91 FERC ¶ 61,338
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Strategic Power Management, Inc.
v. Docket No. EL00-67-000
New York Independent System Operator, Inc.

ORDER ON COMPLAINT

(Issued June 30, 2000)

On April 10, 2000, as amended on May 10, Strategic Power Management, Inc. (Strategic), filed with the Commission a complaint against the New York ISO. Strategic's complaint requests various relief, including that the Commission direct the New York ISO to reinstate cost-based rates for ancillary services and to refund the difference between market-based and cost-based rates billed for ancillary services from November 18 to December 23, 1999; that the New York ISO be held liable for its failure to act sooner in the ancillary service markets; that the New York ISO make more information available to market participants regarding its ancillary service charges; and that the New York ISO reverse its billing of $15 million for cash working capital on a lump-sum basis in 1999 and adopt a reasonable amortization period with appropriate refunds for the 1999 billings. We address Strategic's requests in further detail below.

Notice of Filings and Interventions

Notice of Strategic's original complaint was published in the Federal Register, with protests and motions to intervene due on or before April 21, 2000. Subsequently, on May 10, 2000, Strategic filed an amendment to its complaint. The amendment to the complaint was published in the Federal Register, with protests and motions to intervene due on or before June 12, 2000.

Motions to intervene and protest were filed by EME Homer City Generation, LP, Edison Mission Marketing & Trading, Inc., Orion Power New York GP, Inc., Niagara Mohawk Energy Marketing, Inc., Member Systems, Keyspan-Ravenswood, Inc., PG&E National Energy Group, PG&E Generating and PG&E Energy Trading Power, LP, NRG Power Marketing, Inc., Southern Energy NY Gen, LLC, Southern Energy Bowline, LLC, and Southern Energy Lovett, LLC, Energetix, Inc., and Sithe Power Marketing, LP.

Discussion

Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (1999), the timely unopposed motions to intervene and protest of the entities that filed them serve to make them parties to this proceeding.

Request to Hold the New York ISO Liable and Request for Discovery

Strategic requests that the Commission find the New York ISO responsible under the liability and indemnification section of the New York ISO Market Services Tariff, Article 12, for compensating participants for losses sustained in the markets. Strategic claims that market failure or manipulation in the operating reserves markets was observed beginning in mid-January 2000, but that the New York ISO took no action until March 27. Strategic argues that this failure to act in a timely manner caused load-serving market participants to incur increased costs of $65 million and, moreover, is in direct contravention of the Commission's order accepting the New York ISO Tariff, Central Hudson & Gas Electric Corp, et al (Central Hudson).[1] Therein, Strategic notes, the Commission stated that

> the ISO will be monitoring the markets for market power. In the event that the ISO detects the exercise of market power, it will have the obligation to report this to the Commission and recommend appropriate steps to mitigate the exercise of market power.

Strategic also requests that it be allowed to conduct an independent investigation of the New York ISO ancillary services markets, of the New York ISO and ancillary service providers, including bid data, clearing price, ancillary market modeling, and all communications and correspondence related thereto, whether physical or electronic, from the inception of the New York ISO on November 18, 1999.

Southern Energy and NRG Power Marketing protest Strategic's request concerning discovery into the ancillary services markets. They contend that Strategic has produced no evidence of the exercise of market power, nor in general alleged facts

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[1] 86 FERC ¶ 61,062 (1999)

sufficient to justify an open-ended inquiry into the behavior of every market participant. Southern Energy argues that Strategic seeks to arrogate to itself the market monitoring role that was given to the New York ISO, which already possesses the data necessary to monitor the markets.

In its answer, the New York ISO states that it did respond diligently to problems in the operating reserves markets. The New York ISO notes that the initial indications that the markets were not workably competitive were first noted in late January 2000, not mid-January, as Strategic alleges. The New York ISO argues that it had to proceed cautiously and conduct a careful analysis to ensure that an appropriate determination of the cause was made and that any action taken to correct the problem was not premature, given that the ancillary services markets had only been in operation for 3 months before these indications of potential market problems arose. Furthermore, the New York ISO argues that it had to take into consideration the potential limitations of acting pursuant to its Market Mitigation Measures, which had not yet been approved by the Commission, the Temporary Extraordinary Procedures, which do not include any market mitigation measures, and the billing provisions of Section 7 of the OATT.

