

139 FERC ¶ 61,108
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 8, 2012

In Reply Refer To:
New York Independent System Operator, Inc.
Docket No. ER12-1215-001

New York Independent System Operator, Inc.
Attn: Kristen A. Bluvas, Esq.
10 Krey Blvd.
Rensselaer, New York 12144

Dear Ms. Bluvas:

1. On March 6, 2012, as amended March 9, 2012, the New York Independent System Operator (NYISO) submitted revisions to Attachment J of its Market Administration and Control Area Services Tariff (Services Tariff) to align the Services Tariff with NYISO's settlement code, market design, and current practice. NYISO states that it has been making certain supplemental payments to gas turbine generators in a manner that does not strictly comply with the provisions of Attachment J to its Services Tariff. Therefore, NYISO seeks to revise Attachment J to clarify the relevant provisions in order to continue making these payments to eligible suppliers. NYISO seeks a waiver for all open service months¹ to allow suppliers that received payments under these circumstances to retain them. NYISO also requests that the Commission waive the 60-day notice requirement and accept the proposed tariff revisions effective March 7, 2012. As discussed below, we grant the requested waivers and accept the proposed tariff revisions effective March 7, 2012, as requested.

¹ NYISO states that for the purposes of this filing, open service months are those months in which the invoices are not yet finalized and thus subject to further correction and revision. Under Section 7.4 of the Services Tariff, settlement information is subject to review, comment, challenge, correction or adjustment at any time for up to five months from the date of the initial invoice for the month in which the service was rendered. Finalized or closed customer invoices are those that are no longer subject to correction or adjustment under this provision.

Background

2. NYISO states that Attachment J of its Services Tariff provides a supplemental payment to resources, as necessary, to recover the difference between their accepted day-ahead offer price and the day-ahead locational based marginal price when NYISO has directed that they reduce their real-time output and such reduction has exposed them to balancing obligations that erode their day-ahead margin. These payments are known as day-ahead marginal assurance payments (DAMAP).

3. According to NYISO, the purpose of DAMAP is to encourage suppliers to maintain flexible economic offers in the real-time market by ensuring that doing so does not expose them to financial harm. NYISO states that all generators, including gas turbines, are eligible to receive DAMAP when they have a day-ahead energy or non-synchronous reserves schedule, bid flexibly, and are online and dispatched in real-time.

4. NYISO states that its Services Tariff does not provide DAMAP eligibility for the day-ahead scheduled gas turbine generators that are directed by NYISO's economic evaluation not to run in real-time, although NYISO's settlement code has been treating them as if they were eligible for DAMAP since 2005. In addition, NYISO states that DAMAP are intended to compensate suppliers that lose day-ahead margin because they followed NYISO's instructions. NYISO states day-ahead scheduled gas turbine generators that do not operate in real-time, at the direction of NYISO, are exposed to the same financial harm from complying with NYISO's instructions and they should also be eligible for DAMAP.

5. NYISO adds that gas turbine generators do not receive must-run status² as their ability to start quickly offers NYISO the opportunity to reevaluate the economic merit of operating the unit throughout the day and thereby provides NYISO with an increased level of flexibility in responding to changing real-time conditions.

NYISO's March 6, 2012 Filing

6. NYISO requests waiver from the application of Attachment J of its Services Tariff for all open service months to allow suppliers that received DAMAP under these circumstances to retain their payments. NYISO proposes tariff revisions³ to authorize it

² NYISO states that most resources that receive a day-ahead schedule are designated to run at no less than their designated minimum generation level in real-time.

³ NYISO proposes to revise § 25.2.1 General Eligibility Requirements for Suppliers to Receive Day-Ahead Margin Assurance Payments to state, in relevant part, that "Subject to Section 25.2.2 of this Attachment J, the following categories of Resources bid by Suppliers shall be eligible to receive Day-Ahead Margin Assurance Payments: (1) all Self-Committed Flexible and ISO-Committed Flexible Generators that

to make these payments going forward and it requests waiver of the associated 60-day notice and comment period.

7. With respect to waiver of the relevant tariff provisions, NYISO states that it meets the criteria the Commission has previously used in evaluating waiver requests. NYISO contends that the scope of this waiver is limited in nature in that the payments inconsistently impacted only 80 suppliers out of approximately 400 suppliers on the NYISO system. In addition, NYISO states that the financial impact of this issue is small in that it represents approximately \$120,000/year out of the total NYISO energy markets which paid approximately 4 billion dollars to generators in 2011.

