STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: http://www.dps.state.ny.us

March 29, 2010

SENT VIA ELECTRONIC FILING
Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 1-A209
Washington, D.C. 20426

Re: Docket No. RM10-13-000 - Credit Reforms in Organized Wholesale Electric Markets

Dear Secretary Bose:

For filing, please find the Notice of Intervention and Comments of the New York State Public Service Commission in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 474-1585.

Very truly yours,

Alan T. Michaels
Assistant Counsel

Attachment

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Credit Reforms in Organized Wholesale Electric Markets	))	Docket No. RM10-13-000

NOTICE OF INTERVENTION AND COMMENTS OF THE NEW YORK STATE PUBLIC SERVICE COMMISSION

NOTICE OF INTERVENTION

On January 21, 2010, the Federal Energy Regulatory Commission (FERC or Commission) issued a Notice of Proposed Rulemaking (NOPR) in which it proposed credit reforms in organized wholesale electric markets. The New York State Public Service Commission (NYPSC) hereby submits its Notice of Intervention and Comments in the above-captioned proceeding pursuant to the Notice published in the Federal Register on January 27, 2010, and Rule 214 of the Commission's Rules of Practice and Procedure.

Copies of all correspondence and pleadings should be addressed to:

Alan T. Michaels
Assistant Counsel
New York State Department
of Public Service
Three Empire State Plaza
Albany, New York 12223-1350
alan_michaels@dps.state.ny.us

William Heinrich
Chief, Policy Coordination
New York State Department
of Public Service
Three Empire State Plaza
Albany, New York 12223-1350
william_heinrich@dps.state.ny.us

BACKGROUND

On January 21, 2010 the Federal Energy Regulatory Commission (FERC or the Commission) issued a Notice of Proposed Rulemaking (NOPR) pursuant to section 206 of the Federal Power Act.[1] In proposing new credit practices for individual organized electric markets, FERC states its goal is to "provide competitive markets with adequate access to capital without excessive risk and without excessive cost."[2] The Commission further notes that "regional transmission organizations (RTOs) and independent system operators (ISOs) must balance the need for market liquidity against corresponding risk."[3] In its exploration of credit practices, the Commission recognizes it must be mindful of the delicate balance between limiting risk and ultimately the cost of security while ensuring just and reasonable rates.[4]

Members of the Commission also specified their intent with the release of the NOPR. FERC Chairman Jon Wellinghoff stated that a goal of "improving the credit practices in the organized markets [is] to enhance market efficiency and consumer

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1 130 FERC ¶61,055 (2010) (hereinafter "NOPR").

2 NOPR at p.1.

3 *Id.* at p.2.

4 "FERC Proposes Credit Reforms for Organized Electric Markets", Docket No.RM10-13-000, Issuance 20100121-3056, (January 21, 2010).

protection."[5] Commissioner Moeller stated that RTOs and ISOs must take measures to limit customer's exposure to market participants' inability to cover their obligations.[6]

INTRODUCTION

Improving efficiency, protecting consumers, and limiting risks are worthy goals. The NYPSC also fully support the need for balancing risk exposure against the cost of mitigating that exposure in order to ensure just and reasonable rates, as the Commission has recognized.

The NOPR reflects that the Commission previously called for enhanced default protections. FERC considered issues related to credit practices in 1996, and again in a policy statement issued in 2004.[7] The organized markets responded, and many RTOs/ISOs took measures to prevent defaults within their jurisdictions. Through the governance process, the New York Independent System Operator, Inc. (NYISO) adopted a number of enhancements to develop further protections.

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5 Statement of Chairman Jon Wellinghoff on Credit Reforms for Organized Electric Markets, RM10-13-000, Item No.E-2, Issuance20100121-3058, (January 21, 2010).

6 Statement of Commissioner Philip D. Moeller on Credit Reforms for Organized Electric Markets, RM10-13-000, Item No.E-2, Issuance 20100121-3081, (January 21, 2010).

7 *See*, NOPR at p.2-3

Though the NOPR addresses a number of credit protection measures, the NYPSC has focused its comments on more frequent invoicing. The NYPSC and most market participants recognize that more frequent invoicing reduces the risk of default. It is also true that the amount of risk mitigated by such actions is wholly dependent on the creditworthiness provisions the ISO/RTOs already have in place. In New York, the market participants have thoroughly vetted these New York-specific circumstances, and have determined that weekly (or even daily) invoicing will not produce risk mitigation benefits that outweigh the costs of adopting more frequent settlements. The NYPSC respectfully requests that the Commission reject a universal approach to weekly or daily invoicing.