We will deny Strategic's request for a ruling on the New York ISO's liability with respect to the rise in prices in the operating reserves markets. On May 31, 2000, in New York Independent System Operator, Inc., et al,[2] we addressed the recent problems experienced in the operating reserves markets. We found that there was sufficient evidence presented to call into question continued reliance on market-based pricing for non-spinning reserves. Although we noted that there were features of the New York ISO operation and design that had exacerbated problems in reserves markets, we did not make a finding that these problems were attributable to the New York ISO. Strategic has presented no new evidence that would justify such a finding here. However, as we have noted previously, our finding does not preclude any party from seeking redress or a finding of liability under the appropriate state court.[3]

We will also deny Strategic's request to initiate an independent investigation. In our May 31 order, we required the New York ISO to establish a timetable for solving design flaws that have already been identified as having contributed to the rise in operating reserves prices. We ordered that the time table and resulting solutions be submitted in compliance filings, at which time we will determine what, if any, further action is required.

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[2] 91 FERC ¶ 61,218 (2000)

[3] Consolidated Edison Company of New York, Inc., 84 FERC ¶ 61,163 (1998)

Request for a Cost-Based Ancillary Service Rate

Strategic requests that its total ancillary service charges be set at $2.22 per MWH, as it was before the start of the New York ISO under its previous transmission provider, Orange & Rockland Utilities, Inc. In addition, Strategic requests that it be refunded all ancillary service charges for the period of November 18, 1999, through December 23, 1999, that exceed $2.22 MWh. Strategic argues that the New York ISO did not have the authority to purchase ancillary services at market-based rates during this period. It claims that the authority for market-based rates commenced on December 23, 1999, the effective date of the Commission's conditional acceptance of the New York ISO market mitigation plan. In support, Strategic notes that the Commission, on November 23, 1999, in New York Independent System Operator, Inc., et al,[4] stated that "our prior approval of market-based rates in the New York ISO markets was premised, in part, on having an effective market monitoring and mitigation plan in place." Thus, Strategic argues, the market-based clearing prices were improper before December 23.

Southern Energy rejects Strategic's contention that the New York ISO did not have the authority to transact at market-based rates. It notes that the Commission had ordered the New York ISO to file a market mitigation plan within six months of its order or New York ISO start-up, whichever was sooner. Southern Energy further argues that Strategic has effectively waived its right to raise this argument, since it waited approximately five months before objecting to the operation of the New York ISO-administered markets.

The New York ISO responds that the New York ISO's only authority was to commence the operation of the New York markets on the basis of the tariffs that had been approved by the Commission, and which specified market-based bidding. The New York ISO claims that in the November 23 Order, while aware that the New York ISO had recently commenced operations, the Commission did not direct the New York ISO to delay the commencement of operations until the mitigation measures were re-filed or in any way require the New York ISO to modify its operations from those that the Commission approved in its January 27[5] and July 29, 1999[6] orders.

The New York ISO further contends that the rate that Strategic paid to Orange & Rockland Utilities, Inc., prior to joining the New York ISO has not been shown to

[4] 89 FERC ¶ 61,196 (1999)

[5] Central Hudson & Gas Electric Corp., et al 86 FERC ¶ 61,062 (1999)

[6] Central Hudson & Gas Electric Corp., et al 88 FERC ¶ 61,138 (1999)

adequately approximate the costs incurred by the mix of generating facilities that are currently providing ancillary services to the New York ISO, as well as the other costs or charges incurred by the New York ISO in providing the package of ancillary services about which Strategic complains.