8. NYISO asserts that it made these settlements in good faith. NYISO states that since its new version of its market design software was introduced in 2005, the settlement code was revised to expand DAMAP in order to hold generators harmless with respect to the balancing obligations directed by NYISO. NYISO asserts that the omission of the revised language in the Services Tariff to cover holding offline gas turbine generators equally harmless was completely inadvertent.

9. NYISO states that the discrepancy between the units' settlements and the tariff language for historical periods needs to be remedied. NYISO adds that customers expect finality in NYISO's invoice process.⁴ NYISO further states that although the payments at issue were not consistent with the Services Tariff, they were appropriate to the intended market design in that they avoided financial harm otherwise wrongly imposed on market participants when they follow NYISO's instructions.

10. NYISO states that it self-reported this inconsistency between its tariff language and settlement code to the Commission's Office of Enforcement on January 4, 2012. NYISO further states that NYISO and the market participants are in agreement on the tariff revisions, NYISO's management committee unanimously approved them on January 25, 2012; and the NYISO board of directors approved them on February 13, 2012.

Notice of Filing and Responsive Pleadings

11. Notice of NYISO's March 6, 2012 Filing was published in the *Federal Register*, 77 Fed. Reg. 14,510 (2012), with comments, protests and interventions due on or before March 27, 2012. Notice of NYISO's March 9, 2012 Filing was published in the *Federal Register*, 77 Fed. Reg. 16,024 (2012), with comments, protests, and interventions due on

are *either* online and dispatched by RTD *or available for commitment by RTC*" (proposed additional language in italics). NYISO's March 6, 2012 Filing contained incorrect tariff sheets, an error that NYISO corrected in its March 9, 2012 Filing.

⁴ NYISO March 6, 2012 Transmittal at 4.

or before March 30, 2012. New York Transmission Owners⁵ filed a motion to intervene. No protests were filed.

Commission Determination

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the motion to intervene serves to make the entities that filed it parties to this proceeding.

13. As discussed below, we grant the requested waivers and accept the proposed amendments to Attachment J of NYISO's Services Tariff, effective March 7, 2012, as requested. We find that the proposed revisions correct, clarify and/or make consistent the relevant provisions of the tariff. They bring the Services Tariff into conformance with NYISO's current practice and its intended market design and settlement code. We also grant waiver of the 60-day notice and comment period. NYISO stakeholders have been on notice of this filing since January 2012. The proposed revisions received unanimous stakeholder support and no comments or protests were filed with the Commission.

14. The Commission has previously granted Independent System Operators and Regional Transmission Organizations limited waivers of their own tariff provisions when: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.⁶

15. We find that NYISO has demonstrated good cause to grant the request for limited tariff waiver for the open service months from June 2011 until the effective date of this order because NYISO's requested waiver satisfies the aforementioned conditions. NYISO has acted in good faith and we have no reason to believe the omission of the

⁵ For purposes of this filing, New York Transmission Owners consists of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

⁶ See, e.g., *PJM Interconnection, LLC*, 137 FERC ¶ 61,184, at P 13 (2011); *PJM Interconnection, LLC*, 137 FERC ¶ 61,109, at P 11 (2011); *PJM Interconnection, LLC*, 135 FERC ¶ 61,069, at P 8 (2011); *ISO-New England, Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *California Independent System Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010); *Hudson Transmission Partners*, 131 FERC ¶ 61,157, at P 10 (2010); *Pittsfield Generating Co., L.P.*, 130 FERC ¶ 61,182, at P 9-10 (2010); *ISO New England Inc. - EnerNOC*, 122 FERC ¶ 61,297 (2008); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008).

tariff language necessary to hold gas turbine generators harmless was anything but inadvertent. The waiver is limited in scope in that it will excuse NYISO's past noncompliance with its Services Tariff for the open service months from June 2011 until the effective date of this order. Further, relatively few suppliers were paid in violation of the tariff provisions, and those payments represent only a small fraction of NYISO's total payments to generators. In addition, waiver of the tariff will avoid financial harm otherwise wrongly imposed on market participants when following NYISO's instruction.

16. For the foregoing reasons, we grant NYISO's request for limited waiver of section 25.2.1 of NYISO's Services Tariff. We accept the proposed revisions to section 25.2.1 effective March 7, 2012, as requested and we grant waiver of the 60-day notice period.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.