

UNITED STATES OF AMERICA 92 FERC ¶ 61,051
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.

Docket No. ER00-2624-000

ORDER ON TARIFF FILING

(Issued July 25, 2000)

As discussed in this order, we extend the Temporary Extraordinary Procedures (TEP) until October 31, 2000 and require the New York Independent System Operator, Inc. (NYISO) to file a report by September 1, 2000.

I. Background

The TEP are designed to address unanticipated market design flaws and transitional abnormalities which occur during the start-up period of NYISO. The Commission first approved the TEP for NYISO for a period of 90 days from commencement of operations on November 18, 1999, until February 16, 2000.¹ Subsequently, in its March 29, 2000 Order, the Commission extended the TEP authority for an additional 90 days expiring on May 16, 2000.²

The TEP define a "Market Design Flaw" as a market structure, market design or implementation flaw giving rise to situations in which market conditions or the application of Independent System Operator Procedures would result in inefficient markets or prices that would not be produced in a workably competitive market. The TEP identifies possible indications of market design flaws to include:

¹New York Independent System Operator, Inc., 88 FERC ¶ 61,228 (1999).

²New York Independent System Operator, Inc., 90 FERC ¶ 61,320 (2000) (March 29 Order).

- the dispatch of higher priced resources in the market when resources with lower priced bids are available and not selected to operate, and there is no valid reason for not operating the lower-priced resource;
- situations in which approved procedures would inadvertently create a shortage of supply in actual operations when sufficient supply would have otherwise been available;
- the derivation of prices in the price model that are significantly inconsistent with the actual operation of the system.

The TEP define a "Transitional Abnormality" as a situation in which a systemic equipment malfunction, including telecommunications failures or widespread and massive electric transmission or equipment outages, would prevent the dispatch of the system as contemplated by the market rules.

The TEP specifically provide, however, that market design flaws and transitional abnormalities do not include situations in which prices are a product of efficient competition in times of relative scarcity or surplus.

The TEP also provides procedures for NYISO to take Extraordinary Corrective Action (ECA) to correct a market design flaw or a transitional abnormality. The types of action that NYISO can take under the ECA are limited to the following, which are listed in order of least restrictive to most restrictive. NYISO must first use the least restrictive action that it reasonably concludes is sufficient to address the problem on an interim emergency basis:³

- Notify the market participants that a shortage of one or more energy or other products may develop and request that market participants submit bids which provide greater operating flexibility for such products;
- If possible with reasonable certainty, recalculate LBMPs or other clearing prices as they should have been but for a transitional abnormality or market

³The Commission's March 29 Order on the TEP lists the following ECAs that were approved: (1) the ability to post day-ahead market results as late as 1 PM on the day prior to the dispatch day; (2) the ability to recalculate prices in the event of a market design flaw or transitional abnormality; and (3) authority to ask units providing Installed Capacity (ICAP) to provide day-ahead market bids up to fifteen days into the future with the understanding that these ICAP units may change their day-ahead market bids at any time up to 5 AM on the day prior to the dispatch day.

design flaw, and substitute the recalculated LBMPs or other clearing prices for the prices reflecting the transitional abnormality or market design flaw.

II. Related Filing

On April 24, 2000, in Docket No. EL00-70-000, as amended May 10, 2000, New York State Electric & Gas Corporation (NYSEG) filed a complaint under section 206 of the Federal Power Act (FPA) against NYISO requesting that certain restrictions be imposed in NYISO's markets during the summer period. NYSEG maintains that restrictions are necessary due to the existence of several implementation problems and market flaws. Various measures and restrictions have been proposed in that proceeding, including a "price screening" procedure that would be administered by NYISO and incorporated into its TEP. In addition, the proposal provided for the extension of NYISO's TEP until October 31, 2000.

Subsequently, on May 26, 2000, NYISO filed the instant filing to extend its TEP authority, which we address below. The instant filing does not incorporate the price screening proposal referred to in the NYSEG complaint.

