

UNITED STATES OF AMERICA 92 FERC ¶ 61,060
FEDERAL ENERGY REGULATORY COMMISSION

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

Niagara Mohawk Energy Marketing, Inc.

v.

Docket No. EL00-82-000

New York Independent System Operator, Inc.

ORDER ON COMPLAINT

(Issued July 26, 2000)

On June 12, 2000, Niagara Mohawk Energy Marketing, Inc. (NIMO Marketing) filed a complaint under section 206 of the Federal Power Act (FPA)¹ against the New York Independent System Operator (NYISO), claiming that the NYISO's software wrongfully denied NIMO Marketing's attempt to export power. NIMO Marketing requests that the Commission direct the NYISO to immediately implement manual check procedures to ensure that the software does not further reject rational exports or, in the alternative, that the NYISO compensate market participants for their lost opportunity costs when export transactions are wrongly rejected.

As discussed in the body of this order, we deny the requested relief and direct the NYISO to implement corrections to its System Constrained Unit Commitment (SCUC) software.

I. NIMO Marketing's Complaint

On May 5, 2000, NIMO Marketing submitted a request to the NYISO to export 50 MW in the day-ahead market from New York into PJM for hours 0700 through 2300 on May 8. NIMO Marketing claims that the NYISO's day-ahead scheduling software, or SCUC software, partially accepted the bid, but denied scheduling it for the hours of 1400 through 1700. NIMO Marketing claims that the SCUC software denied the bid for the four hour period despite the fact that NIMO Marketing submitted an accompanying

¹16 U.S.C § 824e (1994)

decremental bid of \$9,999.99/Mwh, indicating that NIMO Marketing did not want the requested transaction denied for economic reasons. NIMO Marketing argues that its bid was therefore wrongfully denied by the SCUC software because the day-ahead market clearing prices for the four hour period were in the range of \$50/Mwh, well below its decremental bid. NIMO Marketing contends that the NYISO has not taken adequate steps to correct the apparent flaw in the SCUC software, and believes that the SCUC software problems could recur indefinitely in the future.

NIMO Marketing requests relief from the Commission because it claims that the denial of its bid for the four hour period is a violation of Section 205 of the FPA to the extent NIMO Marketing was subjected to undue prejudice or disadvantage. It also says that the denial was a violation of the NYISO Open Access Tariff because the tariff contemplates that curtailments of firm transmission services will take place on a non-discriminatory basis. NIMO Marketing requests that the NYISO be directed to establish a procedure whereby any previously scheduled transactions that are canceled by the SCUC software are reviewed manually and, to the extent the SCUC software rejection of the bids is not consistent with the projected market prices, the computerized schedule should be manually overridden or revised. In the alternative, NIMO Marketing requests that the NYISO compensate market participants whose export transmission requests are wrongly rejected. This would be done by a mechanism similar to the NYISO's bid production cost guarantee, which the NYISO uses to make whole generators that bid into the day-ahead market and do not recover their entire costs.

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

Notice of NIMO Marketing's complaint was published in the Federal Register, 65 Fed. Reg. 65 FR 37,966 (2000), with protests, answers, and motions to intervene required to be filed on or before June 19, 2000. Timely motions to intervene or protest were filed by Merrill Lynch Capital Services, Inc., Keyspan-Ravenswood, Inc., AES NY, LLC, Hydro Quebec Energy Services (US), Inc., Member Systems, PPL Electric Utilities Corporation, Enron Power Marketing, Inc., TransCanada Power Marketing, Ltd., Southern Energy Bowline, LLC, et al (Southern Energy Bowline), the Indeck Companies, the Public Service Commission of the State of New York, Public Service Electric and Gas Company, NRG Power Marketing, Inc., Duke Energy Trading and Marketing, LLC, PG&E National Energy Group, et al, Dynegy Power Marketing, Inc., National Energy Marketers Association, and Morgan Stanley Capital Group, Inc (Morgan Stanley).

PPL Electric Utilities Corporation and Southern Energy Bowline support NIMO Marketing and claim that they experienced similar denials of their bids to export power even though their bids were also accompanied by decremental bids of \$9,999.99/Mwh.

Southern Energy Bowline argues that the NYISO gives an undue preference to importers of power over exporters by giving importers the bid production cost guarantee and by using different parameters in its SCUC software in scheduling exported power than in scheduling non-exported power. Southern Energy Bowline claims that the SCUC software evaluates exports based on forecasted prices of the day-ahead load, but not according to the final prices determined in the day-ahead market, as imports are evaluated. It argues that the NYISO has so far ignored a motion passed by the NYISO Business Issues Committee requesting that the NYISO modify its SCUC software so that external transactions can be evaluated using day-ahead bid load instead of the forecasted load. Southern Energy Bowline supports the manual fix proposed by NIMO Marketing, and notes that the Commission approved a similar fix for the California ISO.²

TransCanada Power Marketing, Ltd., requests that the Commission initiate hearings on an expedited basis to address the allegations raised by NIMO Marketing.

