

UNITED STATES OF AMERICA 93 FERC ¶ 61,187
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. ER01-94-000

ORDER ON TARIFF FILING AND SETTING CERTAIN
ISSUES FOR TECHNICAL CONFERENCE

(Issued November 21, 2000)

As discussed in this order, we extend the Temporary Extraordinary Procedures (TEP) until April 30, 2001 and permit certain issues to be raised at the technical conference ordered by the Commission in its November 8, 2000 order in New York Independent System Operator, Inc. (NYISO), Docket No. ER00-3591, et al.

I. Background

The TEP are designed to address unanticipated market design flaws and transitional abnormalities which occur during the start-up period of NYISO. Under the TEP, NYISO may take Extraordinary Corrective Action (ECA) in order to recalculate LBMP prices, when possible with reasonable certainty, that are incorrect due to market design flaws. NYISO is also permitted to issue an ECA to request that market participants submit bids which provide greater operating flexibility to counter the effects of market design flaws.¹

The Commission first approved the TEP for a period of 90 days from the date of commencement of NYISO's operations on November 18, 1999, until February 16, 2000.²

¹See New York Independent System Operator, Inc., 92 FERC ¶ 61,051 (2000)(Provides further description of the authority granted NYISO under its TEP authority.)

²New York Independent System Operator, Inc., 88 FERC ¶ 61,228 (1999)

Subsequently, the Commission extended the TEP authority for an additional 90 days expiring on May 16, 2000, in its March 29, 2000 Order,³ and again to October 31, 2000, in its June 25, 2000 Order.⁴

II. Related Filing

On September 8, 2000, in Docket No. EL00-3591-001, NYISO filed a comprehensive report (September Report) with the Commission reporting on the status of its corrections to existing software problems and market flaws pursuant to five Commission Orders.⁵ One order, which was issued June 25, 2000, approved the extension of the TEP authority until October 31, 2000 and required NYISO to report on all price corrections made during the summer capability period under this authority (TEP Order).

The September Report includes NYISO's report on all price corrections made during the summer capability period as required by the TEP Order. The September Report indicates that NYISO has corrected two market flaws which were the primary reasons for many of the price adjustments under the TEP.⁶ NYISO also indicates that the frequency of price corrections under this authority is down, but the fact remains that NYISO will need to correct prices in the future due to software problems causing incorrect price calculations and other future market flaws that surface. NYISO did not request an extension of the TEP authority in its September Report.

The issues raised by the protesters in Docket No. ER00-3591-001 concerning NYISO's TEP procedures include: (1) allegations that the frequency of price corrections under the TEP are much higher than NYISO contends; (2) whether NYISO should use its TEP to reserve and correct prices to the levels that would have occurred absent these market design flaws that contribute to inflated, or erroneous, Locational Based Marginal Prices (LBMPs), such as in instances where the BME rejects economic transactions in the hour-ahead market; (3) concerns that NYISO is using its TEP authority in

³New York Independent System Operator, Inc., 90 FERC ¶ 61,320 (2000)

⁴New York Independent System Operator, Inc., 92 FERC ¶ 61,051 (2000)

⁵See 91 FERC ¶ 61,218 (Reserves Order); 91 FERC ¶ 61,338 (SPM Order); 92 FERC ¶ 61,073 (Bid Cap Order); and 92 FERC ¶ 61,060 (NMEM Order); and 92 FERC ¶ 61,051 (TEP Order).

⁶These corrections include: (1) a correction to the Security Constrained Dispatch (SCD) software which was assigning incorrect upper operating limits to steam units; and (2) implementation of software enhancements and negotiations with generation owners to reduce the number and size of multi-block bidding units. The latter correction has prevented pricing errors from arising as a result of bids submitted by large multi-unit bidding blocks, and the running of large amounts of uneconomic energy associated with the multi-unit bidding blocks.

situations not covered by such authority; and (4) whether the TEP should be extended beyond the current expiration date of October 31, 2000.

By Commission Order acting on the September Report⁷, the Commission deferred ruling on issues raised regarding NYISO's TEP authority in that proceeding pending action on the instant filing, which we address below.

III. Instant Filing

In its filing, NYISO requests that the Commission extend its TEP authority until April 30, 2001, and waive the Commission's notice requirements in order to grant an effective date of November 1, 2000. NYISO states 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 explains that the frequency of price corrections under its TEP authority continues to drop. NYISO states it has eliminated many of the problems that have required it to resort to its TEP authority in the past. For example, NYISO introduced software changes on July 25 to correct a problem that caused its Security Constrained Dispatch (SCD) to assign incorrect upper operating limits to steam units, thereby producing pricing errors. As described in the September Report, NYISO has implemented software enhancements to prevent pricing errors caused by bids submitted by large multi-unit bidding blocks, as well as to reduce the running of large amounts of uneconomic energy associated with "block loading." Such problems have been the most frequent causes of price miscalculations.