III. Instant Filing

In its May 26, 2000 filing in Docket No. ER00-2624-000, NYISO requests that the Commission extend its TEP until October 31, 2000, and waive the Commission's notice requirements in order to grant an effective date of May 17, 2000. NYISO states that it invokes its authority under the TEP only as necessary, and primarily to provide corrected prices that are consistent with its Commission-approved tariffs and market rules.

NYISO cites two examples of software problems causing incorrect prices for which it needs the continued use of its TEP authority. First, incorrect prices result when combustion turbines are operating, but not all units are needed to meet load. Large multiple units are currently modeled in the software as single units. Corrections to the software, which NYISO is currently revising, must be made to allow individual combustion turbines to be modeled and dispatched separately.⁴ Second, incorrect prices

⁴In its Answer filed June 23, 2000 in NYSEG's complaint proceeding in Docket Nos. EL00-70-000 and 001, NYISO explains that it is in the process of negotiating with turbine owners, that it has been successful in establishing smaller blocks of bidding units (from 160 MW blocks down to 40 MW blocks) with two of the three owners, and that it
(continued...)

relating to ramp rates for dispatched steam units result when the amount of out-of-merit dispatched generation is large. NYISO states that it is working with its consultants to develop additional dispatch logic to correct this problem.

IV. Notice of Filings, Interventions, Protest, and Comments

Notice of NYISO's TEP filing in Docket No. ER00-2624-000 was published in the Federal Register, 65 Fed. Reg. 35,917 (2000), with protests, answers, and motions to intervene required to be filed on or before June 16, 2000. Timely motions to intervene were filed by entities listed in the appendix to this order.

V. Discussion

A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2000), the timely, unopposed motions to intervene of the entities listed in the appendix to this order serve to make them parties to this proceeding. At this early stage of the proceeding, given the lack of undue prejudice or delay and given the parties' interests, we also find good cause to grant under Rule 214 the unopposed, untimely motions to intervene in these proceedings.

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 deny waiver of Rule 213 with regard to the response filed by NYISO on June 26, 2000. The response of NYISO presents no new facts for us to consider.

B. Comments

1. Support for Extension of TEP

Several parties, including the Members of the Transmission Owners Committee of the Energy Association of New York State (Member Systems), the Consumer Protection Board of New York (CPBNY), the New York State Public Service Commission (New

⁴(...continued)
expects to reach a similar agreement with the third owner in the near future.

York Commission), Electric Power Supply Association (EPSA), Keyspan-Ravenswood, Inc. (Ravenswood), NRG Power Marketing, Inc. (NRG) and Public Service Electric and Gas Company (PSE&G), either support or do not oppose the extension of the TEP. These intervenors state that NYISO is still in a transition stage and has yet to operate during peak summer conditions. Therefore, they claim it is important that NYISO have all the necessary tools at its disposal to deal with any unforeseen situations. They submit that NYISO should correct the conditions that necessitate the need for the TEP by the end of the extension period.

The New York Commission requests that the Commission extend the TEP authority to situations where market power (economic and physical withholding) exists, and can be used effectively because of market design and implementation flaws.

EPSA does not oppose the extension but states that authority under the TEP should be exercised cautiously in limited situations where other remedies are unavailable and should not be routinely used to disrupt markets through after-the-fact price adjustments.

Ravenswood does not oppose the extension but suggests that the Commission allow any party to seek Commission rescission of the extended TEP authority upon a showing that: (1) it has been applied in a non-judicious manner that has interfered excessively with the competitive market or (2) progress has been made on system improvements sufficient to obviate the need for the TEP authority.

NRG⁵ does not oppose the extension of the TEP provided: (1) it is only used in limited circumstances as prescribed; and, (2) is not extended beyond October 31, 2000.

Similarly, PSE&G requests that the Commission impose a firm timetable on NYISO to address problems. It also argues that the Commission should draw the line and inject meaning into the term "temporary" by denying any further extensions beyond October 31, 2000.