Enron Power Marketing, Inc., supports NIMO Marketing's requested relief. It argues that the flawed SCUC software and the denial of exports of power represent regional economic protectionism and threaten the well-being of consumers in the power markets outside of New York.

Morgan Stanley supports NIMO Marketing's request for monetary damages for the denial of exported power, but opposes NIMO Marketing's request for a manual fix. Morgan Stanley argues that a manual fix would introduce additional imperfections, unfairness and non-transparency in the NYISO market because market participants cannot be sure how the manual adjustments would be implemented by the NYISO or what the results of such adjustments would be.

On June 20, 2000, the NYISO filed an answer to NIMO Marketing's complaint. The NYISO concurs in the need to improve the SCUC software's handling of exports and states that it is working diligently to implement appropriate SCUC software changes. The NYISO explains that when its forecast load is significantly greater than the load scheduled in the day-ahead market, the SCUC software uses the forecast load to assure that sufficient capacity is scheduled. It states that the SCUC software selects generation resources on the basis of capacity availability rather than simply energy cost, and that the software has forecasted prices high enough at times that certain export transactions have not been scheduled. The NYISO proposes to modify the SCUC software so that requested export transactions are compared to the final prices determined in the day-

² California Independent System Operator, Inc., *et al.*, 82 FERC ¶ 61,327 (1998).

ahead market rather than the forecasted prices. The NYISO contends that such a modification will ensure that all export transactions that are economic under the final day-ahead prices will be scheduled in the day-ahead market. The NYISO states that it expects to have its proposed modifications to the SCUC software in place by mid-July, pending approval by the relevant NYISO committees.

The NYISO argues that the manual fix requested by NIMO Marketing is not feasible. It claims that such a manual fix would add external load that would not have been taken into account in the SCUC determination of day-ahead prices, and no generation would have been scheduled at day-ahead prices to meet this load. Furthermore, the NYISO states that day-ahead prices could not be re-determined manually, since the only way to correctly determine day-ahead prices is through the SCUC software process.

III. 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 above 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 motion to intervene in these proceedings.

B. NIMO Marketing's Complaint

We will deny NIMO Marketing's request for lost opportunity cost payments for rejected bids for exports of power and its request for a manual fix to the SCUC software. Based on the evidence shown, we agree with the NYISO that such solutions may be impractical at this point. Since the NYISO is currently implementing its software fix of this problem, it would be an inefficient use of the Commission's and the affected parties' limited resources to now develop a compensation mechanism. It is likely that the period of peak summer demand for electricity will be over by the time specific tariff language is proposed to and approved by the Commission pursuant to section 206 of the FPA. Accordingly, the Commission also rejects NIMO Marketing's request that the compensation mechanism be made effective on June 12, 2000, the date NIMO Marketing

filed its complaint.³ In any event, as the Commission held in New York Independent System Operator, Inc.,⁴ such tariff modifications should be prospective.

As in recent complaint proceedings involving the NYISO, the Commission requires a comprehensive filed statement of the status of the changes the NYISO has made to correct the market flaws identified by NIMO Marketing in this proceeding, and a report on the effects of the changes on the NYISO's markets. This will be necessary in order for the Commission to determine if any further action, such as the implementation of a compensation mechanism, is appropriate. Therefore, we will require the NYISO to file by September 1, 2000, a status report of any changes or revisions it has made to correct or address the flaws identified in NIMO Marketing's complaint. We also direct the NYISO to provide in that report a full description of the effects these changes have had on its markets and whether additional changes are necessary. The filing of this report will provide an opportunity for parties to comment on the NYISO's actions to date and proposed course of action.

September 1, 2000, the date that we are setting in this case as the date on which the NYISO is to file its report on the status and effects of its changes, is the same date on which the Commission required the NYISO to make a similar report in our May 31, 2000 order in Docket No. ER00-1969-000, et al.⁵ The report in this case and the report in the Docket No. ER00-1969 proceeding should be filed together as a combined report. This will enable the Commission to have, at the end of the summer period, a comprehensive picture concerning all the significant changes the NYISO has implemented and those that are still under review in all of the NYISO's markets. In this combined report, the Commission should have the information necessary to determine whether the NYISO's changes have solved the problems identified. If the problems are not resolved, the Commission will have time to review the data and take whatever action is then appropriate.

³The parties do not address, and we do not decide, the issue of whether NIMO Marketing's proposed retroactive remedy constitutes reparations which the Commission is not authorized to award.

⁴New York Independent System Operator, Inc., 91 FERC ¶ 61,218 (2000), slip op. at 24.

⁵Id.

The Commission orders:

(A) NIMO Marketing's complaint is denied as discussed in the body of this order.

(B) On September 1, 2000, the NYISO shall file the combined report described in the body of this order.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.