However, NYISO explains that its efforts to improve its markets are by no means complete, and that participants in the NYISO-administered markets are still adversely affected by market flaws. NYISO explains that it will continue to implement additional corrections and enhancements during the upcoming months. For example, NYISO states it is currently developing effective demand response mechanisms, expanding the availability of price-sensitive load bids, developing mechanisms for virtual bidding and planning interim and permanent BME modifications in order to stabilize and improve its markets, as well as various other changes. Even though all such modifications will be thoroughly tested prior to implementation, they may have unintended consequences or create unanticipated gaming opportunities which would necessitate NYISO action pursuant to its TEP authority. NYISO therefore, concludes it is necessary to continue use of its TEP authority at least until April 30, 2001, which is the end of the Winter Capability Period.

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

⁷ New York Independent System Operation, Inc., 93 FERC ¶ 61,142 (2000).

Notice of NYISO's TEP filing in Docket No. ER01-94-000 was published in the Federal Register, 65 Fed. Reg. 63,856 (2000), with protests, answers, and motions to intervene required to be filed on or before November 1, 2000. Timely motions to intervene were filed by entities listed in Appendix to this order.

Comments were filed by the Public Service Commission of the State of New York (New York Commission), Member Systems of the Transmission Owners Committee of the Energy Association of New York State (Member Systems) and Indeck Companies (Indeck Companies). A protest was filed by Morgan Stanley Capital Group, Inc. (Morgan Stanley).

The NYPSC supports NYISO's filing to extend the TEP authority. The NYPSC states that continued availability of this tool is crucial while a number of design and software flaws are in the process of correction. Modifications to design and software could have unintended consequences or create unanticipated gaming opportunities that may harm consumers and market participants.

The Member Systems also support NYISO's proposal to extend the TEP authority. Member Systems state that in light of the number and extent of the continuing problems being experienced in NYISO's market, as evidenced by NYISO's September Report and by comments filed in that proceeding, it is essential that the NYISO's TEP authority be extended. Member Systems submit that the NYISO should be directed to utilize its TEP authority wherever possible to address the impacts of market flaws on NYISO administered markets.

Indeck Companies filed comments stating it does not oppose the extension of the TEP authority provided NYISO does not obtain other new or extended price control mechanisms. Indeck Companies note that NYISO has recently filed at the Commission for an extension of the energy bid cap through April 30, 2001 in Docket No. ER00-180-000, and for a potentially even longer period in ER01-181-000. Indeck Companies do not support any extension of bid caps and submit that they are completely unneeded and unwarranted, particularly if the Commission grants the requested TEP extension and given the fact the NYISO already has a market monitoring plan.

Morgan Stanley filed a protest stating that NYISO has failed to meet its burden to demonstrate the necessity of any further extensions of the TEP which were intended to be a temporary tool. Morgan Stanley contends that by NYISO's own account, price corrections have become less frequent since commencing operations and that this supports the elimination, not continuation, of the TEP authority. Morgan Stanley also argues that the TEP have a significant adverse effect on the competitive market and that NYISO's Board of Directors already has the authority to propose "emergency"

changes to its tariffs and rules directly to the Commission under Section 205 of the Federal Power Act.⁸

V. Discussion

A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (1999), the timely, unopposed motions to intervene of the entities listed in Appendix A to this order serve to make them parties to this proceeding(s) in which they intervened. 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.

B. Commission Decision

We grant the authority requested by NYISO to extend the TEP until April 30, 2001. We believe that it is appropriate to extend NYISO's TEP authority in light of the market flaws that have been identified and the continued use of the procedures to correct incorrect prices that, as a result of software errors, are not consistent with the market design and tariffs approved by the Commission.

We note that the TEP expired on October 31, 2000. NYISO filed its request for extension on October 11, 2000 and requests waiver of the 60-day notice period to permit an effective date of November 1, 2000. We grant waiver of the notice period and permit the TEP procedures to take effect on November 1, 2000, as proposed.

The tariff sheets filed herein are identical to those filed May 26, 2000, and approved by the Commission June 25, 2000 order, except with respect to the proposed termination date.

To address Morgan-Stanley's objections to another extension of NYISO's TEP authority, we find that while the TEP procedures were intended to aid NYISO through its start-up phase, it has become evident that NYISO is still encountering problems as it continues to make software corrections and implement new market mechanisms. We believe that while NYISO is working to fix its software and market flaws, it continues to need limited flexibility to continue to correct incorrect market prices and to address any new problems that may emerge as new market enhancements are introduced. Therefore, we reject Morgan-Stanley's request and grant the requested extension.

⁸Citing Section 3.03 of the Transmission Owners Agreement and Section 19.01 of the NYISO Agreement.