2. Opposition to Extension of TEP

⁵In its May 25, 2000 comments filed in Docket No. EL00-70-000, NRG opposed the extension of the requests to extend the TEP. However, in its comments filed June 16, 2000 in Docket No. ER00-2624-000, NRG stated that it would not oppose the extension for the upcoming summer period.

Several intervenors oppose the extension of the TEP, or offer alternatives if the Commission should decide to grant the extension. The alternatives suggested include proposals to: (1) extend the TEP for only 90 days; (2) limit the authority under the TEP to be consistent with ISO New England's Market Rule 15; and (3) condition the extension on NYISO's compliance with reporting requirements and require NYISO to fix the problems by a date certain.

Intervenors including Indeck Companies (Indeck), Southern Energy Bowline, L.L.C., Southern Energy Lovett, L.L.C., and Southern Energy NY Gen, L.L.C. (Southern Parties), PPL EnergyPlus, LLC (PPL EnergyPlus), Merrill Lynch Capital Services, Inc. (Merrill Lynch), Reliant Energy Power Generation, Inc. (REPG) and Morgan Stanley Capital Group, Inc. (MSCG), object to the extension of NYISO's TEP authority. The following reasons were given to support the denial of the proposed extension: (1) the TEP authority were intended as temporary but now has already been extended once and has been in place for six months; (2) a further extension would perpetuate reliance on regulatory intervention by NYISO and hamper development of competitive markets in New York; (3) the Commission has previously refused to extend a similar NEPOOL rule, noting that the rule had been in place for five months and that extending it yet again would "simply perpetuate reliance on intervention in the NEPOOL markets;"⁶ (4) the TEP is overly broad as it permits price corrections due to "market design flaws;" (5) a further extension provides little incentive for NYISO to immediately correct the market flaws that are creating dysfunctional bidding and pricing when it can continue to use after-the-fact price adjustments; (6) NYISO already has the authority to propose "emergency" changes to its tariffs and rules by filing a section 205 application with the Commission and can correct prices including software errors under the filed rate doctrine; (7) the constant readjustment of prices by NYISO whether under the TEP authority or under the filed rate doctrine, violates the intent underlying the filed rate doctrine; (8) the fact that NYISO permitted the TEP to expire on its own terms on May 16, 2000, indicates that NYISO itself has concluded that the TEP procedures are unnecessary; and (9) concerns that the transmission owners that support the extension are serving their interests as buyers of power rather than as transmission providers.

However, should the Commission decide to extend the TEP, Indeck and Southern Parties state that the extension should be for no longer than 90 days. They claim that any longer period would only further harm the competitive market.

⁶Citing ISO New England, Inc., 89 FERC ¶ 61,209 (1999).

Southern Parties further request that the authority under the TEPs be limited as the Commission subsequently limited the authority under ISO New England's Market Rule 15.⁷ First, the Commission should, as it did with Market Rule 15, narrowly limit the grounds for action by NYISO to software errors and input errors. Second, the Commission should direct NYISO to promptly provide notice to market participants that action may be taken pursuant to the TEPs. Southern Parties point out that under Market Rule 15, ISO New England must provide notice no later than 75 minutes after the end of the hour that the market clearing price for that hour is subject to change. By contrast, under NYISO TEPs, NYISO is given until 5 p.m. on the next trading day to post notice that it is examining a specific hour to determine if it is necessary to take Extraordinary Corrective Action. Third, the tariff needs to clarify that actions taken pursuant to the TEP will not result in energy providers receiving a price below their bids, as revised Market Rule 15 expressly provides.⁸ Fourth, Southern Parties contend that if the TEP authority is extended, the Commission should require NYISO to post an explanation of why action was taken.

Merrill Lynch says that should the TEP be extended, the Commission should reject NYISO's proposal requesting a retroactive effective date of May 17, 2000. It states that the Commission should also make NYISO accountable for any price changes necessary where its adjustments are not due to a software limitation or other design flaw by requiring NYISO to refund to the seller or buyer the difference between the original price and the subsequently adjusted price at no expense to end-use customers. In addition, Merrill Lynch requests that we require NYISO to give suppliers a two-day window to withdraw an offer to sell power after NYISO gives notice of a price change.

