

91 FERC ¶ 61, 154
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
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.

New York State Electric and
Gas Corporation

Niagara Mohawk Power Corporation

Orange and Rockland Utilities, Inc.

Rochester Gas and Electric Corporation

New York Power Pool

Docket Nos. ER97-1523-041,
ER97-4234-037,
and OA97-470-039

ORDER GRANTING CLARIFICATION
AND DISMISSING REHEARING AS MOOT

(Issued May 18, 2000)

This order addresses the requests for clarification or, in the alternative, rehearing, filed by the New York Independent System Operator, Inc. (NYISO) concerning the March 29, 2000 order in this proceeding.¹ That order accepted, as clarified and modified, the revised market power mitigation plan that the NYISO filed on December 23, 1999, to comply with the order issued on November 23, 1999.² The March 29 order also denied rehearing of the November 23 order. The NYISO requests the Commission to clarify that

¹90 FERC ¶ 61,317 (2000).

²Central Hudson Gas & Electric Corp., *et al.*, 89 FERC ¶ 61,196 (1999).

the access to the NYISO's models that the Commission provided for³ does not entitle a market party to have access to confidential bid information, to Protected Information (as used in the Market Monitoring Plan), or to other competitively or commercially confidential information, except as, and to the extent appropriate, in accordance with the Commission's requirements for the disclosure of bid information, or in accordance with the protections for Protected Information specified in the Market Monitoring Plan or other NYISO agreements or tariffs. The NYISO also requests the Commission to clarify that access to the NYISO's models "shall not be in derogation of any copyright or other intellectual property rights of third parties or the NYISO in such models." If the Commission denies the requests for clarification, the NYISO seeks rehearing on those issues.

The Commission grants clarification.⁴ The Commission agrees with NYISO that access to the NYISO's models, which are used to assess market performance, should not be a vehicle for market participants to gain access to current or nearly current bid information from their competitors. If a party potentially subject to mitigation needs quantitative information to verify that a threshold has been triggered, however, the ISO may provide the quantitative information in a format that does not divulge the identity of the bidders. In addition, while we expect market participants seeking access to the models to comply in the first instance with any applicable laws concerning copyright or other intellectual property rights, we see no need to further address such issues here; the Commission's responsibilities do not extend to affirmatively enforcing copyright or other intellectual property rights.⁵

³90 FERC at 62,055.

⁴Because the Commission grants clarification, the NYISO's request for rehearing is dismissed as moot.

⁵We expect that the NYISO will allow a market participant access to the models if it wishes to verify the NYISO's calculations when it is subject to mitigation because a mitigation triggering threshold has been exceeded. It may be sufficient to allow a market participant to examine the model's algorithms without allowing examination of the underlying computer code out of concern for any existing intellectual property rights. Requiring the execution of protective agreements may also be appropriate.

The Commission orders:

Clarification is granted, as discussed in the body of this order. NYISO's request for rehearing is dismissed as moot.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.