We disagree with Indeck Companies that an extension of the TEP procedures, coupled with the existence of NYISO's market mitigation plan, eliminate the need for an extension of the \$1,000 bid cap. Each is designed to address different problems which may occur in NYISO's markets. For example, in a concurrent order in NYISO's Docket Nos. ER01-180-000 and ER01-180-001, we are granting the proposed extension of NYISO's \$1,000 per MWh bid cap on its energy markets. As discussed in that order, we believe that the \$1,000 per MWh bid cap serves to ensure that prices do not spike above \$1,000 during times of tight supplies. The market mitigation plan is designed to target specific behavior by specific entities believed to have engaged in anti-competitive behavior and any mitigation measures taken against an entity are specific to the entity. Moreover, the Commission, in approving NYISO's market mitigation plan stated that it did not intend for mitigation to entail any retroactive recalculation of market-clearing prices.⁹ The TEP procedures permit NYISO to recalculate market prices as a result of software errors and data input errors where NYISO can "with reasonable certainty" recalculate the correct price. In this regard, NYISO is permitted under its TEP, as well as under the filed rate doctrine, to make retroactive changes in order to correct mistakes in the computation or calculation of prices.

As mentioned previously, the Commission deferred ruling on certain issues raised by protesters in NYISO's proceeding regarding its September Report filed in Docket No. ER00-3591-001 concerning TEP procedures. The request to extend the TEP procedures raised in that proceeding is addressed by this order. The remaining issues including, concerns over the frequency of price corrections under the TEP, whether NYISO should use its TEP to reserve and correct prices due to problems with NYISO's Balancing Market Evaluation (BME) software in instances where the BME incorrectly rejects economic transactions in the hour-ahead market and, concerns that NYISO is using its TEP authority in situations not covered by such authority, are issues that can be raised at the technical conference.

The Commission orders:

(A) The tariff sheets filed by NYISO on October 11, 2000 in Docket No. ER01-94-000 are hereby accepted for filing. Waiver is granted to permit these tariff sheets to become effective November 1, 2000, as proposed.

(B) Certain issues as mentioned in this order can be discussed at the technical conference established in NYISO's proceeding in Docket No. ER00-3591, et al.

By the Commission. Commissioner Hébert dissented with a separate statement attached.

(S E A L)

⁹New York Independent System Operator, Inc., 90 FERC ¶ 61,317 (2000).

David P. Boergers,
Secretary.

Interventions in Docket No. ER01-94-000

Dynegy Power Marketing, Inc.

Enron Power Marketing, Inc.

H.Q. Energy Services (U.S.), Inc.

Keyspan-Ravenswood, Inc.

Indeck Companies +

Member Systems of the Transmission Owners Committee of the

Energy Association of New York State +

Morgan Stanley Capital Group, Inc.*

Orion Power New York GP, Inc.

Public Service Commission of the State of New York +

1st Rochdale Cooperative Group, Ltd. and Coordinated Housing Services, Inc.

Southern Energy Bowline, L.L.C., Southern Energy Lovett, L.L.C., and

Southern Energy NY Gen, L.L.C.

*protest

+comments

(Issued November 21, 2000)

HÉBERT, Commissioner, *dissenting*

I would terminate the authority of the New York Independent System Operator, Inc. (ISO) to change (read, reduce) the prices it pays sellers of electricity, after the fact, and to order bids into the market. I agree with Morgan Stanley Capital Group's protest, at 3-10. Retroactive price changes (and, I would add, commandeering bids) create uncertainty in the market. As we have seen in many parts of the world, uncertainty drives suppliers from the market, on the theory "fooled twice, shame on me." This kind of conduct undermines competition, to the detriment of consumers. Forcing bids into the market has the same effect. All the more here, that the provision in question contains language more vague than what I describe. "Corrective actions," the term in the tariff, can mean anything.

On the other side of the coin, I see no benefit to the market. The record shows that the ISO has seldom used this authority. Further, I have argued repeatedly that measures such as this, under which an ISO can manipulate the market, prevent participants from making tough decisions to set things right. The ISO has says it needs still to test software in use since 1999. Perhaps the ISO should order new applications, perhaps the ISO can fix what it owns; either way, the ISO should not fix prices after the fact and requisition electricity.

My colleagues express exasperation with incompetence in ISO's, quite rightly. My colleagues, however, shrink from doing anything meaningful about it. I would step up to the plate and tell the ISO to run on its own. Making the ISO sink or swim, and not allowing retroactive changes, would have the healthy effect of waking up the regulators of the New York market to the job at hand. (Under the law, the ISO, as it should, may correct obvious computation or typographical errors, without any Temporary Extraordinary Procedures.)

For the benefit of consumers in New York, I think we must prepare the ISO to take its medicine. The majority persists with placebos. Therefore, I dissent.

Curt L. Hébert, Jr.
Commissioner