PPL EnergyPlus requests that if an extension is granted, it be conditioned on NYISO's compliance with strict reporting requirements, the development of a permanent fix by a date certain and limitations on NYISO's authority to readjust prices. It requests that the Commission require NYISO to notify the Commission each time it invokes an ECA under the TEP authority and to submit a detailed report for each incident to the Commission.

3. Commission Decision

⁷Citing ISO New England, Inc., 90 FERC ¶ 61,141(2000) (limiting price corrections to software errors or incorrect data inputs).

⁸Ibid.

We grant the authority requested by NYISO to extend the TEP until October 31, 2000. We believe that it is appropriate to extend NYISO's TEP authority during NYISO's first summer peak period in light of the continued use of the procedures to correct for pricing problems such as those which result from the dispatch of fixed block generation. The TEP procedures also aid NYISO in monitoring and correcting prices that, as a result of software errors, are not consistent with the market design and tariffs approved by the Commission. During the summer period we believe NYISO should have all the tools available to it to correct market prices that are the result of software imperfections. We do not wish to deny NYISO the use of these procedures during its first critical period of operation.

However, we note that the TEP expired on May 16, 2000. NYISO filed on May 26, 2000 requesting a retroactive effective date of May 17, 2000. We will deny the requested effective date of May 16, 2000, as this would be a retroactive change. We will however, waive the notice period and permit the TEP procedures to take effect on the date of the filing, May 26, 2000.

We deny the requests to limit the TEP extension to 90 days. A 90-day period would expire in mid-August during the peak summer demand period. This authority will remain in place throughout the summer period until October 31, 2000.

We also deny the requests to deny, or limit, the extension of the TEP authority in a manner consistent with Commission orders regarding ISO New England's Market Rule 15.⁹ We believe such a change is unnecessary because under our orders the ISO's would have similar authority during their first summer period.

We note that Market Rule 15 was extended initially to cover the first summer period experienced by ISO New England, in its original form.¹⁰ In approving the extension, the Commission found it reasonable to extend Market Rule 15 given that ISO New England had explained that it was in the midst of the summer period and was still uncovering market design flaws which needed to be corrected. Thus, the Commission approved the extension of Market Rule 15 for the summer period without modifying the

⁹Intervenors cite the following orders: ISO New England, Inc. and New England Power Pool, 89 FERC ¶ 61,209 (1999) (order rejecting extension of Market Rule 15); and ISO New England, Inc., 90 FERC ¶ 61,141 (2000) (order approving interim Market Rule 15).

¹⁰New England Power Pool, 88 FERC ¶ 61,316 (1999) (order granting extension of Market Rule 15).

authority under Market Rule 15. The "scaled-down" version of Market Rule 15, as alluded to by the intervenors, was not authorized until after the summer capability period in New England.¹¹ Therefore, our granting of the extension of the TEP authority, without limiting authority under the TEP over the summer period, is consistent with our treatment of the first extension of Market Rule 15.

Moreover, in granting the first extension of NYISO's TEP authority in Docket No. ER00-1533-000, the Commission addressed similar requests by intervenors that the TEP be extended only in a form that conforms to the "scaled-down" Market Rule 15.¹² The Commission denied this request, stating that "though different in language from the revised ISO New England Market Rule 15, we envision the TEP as similar in operation." The Commission concluded that the TEP procedures did not give NYISO wide sweeping authority to change prices it does not like, and denied the request to narrow the scope of the TEP.

