

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

New York Independent System
Operator, Inc.

Docket No. ER06-185-002

ORDER ACCEPTING COMPLIANCE FILING
AND DIRECTING FURTHER FILING

(Issued November 3, 2006)

1. In this order, we accept the filing proffered by the New York Independent System Operator, Inc. (NYISO) to comply with the Commission's order issued on April 7, 2006 in Docket Nos. ER06-185-000 and ER06-185-001.¹ Specifically, NYISO describes the methodology it will use to correct certain errors in the computation of Bid Production Cost Guarantee payments from February 2005 until such time as NYISO implements its going forward Real-Time Guarantee Payment (RTGP) impact test and submits a summary of the bill corrections NYISO will apply to each affected generator's settlement. Additionally, we grant NYISO's request to forego the Real-Time guarantee payment impact test for a small number of bids when necessary data is not available in its Market Information System and would need to be reconstructed and direct NYISO to continue discussions with its stakeholders addressing their remaining concerns about the RTGP Test and to report to the Commission with respect to those discussions.

Background

2. On November 8, 2005, NYISO reported to the Commission, in Docket No. ER06-185-000, that it had discovered that it had made errors in computing Bid Production Cost Guarantees (Guarantees) going back to June 1, 2002. These errors occurred while NYISO was implementing the new mitigation measures provisions in its Market Administration and Control Area Services Tariff (Services Tariff). In brief, certain aspects of mitigation implementation did not conform to the applicable tariff

¹ *New York Independent System Operator, Inc.*, 115 FERC ¶ 61,026 (2006) (April 2006 Order).

requirements as they were changed from time to time. According to NYISO, the implementation errors, for the most part, affected Guarantee compensation of certain units in the New York City zone, which has been designated as a Constrained Area for market mitigation purposes. NYISO proposed settlement corrections to bring it into compliance with its tariff.

3. On January 6, 2006, Staff issued a data request to NYISO. The data request directed NYISO to: (1) state the total amount of money being paid to generators and the impact of such payments on load-serving entities in New York; (2) describe the discussions NYISO had with affected market participants to date and the status of those discussions; (3) describe how payments to generators will be calculated; and (4) describe NYISO's plans for preventing the recurrence of errors and to improve pricing and billing accuracy. On February 6, 2006, in Docket No. ER06-185-001, NYISO filed its answer to Staff's data request.

4. The April 2006 Order granted NYISO a tariff waiver that allowed NYISO to make stated settlement corrections and billing adjustments to Guarantee calculations and compensation for the period from June 1, 2002 through January 31, 2005. For the period from February 2005 through April 7, 2006, for which NYISO had not yet determined the net settlement charges for generation, the Commission granted NYISO's request to: (1) correct errors in its computation of Guarantees; (2) implement the mitigation measures in its Services Tariff; (3) not to recompute locational-based marginal prices (LBMPs). In addition, the April 2006 Order included a requirement that NYISO provide the Commission with details for the settlement corrections, consistent with the Staff data request.

NYISO's Filing

5. NYISO's filing describes the method it proposes to use to correct the errors it made in its computation of Guarantee payments from February 2005 to the date that it implements its going-forward RTGP Test (Historical Period).² NYISO requests "waiver" of its tariff obligation to apply the RTGP Test to a very small number of Bids when necessary data is not available in the NYISO's Market Information System and would have to be reconstructed from original or potentially imperfect sources at significant burden and expense. NYISO's filing describes its plan to implement the going-forward RTGP Test. In addition, NYISO filed a preliminary Generator-specific summary of the bill corrections that NYISO may apply to each affected Generator to correct the

² The RTGP Test identifies real-time bids submitted by generators in New York City that would have an impact on the Guarantee payment and that fail the conduct test. If certain thresholds are exceeded, this bid is then compared to a computed "as mitigated" bid to see if the Guarantee payments need adjustment. NYISO provides a full description of the RTGP Test methodology in its response to Staff's data request (at pages 7-10).

February 2005 settlements. NYISO states that it intends to report the revised Guarantee payments for the remainder of the Historical Period as the actual settlement data becomes available for each month.

Notice of Filing and Responsive Pleadings

6. Notice of the filing was published in the *Federal Register*, 71 *Fed. Reg.* 54,643 (2006), with interventions due on or before September 26, 2006, later extended to October 2, 2006. Independent Power Producers of New York, Inc. (IPPNY) filed a timely protest. Astoria Generating Company, LP, and the NRG Companies³ (Astoria & NRG) jointly filed a timely protest. On October 17, 2006, NYISO filed an answer to the protests of IPPNY and Astoria & NRG.

