

119 FERC ¶ 61,130

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. ER07-748-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued May 11, 2007)

1. On April 13, 2007, New York Independent System Operator, Inc. (NYISO) submitted revisions to its Market Administration and Control Area Services Tariff¹ (Services Tariff) and its Open Access Transmission Tariff (OATT).² The proposed margin restoration payment changes would allow the NYISO to compensate generators for the increased costs they incur when complying with a specific local reliability rule without an offset for revenue margins otherwise earned in the day. NYISO asks for an effective date of May 13, 2007 and for expedited action on the filing so that the compensation mechanism can be in place for such generators for the period the rule is likely to be invoked during the coming Summer Capability Period.³ Also, the proposed changes would allow the NYISO to recover the margin restoration payment made to these units from loads in the load zone in which the generator is located. As discussed below, we accept the filing to be effective May 13, 2007.

¹ FERC Electric Tariff, Original Volume No. 1

² FERC Electric Tariff, Original Volume No. 2

³ The Summer Capability Period begins May 1.

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Background

2. NYISO states that the New York State Reliability Council (NYSRC)⁴ establishes reliability rules for the New York State Power System, and the NYISO complies with these rules in operating the power system and administering the electricity markets. Some of these reliability rules require the NYISO, the Transmission Owners, and the generators to take certain action in defined load zones under defined circumstances, which are referred to by the NYSRC as local reliability rules.

3. One of the local reliability rules is I-R3, referred to as the “Minimum Oil Burn Rule,” which states:

[T]he NYS Bulk Power System shall be operated so that the loss of a single gas facility does not result in the loss of electric load within the New York City or Long Island zones.

NYISO states that, in order to implement this rule, Consolidated Edison Company of New York, Inc and the Long Island Power Authority establish procedures pursuant to which specifically identified dual fuel generating units in their respective downstate load zones are required to utilize a minimum level of a fuel other than gas, usually oil, when loads are forecasted to reach certain levels (minimum burn requirement). Generators operating with at least a minimum of the alternative fuel will remain on-line should the loss of gas contingency occur.⁵ Compliance with I-R3’s alternative fuel-burning requirements economically disadvantages alternative fuel generating facilities relative to neighboring units not subject to the rule when the alternative fuel is more expensive than a unit’s primary fuel.⁶

4. When forecasts indicate that Loads will trigger I-R3, the Transmission Owners inform the NYISO and notify the named generating facilities that the minimum burn requirement is in place. When a Transmission Owner’s notification is made prior to the

⁴ The NYSRC was created simultaneously with the NYISO, by the NYISO Transmission Owners--six investor-owned New York Utilities, the New York Power Authority and the Long Island Power Authority. Section 2.1 of the *Agreement between the NYISO and the NYSRC* requires the NYSRC to “develop Reliability Rules which shall be complied with by the ISO and all entities engaged in transactions on the NYS Power System.”

⁵ Tariff Filing at 3.

⁶ *Id.* at 4.

close of the Day-Ahead Market, the unit has an opportunity to include the cost of the alternative fuel in its Day-Ahead energy offer and to request the increased costs also be included in its reference bid.⁷ If I-R3-specified generating facilities reflect higher alternative fuel costs in the Day-Ahead Energy offer, they will likely receive a reduced Day-Ahead schedule when compared to the Day-Ahead schedule the unit would otherwise receive. If the alternative fuel costs are significantly higher than the fuel costs of competing facilities that do not fall within I-R3's ambit, these units may get no Day-Ahead schedule at all.⁸ Units that can offer their higher alternative fuel costs into the Real-Time Market suffer the same economic disadvantages of a reduced schedule as those bidding into the Day-Ahead Market.⁹

5. When the first Load forecast indication that the I-R3 thresholds will be reached is not available until after the Day-Ahead Market has closed, the affected generating facilities are unable to incorporate into their Energy offers the higher costs of their alternative fuel.

6. The economic disadvantage of being subject to I-R3 is the higher cost of the alternative fuels (usually fuel oil) relative to the cost of natural gas.¹⁰ Market Participants and the NYISO remain concerned that the NYISO's existing tariff provides an incomplete revenue stream for a reliability service that is likely to be needed almost every day this summer. This was not an issue until the summer of 2006, when the cost of oil grew to be as much as 20 percent higher than natural gas.¹¹

7. Section 4.1.7 of the NYISO's Services Tariff authorizes the reimbursement of operating costs not reflected in a unit's energy offer, if those costs were incurred "to ensure local reliability."¹² But the NYISO is authorized to make this reimbursement only after crediting against it the margins that the generating facility earned in the NYISO's

⁷ The NYISO will honor requests from operators of generating facilities to increase their reference bids if they document their verifiable costs.

⁸ Tariff Filing at 4.

⁹ *Id.*

¹⁰ *Id.* at 5.

¹¹ *Id.* at 6.

¹² Services Tariff, section 4.1.7.

Day-Ahead or Real-Time Markets for the day in which the increased costs were incurred.¹³ Therefore, the NYISO proposes to eliminate the margin offset currently required by the Services Tariff section 4.1.7.