We reaffirm that we authorized market-based rates in Central Hudson, and that this authority was intended to become effective upon the implementation of the New York ISO. Although a market monitoring and mitigation plan was a factor in our decision to grant market-based rates in this case, we found, in our order on November 23, 1999, that the proposed market monitoring and mitigation plan had unacceptable features and we thus required further revisions. We did not delay the effectiveness of our market-based rate authority for the New York ISO upon the filing of these revisions. Therefore, we reject Strategic's request for a cost-based refund. In addition, we agree with the New York ISO that Strategic has not shown how the price which it paid to Orange & Rockland Utilities, Inc., before the inception of the New York ISO is a reasonable reflection of the costs incurred now. Indeed, Strategic's proposed rate of $2.22 is not a cost-based rate, since it is premised on a cost and service structure that no longer exists. Accordingly, we will reject Strategic's request for a rate of $2.22 for all of its ancillary services.

The Availability of Costing Information for Ancillary Service Charges

Strategic claims that the New York ISO has stopped posting detailed line item data on its web site for costs relating to Schedule 1 of the New York ISO open access tariff. As a result, Strategic claims that the New York ISO has made it difficult for Strategic to verify its costs. Strategic also claims that the New York ISO has not explained how the market-based ancillary service pricing posted on its web site translates into the charges on Strategic’s monthly bill. Thus, Strategic argues that it cannot determine the cost impact of hourly pricing information provided by the New York ISO. It requests that the Commission order the New York ISO to establish a more business-like and consistent monthly charge for Schedule 1, and publish that charge, by month, for the balance of calendar year 2000, as soon as possible. Strategic proposes that the New York ISO be prohibited from varying that charge by more than 10 percent without Commission approval, however we should permit a reconciliation on a six-month basis if such justifiable charges deviate by more than the 10 percent threshold, with an annual reconciliation for costs that fall within the 10 percent threshold. Strategic requests that the New York ISO post its Schedule 1 charges for calendar year 2001 by September 30, 2000. Strategic requests that the New York ISO follow similar procedures for the remaining cost-based charges, Voltage Support Service and Black Start Service. Strategic requests that the New York Power Authority attempt to forecast its transmission adjustment charges[7] as soon as it has enough experience with transmission congestion contract income, but at a minimum require that its base costs be posted with any statements of limitation or potential changes. Strategic also requests that the Commission order the New York ISO to immediately open its market-based ancillary charge calculation to Strategic and to post the cost effects of the day-ahead and real-time market in a daily basis on its web site simultaneously or within a few hours of the posting of market clearing prices.

Southern Energy supports Strategic's requests for more information, noting that this would enhance the development of competitive electric markets. Southern Energy notes that providing greater information to market participants when it is readily available and not commercially sensitive is always desirable. It claims that this action will help to create a more robust market, since market participants will be able to better take account of changes as they move forward. Additionally, providing market participants with the ability to translate market-clearing prices into actual billing amounts provides a useful check on the New York ISO's efforts at producing reliable results. Southern Energy also states that such a measure also allows market participants to better plan for cost effects.

In its answer, the New York ISO concedes that, in February and March, it did not post on its web site the same level of detail for Schedule 1 as it posted for November through January. However, the New York ISO claims that the level of detail was less because the Schedule 1 charges for those two months were a substantial credit to participants instead of a charge. The New York ISO argues that despite the level of detail, Strategic would always have been able to calculate its Schedule 1 costs by multiplying the posted Schedule 1 rate by the amount of its load.

With regard to the level of information provided for other ancillary service charges, the New York ISO acknowledges that market participants are not easily able to confirm their charges for Regulation, Reserves and Black Start services. It states that it is currently working through its Billing and Accounting Working Group to devise an acceptable presentation of the data required to provide market participants with sufficient detail on these markets. The New York ISO has stated that in the meantime, all settlements and clearing prices are subject to audit should any market participant need to check the accuracy of billing determinants and settlement data.

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[7]The NTAC allows the New York Power Authority to recover the cost of NYPA transmission facilities that are used to serve load located in service areas of other transmission providers located within the New York ISO.

The New York ISO acknowledges that Schedule 1 includes charges for the New York ISO's cost of operations, including costs that are relatively easy to predict. The New York ISO notes that costs relating to scheduling, billing and dispatching transmission service communications, transmission system studies, engineering services, record keeping, and training are costs from its annual budget, and do not vary over the course of the year. However, the New York ISO notes that Schedule 1 also includes charges that are impossible to predict, such as: (1) "bid protection guarantee" costs (costs associated with the differences between the amounts bid by generators that have been committed and scheduled by the New York ISO to provide energy and ancillary services and the actual revenues received by these generators); and (2) residual adjustment costs, which include congestion over or under-collections, losses adjustments, and energy residuals, positive or negative, from flows from neighboring systems.