Discussion

A. Procedural Matters

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept NYISO's answer because it has provided information that assisted us in our decision-making process.

B. NYISO's Recomputed Guarantees

8. Neither protest contests the recomputed Guarantees for the month of February 2005. Based on our review of NYISO's submittal, the Commission finds that the Guarantees satisfactorily comply with the April 2006 Order and we will accept this submittal for filing.

C. NYISO's "Waiver" Request

9. In its filing, NYISO states that its quality assurance testing process identified a very small number of bids that were not conduct-tested by the RTGP Test because NYISO's Market Information System was not available due to planned maintenance or an unplanned outage. NYISO seeks a "limited tariff waiver" to avoid the burden and expense of the correcting the settlement data. NYISO asserts that it otherwise would have to gather additional source data or otherwise "force" the software to produce useable data to include these bids in the conduct tests. NYISO states that the information

³ The NRG Companies are NRG Power Marketing, Inc., Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Oswego Harbor Power LLC.

is missing for only about 0.21 percent of the accepted bids and that the burden of replicating the missing data outweighs the benefits.

10. We will grant NYISO's request to forego correcting the settlement data when it corrects the Guarantee payments from February 1, 2005 through April 7, 2006.⁴ We agree with NYISO that the burden associated with replicating the missing data for the small number of bids involved would be excessive.

D. Do Corrections for the Historical Period Constitute Retroactive Mitigation?

1. Protests and Response

11. The protesters state that NYISO's proposed RTGP Test would violate the core principle of limiting mitigation to prospective cases only. The protesters note that section 4 of NYISO's MMM requires that mitigation by default be prospective only. The protesters state that NYISO's proposal could retroactively mitigate generators with accepted bids that have been requested to operate their units out of merit, and that such retroactive mitigation could occur as late as 19 months after the service month, when NYISO issues final payment for an invoice. The protesters state that NYISO's bill correction rules limit NYISO's authority to make bill corrections to instances where the NYISO has made "arithmetic, computation, or estimation" errors. They complain that changing a generator's bid after NYISO has accepted it and the unit already has run based on its accepted bids is a far cry from a mere math mistake.

12. In response, NYISO calls the protesters' claims of retroactive mitigation "collateral attacks on the Commission's Prior Order." NYISO observes that the protesters do not contest any of the details of the settlement corrections, but rather seek to contest the underlying authority for making the corrections by claiming that NYISO is attempting to impose retroactive mitigation or otherwise not complying with its tariff. NYISO asserts that these issues were decided in the April 2006 Order which states:

[W]e agree with NYISO's response that it is not in fact proposing any rate changes to its filed rate schedules nor is it issuing refunds. For the most part the various mitigation errors that NYISO seeks to correct in this filing

⁴ NYISO did not provide a termination date for its request to forego corrections, but we will not grant it an open-ended authority to forego corrections. We remind NYISO that any request to change its tariffs or waive their requirements appropriately is filed in a section 205 application, and not in a compliance filing. If NYISO seeks to forego the use of corrected settlement data when computing future Guarantee payments, it must request a waiver in an appropriate filing, supported by information on the progress of its software corrections and other relevant factors.

are the result of NYISO failing to compute Guarantee compensation in accordance with the filed rate schedule's rates, terms, and conditions, specifically newly modified mitigation measures, because of software implementation errors. Thus, rates are not being changed retroactively, nor is NYISO making refunds. To the contrary, NYISO is attempting to ensure that final bills, as far as possible, conform to its filed rate schedules.^{5]}

13. NYISO states that the protests do not raise issues that are responsive to the September 5th filing, but rather attempt to resurrect issues that were decided in the April 2006 Order. NYISO adds that no party sought rehearing of the April 2006 Order.

2. Commission Conclusion

14. The Commission rejects the protesters' claim that NYISO's correction of these errors would constitute retroactive mitigation. The issue raised here by the protesters is identical to what was argued in response to NYISO's original filings. As indicated by the quotation above, the concerns raised here by protestors were already considered and decided in the April 2006 Order. The protestors add nothing new and we will not revisit this issue.

E. Concerns about the RTGP Test

1. Protests and Response

15. IPPNY and Astoria & NRG state that NYISO first presented its proposed RTGP Test to its Market Participants at a June 29, 2006 meeting of NYISO's stakeholders (referred to by NYISO as its Market Structures Working Group), where stakeholders raised numerous, significant concerns that NYISO has failed to address. Astoria & NRG dispute NYISO's claim that the stakeholders agreed that concerns regarding the application of NYISO's framework to a particular set of facts is appropriately addressed by NYISO's Market Monitoring, Analysis and Performance Department (MMP).

