

130 FERC ¶ 61,166
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 8, 2010

In Reply Refer To:
New York Independent System Operator
Docket No. ER09-1682-000

Hunton & Williams LLP
1900 K Street NW
Washington, DC 20006-1109

Attn: William F. Young, Esq.
Counsel for New York Independent System Operator, Inc.

Subject: Request for Waiver

Dear Mr. Young:

1. On September 4, 2009, pursuant to sections 1(b) and 3.2.3 of Attachment H of its Market Services Tariff, the New York Independent System Operator, Inc. (NYISO) filed a proposed Rate Schedule Market Mitigation No. 1 (Rate Schedule M-1) to become effective September 8, 2009. NYISO proposed Rate Schedule M-1 to apply market power mitigation measures to three specific generators. In its filing, NYISO also requested waiver of the limit of six months on the application of mitigation set forth in section 4.7 of that Attachment H.¹ NYISO requested that the Commission permit it to apply the proposed mitigation measure to the identified generators until such time as NYISO completes its stakeholder process and the Commission accepts amendments to NYISO's market mitigation measures implementing rules for the mitigation of all Generators committed for reliability outside the New York City Constrained Area.

¹ Section 4.7 provides: "Any mitigation measure imposed as specified above shall expire not later than six months after the occurrence of the conduct giving rise to the measure, or such earlier time as may be specified by the ISO." New York Independent System Operator, Inc. FERC Electric Tariff, Original Volume No. 2, Attachment H, Sixth Revised Sheet No. 477.

2. Seneca Power Partners, L.P. and Sterling Power Partners, L.P. (Generation Owners); Independent Power Producers of New York, Inc. (IPPNY); AES Eastern Energy, L.P. (AES); Electric Power Supply Association (EPSA); PSEG Energy Resources & Trade LLC and PSEG Power New York LLC (collectively, PSEG); TransCanada Power Marketing Ltd. and TC Ravenswood, LLC (collectively, TransCanada) submitted comments and protests urging the Commission to deny NYISO's request for waiver of section 4.7. Seneca and Sterling asserted that there is no evidence that the reliability events will occur again prior to next summer and that the six-month limit adds urgency to the stakeholder process and incentivizes speedy resolution of the issues. IPPNY also requests that the Commission deny NYISO's request for waiver of the six month limit for mitigation measures and direct NYISO to develop measures with its stakeholders that apply to all generators needed for reliability located outside of the New York City constrained zone. Otherwise, IPPNY stated, there will be no pressure to affect a long-term solution. TransCanada, EPSA, PSEG, and AES supported IPPNY's comments.

3. In an order issued November 3, 2009,² the Commission accepted and suspended the proposed rate schedule, to become effective as requested, subject to refund, conditions, and further orders, but did not address NYISO's request for waiver of section 4.7.

4. On February 17, 2010, NYISO submitted a letter (February 17, 2010 Letter) noting its request for a waiver of the six-month limit in section 4.7 of Attachment H of NYISO's Market Services Tariff. NYISO states that its stakeholder process for amending its market mitigation rules has not yet been completed; nor have the other factors underlying the NYISO's waiver request changed since the September 4, 2009 filing was submitted. NYISO states that the period of six months from the NYISO's proposed effective date for Rate Schedule M-1 ends on March 9, 2010. NYISO further states that the conditions enabling the three identified generators to submit bids that are not consistent with the bids NYISO would expect them to submit under competitive conditions at times when they are committed for reliability have not changed. NYISO states that action by the Commission on the waiver request reasonably in advance of March 9, 2010, would avoid a lapse in the NYISO's authority to apply Rate Schedule M-1 to the three identified Generators at times when they are committed for local or NYCA reliability, and, possibly, the need for the NYISO to submit a second request to apply mitigation to one or more of these three Generators.

² *New York Independent System Operator, Inc.*, 129 FERC ¶ 61,103 (2009).

5. On March 2, 2010, Generation Owners filed an answer to NYISO's February 17, 2010 Letter,³ asserting that the requested waiver should be denied because (1) "denial will push along a stakeholder process that apparently has no end in sight" and (2) denial will prevent further harm. Generation Owners assert that the imposition of Rate Schedule M-1 has resulted in Generation Owners' facilities being ordered to run at a non-compensatory rate and causes Generation Owners' a significant financial hardship.

6. We find that NYISO has shown good cause to grant the requested waiver. The stakeholder process concerns a mitigation proposal that is not before the Commission in this case. Accordingly, any arguments related to that process are irrelevant. In any event, grant of the requested waiver should not be an excuse to hold up that stakeholder process. Further, because proposed Rate Schedule M-1 will only apply to the identified generators' guarantee payments, NYISO has stated that, should the Commission later reject the proposed Rate Schedule, NYISO will be able to retroactively "undo" any mitigation it has imposed.⁴ Accordingly, we hereby grant, to the extent necessary, NYISO's requested waiver of the six-month time limit of section 4.7 on the application of mitigation under Rate Schedule M-1, subject to further orders of the Commission.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

³ Contrary to Generation Owners' characterization of NYISO's February 17, 2010 letter as a request for waiver, the letter only purports to urge action before March 9, 2010, on the pending request for waiver in its September 4, 2009 filing.

⁴ See NYISO's September 4, 2009 filing, Docket No. ER09-1682-000, Transmittal at 4.