We will not require NYISO to shorten the time period for posting notice of price reviews to be consistent with the reduced notice period approved in revised Market Rule 15. NYISO is currently required to post notice of a proposed ECA, if possible, before bids are submitted for such hour. If this cannot be done, the TEP requires NYISO to post such notice one hour prior to the closing of day-ahead bids for the next trading day, or prior to the closing of bids in the real-time market, but in no event later than 5:00 p.m. of the next calendar day. Under Market Rule 15, ISO New England posts notice as soon as possible, but not later than 75 minutes after the hour for which corrective action may be taken. We note that we rejected the same request to shorten this time period when we extended the TEP in NYISO's Docket No. ER00-1533-000.¹³ First, we believe that the time frame is reasonable, given NYISO's software problems. The intervenors in this proceeding have not demonstrated why the current time period is inadequate; they have simply said they would like it to be shorter. We are concerned that given the number of software problems in NYISO markets, restricting the time as suggested may prevent it from being used as intended. Therefore, we will not direct NYISO to make this change.

¹¹ISO New England, 90 FERC ¶ 61,141 (2000) (order approving interim Market Rule 15).

¹²New York Independent System Operator, Inc., 90 FERC ¶ 61,320 (2000) (order granting extension of and revisions to TEP authority).

¹³Ibid.

The Commission denies the request of various intervenors that the TEP be revised to specifically state, consistent with Market Rule 15, that in no event should an energy provider receive a price below its bid. We note that NYISO's Bid Production Cost Guarantee (BPCG) provisions already prevent an energy provider from receiving a price below its bid.

Regarding the request that the TEP be modified to require that NYISO post an explanation of why an action was taken, we note that we already directed NYISO to do this in our March 29, 2000 Order in Docket No. ER00-1533-000.¹⁴

We deny the New York Commission's requests that the Commission extend the TEP authority to situations where market power exists as a result of the existence of market design and implementation flaws. We have already ruled that the TEP does not extend to market power issues and that all market power issues will be addressed in NYISO's market power mitigation plan, or filings with the Commission.¹⁵

Finally, we agree in part with PPL EnergyPlus and will require NYISO to file a detailed report concerning each price correction it makes under the TEP. We will require NYISO to file this report by September 1, 2000 and to provide the details of any changes in price under the TEP it has corrected to cover the period commencing June 1, 2000 up to the time the report is filed on or before September 1, 2000. We also direct NYISO to provide details regarding the corrective measures it has taken or is taking, and the status of those corrections, to resolve the specific situations in which it has been exercising its TEP authority. The filing of this report will provide an opportunity for parties to comment on NYISO's actions to date and proposed course of action.

In conclusion, we see no basis at this time to limit, or change, the existing TEP authority as requested by the intervenors. The TEP authority will expire after October 31, 2000, after the summer peak period has expired, unless a further extension is sought and justified.

The Commission orders:

¹⁴Ibid.

¹⁵See New York Independent System Operator, Inc., 89 FERC ¶ 61,196 (2000)(order approving market monitoring and mitigation plan); order on reh'g, 90 FERC ¶ 61,317 (2000) and 88 FERC ¶ 61,228 (1999)(orders approving temporary procedures).

(A) The tariff sheets filed by NYISO on May 26, 2000 in Docket No. ER00-2624-000 are hereby accepted for filing to become effective May 26, 2000 until October 31, 2000.

(B) NYISO is directed to file a detailed report concerning use of its TEP authority by September 1, 2000, as described in this order.

By the Commission. Commissioner Hébert dissented. He thinks the
ISO has had sufficient time to test its system.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.

Appendix

Interventions in Docket No. ER00-2624-000

AES NY LLC.

Engage Energy US LP

Keyspan-Ravenswood, Inc.

Member Systems of the Transmission Owners Committee of the
Energy Association of New York State

Merrill Lynch Capital Services, Inc.*

Morgan Stanley Capital Group, Inc.*

NRG Power Marketing Inc.

PG&E National Group, PG&E Generating, and PG&E Energy Trading-
Power, L.P.

PPL EnergyPlus LLC*

Public Service Commission of the State of New York

Public Service Electric and Gas Company

Reliant Energy Power Generation, Inc.+

Southern Energy Bowline, L.L.C., Southern Energy Lovett, L.L.C., and
Southern Energy NY Gen, L.L.C.*

*protest

+late filed