16. IPPNY states that, when asked at the June 29 meeting how it planned to proceed to address the concerns raised about the future RTGP Test, NYISO committed to discuss these issues further. However, IPPNY states, while NYISO later mentioned the issue in a status report, they remained unresolved. IPPNY's concerns include: (1) the lack of any written, firm deadlines on when NYISO will contact potentially impacted generators for the required consultation; and (2) the time frame in which NYISO will have the limited authority to retroactively impose mitigation.

⁵ April 2006 Order at P 45.

17. The protesters urge the Commission to order NYISO to work with its market participants through the committee process to develop clearly defined, transparent procedures and strict time limits on how and when the NYISO can mitigate Guarantees before it can be permitted to implement the RTGP Test on a going-forward basis. The protesters request that NYISO then be required to submit any necessary tariff filings for comment and approval no later than March 15, 2007.

18. NYISO responds that a tariff filing to implement the RTGP Test on a going-forward basis is unnecessary because the purpose of the RTGP Test is merely to ensure that Guarantee mitigation conforms to the mitigation thresholds of the Services Tariff, as accurately and as expeditiously as possible. NYISO states that the protesters have not shown that NYISO's Guarantee mitigation would be imposed pursuant to the application of anything other than the thresholds for Guarantee mitigation specified in section 3.3 of its Market Power Mitigation Measures (MMM).⁶ NYISO notes that the April 2006 Order stated that NYISO "is not in fact proposing any rate changes to its filed rate schedules nor is it issuing refunds" and that the protesters have made no showing of a need to change the Services Tariff.

19. NYISO maintains that all stakeholder concerns regarding the framework NYISO is using to correct historical settlement data for in-City Generators were addressed to the satisfaction of the stakeholders at the June 29 meeting. NYISO states that the stakeholders, in fact, agreed that concerns regarding the application of NYISO's framework would be appropriately addressed by initiating consultation with NYISO's MMP pursuant to its MMM.

20. NYISO also states that, on August 8, 2006, it distributed generator-specific preliminary information to each of the affected generators for February 2005 based on the RTGP Test, and invited the generators to consult with the MMP regarding the reference levels used to perform the RTGP Test. NYISO further states that on August 11, 2006 it sent e-mails to potentially impacted generators stating that the proposed settlement corrections were available in NYISO's Decision Support System (DSS) data warehouse. NYISO states that, before final bills are issued for the affected generator(s), NYISO will re-run the RTGP conduct and impact tests using the revised reference levels.

21. The protesters raise similar concerns as regards the going forward RTGP Test, characterizing it as lacking in detail, and note that it does not provide a firm deadline for completion.

⁶ New York Independent System Operator, Inc., FERC Electric Tariff, Original Volume No. 2, Attachment H, section 3.3.1.

22. NYISO responds that the rules for calculating Guarantee payments are set forth in Attachment C to NYISO's Services Tariff, and the conduct and impact thresholds for mitigating them are specified in the MMM

2. Commission Conclusion

23. Notwithstanding protesters' concerns about how the RTGP Test will be implemented, we find that NYISO's instant proposal conforms with the directives of our April 2006 Order. However, while NYISO believes that it had reached consensus with its stakeholders on these issues, the protests demonstrate that some disagreement remains. Thus, we will direct NYISO to work with its stakeholders to clarify the details of future RTGP Tests consistent with NYISO's Services Tariff. In other words, the Commission will allow NYISO to use the RTGP Test to revise the Guarantees for February 2005, through April 2006⁷ but the Commission also will direct NYISO to continue to work with its stakeholders to refine the RTGP Test, and then to report the results to the Commission.

The Commission orders:

(A) NYISO's recomputed February 2005 Bid Production Cost Guarantee payments are hereby accepted for filing.

(B) NYISO's request for a waiver to forego mitigation measures in its Market Administration and Control Area Services Tariff for the limited number of bids for which Market Information System information is not available, is hereby granted for the period extending from February 1, 2005 through April 7, 2006, as discussed in the body of this order.

(C) NYISO is hereby directed to engage in further discussions with its stakeholders, commencing no later than sixty days from the date of issuance of this order, to refine the RTGP Test and consider the issues raised by the protestors in this

⁷Consistent with the April 2006 Order, we will allow NYISO to revise the Guarantees for February 2005 "through the present," which would be the date of issuance of the April 2006 Order. These corrections must be completed January 1, 2007. However, the instant order does not authorize any revisions to Guarantees for transactions after the date of issuance of the April 2006 Order.

proceeding. When these discussions are complete, NYISO shall provide an informational report to the Commission on its progress or lack of progress in reaching a consensus on these issues.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.