DISCUSSION

The NYPSC agrees that sound credit practices in the organized electric markets benefit all participants and are critical to the success of the markets. It must also be recognized, however, that each ISO/RTO is unique and that a uniform national approach may not be cost effective in all ISOs/RTOs. NYPSC respectfully opposes universally shortened settlement periods. As applied in New York, this suggested remedy imposes burdensome costs on a portion of market participants, yields windfall financial benefits for another portion, and results in very little actual improvement in overall financial risk. This is especially true in New York where the NYISO has developed and continues to enhance financial security provisions that are among the most stringent and most successful in the country.

The NYPSC opposes weekly settlements for four reasons. First, the costs of implementing weekly settlements in New York likely exceed the benefits. Before ordering weekly invoicing in New York, the NYPSC urges FERC to quantify the costs and benefits of its proposals under New York's specific facts and circumstances. Second, without financial mitigation, some market participants will bear increased financial burdens while others will benefit. Third, a national mandate is inconsistent with the governing philosophy that acknowledges and generally respects the decisions reached through the governance process of each ISO/RTO. Fourth, there is no need for weekly or daily invoicing in New York due to New York's history of limited losses, its sophisticated and recently reexamined and enhanced credit practices, and the recent rejection of weekly billing by the majority of its market participants as unnecessary. Accordingly, the Commission should not mandate weekly settlements. If a mandate is imposed, given opposition by the majority of the NYISO market participants, virtually unanimous opposition by consumer advocates and the wholesale loads, and despite the burden to retail customers, NYPSC urges the Commission to require an equitable mitigation of the costs of the mandate.

A. Cost-Benefit Balance

Defaults in the market are not routine, with the NYISO experiencing fewer losses than other markets. The cost of addressing the risk must also be considered to ensure that rates remain just and reasonable.

Upon review, the NYPSC is concerned that increasing the frequency of settlements to a weekly basis will cost more than the expected benefit. For the New York market, weekly invoicing will require that at least 40 more invoices be generated, received, processed, and paid. This increases the amount of work on both ends of the invoicing process; both the generators and the Transmission Owners and Load Serving Entities (TO/LSEs (loads)) will have to hire more employees and add additional software. In comparison to a monthly invoicing, daily invoicing and closing efforts will increase work and documents produced even more. This significant increase in work will cause an increase in costs to TOs/LSEs and to retail customers.

The NYISO analyzed the cost of weekly invoicing. Its study concluded that weekly invoicing would cost consumers approximately $6 million per year in increased cash working capital costs. This study did not include one-time or ongoing administration costs that would also raise retail rates. Clearly, weekly invoicing in New York would increase retail rates, but there is no evidence specific to New York that risk reduction benefits would equal or exceed these costs.

The concept of shortening the invoicing cycle is aimed at protecting the entire market from a few risky participants. Weekly or daily invoicing lessens the exposure of loss across the entire market, despite the fact that de minimus risks are presented by many market participants. As a result, the majority of participants who have never had credit problems in the NYISO market, who have investment grade ratings and/or provide collateral for security, are required to pay for the few who impose credit risks. If credit problems are identified in New York, a more focused solution to the problem would be preferable to an approach which would financially harm major segments of the market.

B. Creation of a Windfall

Although shortening the invoicing cycle to a weekly basis creates a cost for all market participants, the net financial benefits to generators remain significant. By receiving payments more frequently, the NYISO's study indicated that on a net basis, generators will see in excess of a $30 million annual gain. To create a windfall of this magnitude for the benefit one market sector, while other market sectors are burdened with costs, is inequitable at best and discriminatory at worst.

C. Deference to the Governance Process

It is well recognized that each ISO/RTO market is different and has its own characteristics and needs as a result of the varying stakeholder processes, governance structures, and evolution of market rules.[8] Each ISO/RTO understands its market, the participants, and requirements to provide appropriate protections and security. Therefore, in determining whether a specific invoicing frequency should be mandated in New York, the Commission should take into account the expertise of the NYISO, the recent NYISO reviews of creditworthiness, and the independent governance process in New York.

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[8] See generally, Joint Comments of the California Independent System Operator corporation and Midwest Independent Transmission System Operator, Inc., RM10-13-000, (March 15, 2010), where the two ISOs jointly request other commenting parties to review each separate market for a "mutuality" argument, noting each is independent and individualized; see also, Comments of the Detroit Edison Company, Docket No. RM10-13-000, (March 15, 2010), p.2 where the commenting company pleads that it is of utmost importance to allow for differences in the credit rules, limits, invoice dates, and other requirements of each separate ISO/RTO to permit individual discretion.

