contend that the New York ISO should revise the time frame for posting corrective action on its OASIS to be at least as responsive as PJM or NEPOOL. First, PJM

¹⁴The alternate default procedure would only be in place for the first 90 days of ISO operations and with the passage of time the increasing knowledge and data gained by the ISO should make the need to rely on the alternate default procedure less likely.

¹⁵In the January order, the Commission ordered the New York ISO to file a detailed monitoring and mitigation plan within six months of the order date or commencement of ISO operations, whichever was earlier. As noted, the Applicants filed market mitigation measures on August 23, 1999, in conjunction with the New York ISO's market monitoring plan which was filed July 26, 1999, in Docket No. ER97-1523-010, et al.

does not have a rule, analogous to the NEPOOL or New York ISO rules, that allows the ISO to adjust prices after-the-fact to correct for market design flaws. Second, the time periods proposed by the New York ISO are, in fact, the same as NEPOOL's during its first months of operation.¹⁶ We will accept the New York ISO proposal in this regard, however, in light of the intervenors' concerns, we will direct the New York ISO to revisit the timetable for posting this information within six months from the date of commencement of operations.

Cutover Plan

We accept the Applicants' Cutover Plan, with the modifications discussed below. We find that the plan would give the New York ISO the authority, for a limited duration, to react quickly to unanticipated problems which may threaten system reliability or market operations.

Various intervenors argue that the Cutover Plan lacks specific criteria for shutting down the ISO markets and fails to explain the mechanics of a reversion to NYPP procedures.¹⁷ They argue that the New York ISO fails to explain how day-ahead bid commitments will be treated during a shutdown process, the validity of transmission services submitted to the ISO and responsibility for the operating costs of maintaining the system during the cutover period.

The New York ISO requires flexibility to react quickly to a system-threatening problem and we find that reversion to the tariffs and procedures in effect before ISO operations commenced is a reasonable manner in which to deal with such serious operational problems. Applicants state that they are working on the details of any reversion through a collaborative process with market participants, as discussed earlier. In addition, the ISO is proposing to revert to the NYPP tariffs only when all other possible procedures are inadequate to address such unforeseen problems.

In opposing this proposal, we note the intervenors have failed to show that such a reversion to the NYPP tariffs is anything other than a remote possibility. Moreover, intervenors have failed to demonstrate that the proposed plan, if implemented, would result in the ISO favoring a particular class of participants in the event of a system shut-down. Thus, we are not persuaded by intervenors to reject

¹⁶The New York ISO is committed to posting notice that it is considering a corrective action, and if possible a description of that action, as early as reasonably practicable, and preferably prior to the submission of bids. However, notice must be given no later than 24 hours after the hour in which corrective action is contemplated, and the description must be posted no later than 5 days after the hour in question.

¹⁷See PG&E Protest at 8-11; Sithe at 5-6;

the Cutover Plan based on the lack of specific procedures or any uncertainty that may result from reversion to the NYPP tariffs.

Intervenors contend that the New York ISO committee process should be used to determine when to close the market and revert to NYPP operations, and also how to fix the system, determine when the system is fixed and when to reopen ISO operations. We disagree that the ISO committees are appropriate to evaluate operational issues. Operational issues facing the ISO will often require a quick response and thus should be handled by the ISO itself which can take prompt actions in this regard. However, we find that the ISO committees should be used to resolve financial and contractual problems associated with a reversion to NYPP procedures. Moreover, any other outstanding issues resulting from a reversion to NYPP procedures should be addressed through the ISO's governance and alternative dispute resolution procedures.

With regard to intervenors' concerns that the Member Systems should not be solely responsible for solving any problems that lead to a shutdown of the ISO markets,¹⁸ we will direct the ISO to amend its Cutover Plan so that the ISO, in consultation with the Member Systems, will be responsible for fixing any problems that have led to a shutdown of the ISO markets. We find that, during the initial 2 week operating period and any associated shutdown, the current proposal may leave Member Systems with excessive control of the ISO and its operations.

Other issues

Intervenors request changes to provisions of the ISO Services Tariff, which are not being changed by this filing (e.g. the types of entities eligible to participate in the ISO markets).¹⁹ We reject these concerns as they are beyond the scope of the instant filing.

The Commission orders:

(A) The Temporary Extraordinary Procedures and Cutover Plan are hereby accepted for filing, as modified, as discussed in the body of this order.

(B) Applicants' request for authority to implement market mitigation measures is hereby rejected, as discussed in the body of this order.

(C) The New York ISO will be informed of rate schedule designations at a later date.

¹⁸For example, MI believes that the ISO, in consultation with the transmission owners, should be responsible for fixing the associated problems. See MI Protest at 9.

¹⁹See, e.g., Citizens Power Protest at 17.

By the Commission. Commissioner Bailey concurred with a separate statement attached.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.

Appendix

Aquila Energy Marketing Corp. and Tractebel Energy Marketing, Inc. (Aquila)

Citizens Power, LLC, PECO Energy Company-Power Team, Indeck Energy Services, Inc. and Wisvest Connecticut, LLC (Citizens Power)

Constellation Power Source and Vermont Energy Park Holdings, Inc. (Constellation),
Sithe/Independence Power Partners, L.P. (Sithe)

Coral Power, L.L.C, Electric Clearinghouse, Inc. and Enron Power Marketing (Joint Intervenors)

Duke Energy Trading and Marketing, LLC (DETM)

Independent Power Producers of New York, Inc. (IPPNY)

Multiple Intervenors (MI)

PG&E Generating and PG&E Energy Trading-Power, L.P. (PG&E)

New York Independent System Operator, Inc

Docket No. ER99-3508-000

Central Hudson Gas & Electric Corporation,
et al.

(Issued September 15, 1999)

BAILEY, Commissioner, concurring

Fundamentally, "extraordinary" procedures of the type approved in today's order are not consistent with allowing competitive markets to operate. In my judgment, vesting the ISO with the authority and discretion to recalculate and replace market clearing prices when necessary, in its judgment, to address "market design flaws," "transitional abnormalities," and "severe operational difficulties" will act to undermine confidence and discourage participation in ISO power markets and disrupt the transmission of price signals. Recent experience this past summer, when similar procedures (Market Rule 15) were exercised dozens of time by the New England Power Pool, suggests that the New York procedures may be exercised more often than in truly "extraordinary" circumstances.

Nevertheless, I reluctantly support issuance of today's order. The procedures are temporary (90 days only). The Commission is directing the ISO to consult with market participants to develop alternative default procedures, to be used in the event a market clearing price cannot be determined. The Commission is rejecting the ISO's unfiled and unreviewed proposal to implement mitigation measures if it detects the exercise of market power. And, most significant in my judgment, as the ISO explains to us, today's order is necessary to allow for the commencement of ISO operations this fall.

I do not want to stand in the way of the ISO's start-up. I do hope, however, that the ISO is able to abandon "extraordinary"-type procedures as quickly as possible, in favor of longer-term solutions designed to ensure the reliable and competitive operation of wholesale power markets.

Vicky A. Bailey
Commissioner