The New York ISO states that it understands the importance of price certainty for participants, but contends that some amount of volatility at this early stage of the New York ISO operations cannot be avoided. Because the markets are new, the New York ISO currently has a limited ability to predict market behavior and estimate resulting costs. Moreover, the New York ISO lacks operating history data from which to project its costs in the future.

We note that, as the New York ISO has stated in its answer, several of the costs included in the Schedule 1 charge are difficult to predict on a monthly basis. For example, bid protection guarantee costs are directly related to the bidding behavior of market participants and thus reflect a vast multitude of individual economic decisions, and residual adjustment costs by their nature are designed to account for power flows and congestion levels which are inadvertent. For these reasons, a charge which includes bid protection guarantee costs and residual adjustment costs will be variable and subject to fluctuation regardless of the best estimates of the New York ISO. We find it unreasonable to require the New York ISO to predict these charges, given its short operating history, with the degree of accuracy which Strategic requests. Moreover, we note that Schedule 1 charges are simply a pass-through of costs incurred by the market participants and do not represent the level of discretion in their calculation by the New York ISO as Strategic's complaint suggests. Accordingly, we reject Strategic's requests to prohibit the New York ISO from varying its Schedule 1 charges by more than 10 percent absent a 205 filing. However, we note that the amount of information which the New York ISO provides to market participants regarding Schedule 1 and the other ancillary service charges are limited at this point. We find it reasonable that a market participant should be able to verify their costs and explain how such costs will translate to their monthly bills. We note that the New York ISO has committed to create a suitable presentation of this information for market participants and we will require the New York

ISO to submit this presentation in a filing with the Commission. We expect that the New York ISO's presentation will include a method or procedure through which market participants may accurately project their future charges, based on their current consumption of ancillary services. With its direct relationship to the ancillary service markets in New York, we find that it is appropriate for the New York ISO to set forth this presentation within the compliance filing we required the New York ISO to make in New York Independent System Operator, Inc., et al.[8] Therein, we directed the ISO to file its solution to the problems in the operating reserves markets by September 1, 2000, to become effective November 1, 2000.

The New York ISO's Working Capital Account Collection

Strategic claims that from November 18, 1999 through December 31, 1999, the New York ISO collected the entire amount of anticipated cash working capital, $15 million, from market participants. Strategic argues that collecting the entire amount of capital in such a short time is unreasonable. In addition, it argues that the collection will subsidize market participants who enter the market after January 1, 2000, who have not contributed to the collection. Strategic requests that the Commission order the New York ISO to return to Strategic its pro rata share of cash working capital collected in that billing, which is approximately $55,000. Strategic proposes that, as an alternative method of financing its working capital needs, the New York ISO establish a line of credit with the associated financing costs included in Schedule 1 to be paid by all market participants.

The New York ISO responds that, on November 10, 1999, the New York ISO filed a proposed tariff change that explicitly included cash working capital in the New York ISO's Schedule 1 charges. On January 12, 2000, in New York Independent System Operator, Inc., et al,[9] the New York ISO states, the Commission accepted the New York ISO's proposal to change its tariff, explaining that the New York ISO was not adding costs, just adding greater specificity to the existing formula.

We will reject Strategic's request for an alternative method of financing the New York ISO's working capital account. In our January 12 order, we approved the New York ISO's inclusion of working capital as a line item of its Schedule 1 charges. We have found it appropriate that the New York ISO collect its operating costs from market participants and Strategic has presented no evidence that would justify a different finding here.

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[8] 91 FERC ¶ 61,218 (2000)

[9] 90 FERC ¶ 61,015 (2000)

The Commission orders:

(A) Strategic's complaint is granted in part and denied in part as discussed in the body of this order.

(B) On or before September 1, 2000, the New York ISO must make the filing discussed in the body of this order, to become effective no later than November 1, 2000.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.