8. The NYISO proposes adding a new section 4.1.7(a) to its Services Tariff to describe a special payment that would be made to units when operating under the minimum burn requirement. This payment would be limited to the amount of fuel required to be burned and would be made only when: (i) specified load levels had been reached; (ii) the unit has burned the alternative fuel in response to the Transmission Owner's request to do so; (iii) the alternative fuel was more expensive than the principal fuel; and (iv) the unit's reference price for the day was based on the principal rather than the alternative fuel. In addition, this amendment would codify the payment process and the recovery of these payments from loads zones. The NYISO proposes this compensation be made for the full amount of the approved additional costs incurred by the unit in response to an I-R3 call without offset for the margin earned in the energy market(s) for that day.¹⁴

9. The NYISO proposes adding a new subsection (6) to section 2 (B) of Rate Schedule 1 of its OATT to allow the NYISO to recover the costs of this payment from loads, except for third party station power loads, in the load zone in which the generator is located on a monthly load ratio share basis.¹⁵

10. The NYISO is aware that its proposal does not compensate I-R3 specified generating facilities for the storage and delivery infrastructure required to be able to burn an alternative fuel at any given time. NYISO states that it and its stakeholders are still pursuing a design mechanism to capture these costs.¹⁶

11. The NYISO asks the Commission to waive the 60-day prior notice requirement for good cause shown.

¹³ *Id.*

¹⁴ Tariff Filing at 6.

¹⁵ *Id.* at 7.

¹⁶ *Id.*

Notice, Interventions and Protests

12. Notice of NYISO's filing was published in the *Federal Register*, 72 Fed. Reg. 8,722 (2007), with interventions and protests due on or before April 26, 2007.¹⁷

13. KeySpan-Ravenswood, LLC (Ravenswood) filed a timely motion to intervene and protest. New York Power Authority (NYPA) filed a timely motion to intervene and comments. The New York Public Service Commission; Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA, New York State Electric & Gas Corporation, Niagara Mohawk Power Corp. d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester gas and Electric Corporation (New York Transmission Owners); and NRG Power Marketing Inc., Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Oswego Harbor Power LLC (NRG Companies) filed timely motions to intervene.

14. In its intervention and protest, Ravenswood states that the Commission should approve the proposed tariff revisions, which implement the principle of non-discriminatory, full opportunity cost compensation.¹⁸ However, Ravenswood asserts that it is not being fully compensated for its costs, specifically its incremental costs for maintaining storage and deliverability infrastructure and its fixed costs for capital and operation and maintenance associated with facilities that enable it to switch fuels. Ravenswood asks the Commission to direct the NYISO to make a compliance filing, by June 1, 2007, providing an express mechanism for Minimum Oil Burn Rule generators to recover all of their incremental costs, including "storage and deliverability" costs incurred as a result of being capable, upon instruction, "to burn an alternative fuel at any given time."¹⁹ Also, Ravenswood states that the NYISO should be directed to include in its compliance filing an appropriate proposal for a recovery mechanism for the fixed costs associated with maintaining and investing in equipment required to enable a Minimum Oil Burn Rule generator to switch to an alternative fuel "at any given time."²⁰

¹⁷ Notice of NYISO's filing was later published in the *Federal Register*, 72 Fed. Reg. 20,526 (2007), with interventions and protests due on or before May 4, 2007. This second notice was rescinded by Commission notice issued April 20, 2007.

¹⁸ Ravenswood Protest at 9.

¹⁹ *Id.* at 7.

²⁰ *Id.* at 8.

15. NYPA filed comments supporting the NYISO filing because it would compensate generating units for the increased operating costs they incur when they must comply with the application of I-R3.²¹ NYPA believes that the NYISO filing will enable an affected dual-fuel generating unit to obtain compensation of its variable alternative fuel costs when they exceed the primary fuel costs. In addition, NYPA supports the NYISO's request for expedited treatment with an effective date of May 13, 2007.²²

Commission Decision

16. The Commission accepts the proposed revisions to the NYISO's Service Tariff and OATT to be effective May 13, 2007. The new tariff provision will ensure that dual-fuel generators are appropriately compensated for additional fuel costs when required to burn oil in response to I-R3. The Commission grants NYISO's request for a waiver of the 60-day filing requirement. NYISO has shown good cause for the waiver, as this accelerated effective date will permit NYISO to provide compensation for units incurring the additional cost of burning fuel oil when these units are likely to be needed during the Summer Capability Period.

17. The Commission denies Ravenswood's protest as beyond the scope of this proceeding. Ravenswood supports NYISO's proposed revisions but wants NYISO to go further than it has and revise its tariff to provide additional compensation to generators subject to the Minimum Oil Burn Rule. The NYISO states that it is committed to bringing the issue of compensation for storage and delivery infrastructure back to its stakeholders for further work over the next several months.²³ It also states that it will propose a recovery mechanism for fixed costs if and when it and its stakeholders agree on its necessity and its design.²⁴ We believe the NYISO's stakeholder process is the appropriate mechanism to address these issues, and so we will not require the NYISO to file a compliance filing by June 1, 2007, as requested by Ravenswood.

The Commission orders:

(A) NYISO's revisions to its Services Tariff and OATT are hereby accepted.

²¹ NYPA Comments at 3.

²² *Id.* at 4.

²³ Tariff Filing at 7.

²⁴ *Id.*

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(B) Ravenswood's protest is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.