The NYISO actively sought to reduce default risks within its jurisdiction well before the NOPR was issued. The NYISO and its market participants observed losses in neighboring markets, and conducted their own assessment of credit practices within the New York market. NYISO market participants examined 18 credit policy enhancements during 2009, of which to date eight have been adopted and approved by FERC, and one proposal, weekly invoicing, was rejected by a substantial margin.[9]

In fact, the New York market is unique due to the NYISO's robust default risk protection rules. The fact that such measures work effectively is demonstrated by the history of the NYISO's bad debt losses. To date, the NYISO has only experienced a significant bad debt loss due to the fallout from the Enron bankruptcy in 2003, and it recovered approximately 90% of that loss; the impact was limited due to the NYISO's credit policies/provisions. Further evidence of the efficacy of the NYISO's credit policies is the lack of significant bad debt loss despite the risks brought on by the substantial recession and financial downturn. The NYISO's credit provisions are proactive and effective.

After much recent analyses and discussion, the NYISO's market participants found no need to adopt weekly invoicing to

[9] See, New York Independent System Operator, Inc., Docket Nos. ER09-1612-000 and ER09-1612-001 (Nov. 4, 2009).

ensure adequate protection against the risk of default. The review was rigorous, and the market participants reached an informed decision that weekly invoicing was unnecessary. This recent and thorough review under the NYISO's governance process, which included input from all market participants, should not be discounted by the Commission.

D. New York Retail Markets

The New York retail market is unique. Unlike its neighboring markets, New York's retail market has numerous competitive suppliers (Energy Service Companies, or ESCOs), which serve more than 50% of the State's retail sales. By contrast, the Pennsylvania, New Jersey and Maryland (PJM) market has few retail suppliers, and those few serve largely non-residential customers.

Increasing the costs to LSEs for weekly invoicing, especially with doubtful offsetting financial benefits, could have a direct and negative impact on the retail competitive market in New York. ESCOs, like other LSEs, would incur increased working capital costs and increased operational costs, which could pose a barrier to entry and which could cause some ESCOs to exit the New York market. These cost increases may negatively affect the well-established competitive retail energy market in New York.

E. Impose "Remedy" with Considerations

If, arguendo, the Commission is inclined to order weekly or daily invoicing (at a potentially significant cost to TOs/LSEs), the terms of the requirement should be carefully limited. First, market participants who impose no material financial risks, such as municipalities (which the NOPR notes), the traditional utilities with provider-of-last-resort responsibilities and ESCOs that provide security, should not be subjected to weekly invoicing. Such an approach will minimize the addition of unneeded costs in the wholesale market and will limit the impact on retail rates.

Another limitation NYPSC urges the Commission to consider, assuming a weekly settlement cycle is deemed necessary despite objections raised, is giving the ISO/RTOs the option of a twice monthly settlement cycle. Both capital and operational costs would be significantly reduced as compared to the weekly proposal, and very substantially reduced as compared to daily settlements. Again, NYPSC remains convinced that weekly settlements as a further credit protection in New York are unnecessary,[10] but if they are to be imposed, NYPSC urges FERC to do so in a flexible manner, providing deference to the decisions

[10] It should also be noted that the market participants though the NYISO or FERC can implement further credit protections should they become necessary.

of the NYISO, and only after a review and balancing of the costs and benefits that are unique to the New York market.

Lastly, if more frequent invoicing is imposed, the Commission should address the need to reconcile payments due to generators and payments due from generators based on a comparable period. In particular, payments due from generators for the use of "station power" should be netted and paid based on the same invoicing period. If generators are permitted to pursue weekly or daily invoicing, the utilities should be afforded similar protections for power provided to generators for station use.

CONCLUSION

Given the NYISO's unique governance structure, the recent review and enhancement of its credit protections and the rejection of weekly invoicing, the potential impact on New York's vibrant retail markets, and the NYISO's history of effective default protections, NYPSC urges the FERC to conclude that weekly invoicing would be harmful to New York and that a universal weekly settlement cycle should not be employed. The NYPSC respectfully requests that the Commission reject a universal approach to weekly or daily invoicing.

If the Commission remains inclined to mandate more frequent settlement periods, the FERC should consider imposing the cost burden on those market participants that are responsible for the increased default risk. Further, any mandate considered should include twice-monthly settlement periods as an option. If a remedy is mandated, twice-monthly invoicing would provide the risk reduction sought, while limiting the costs.

Respectfully submitted,

Peter McGowan
General Counsel
Public Service Commission
of the State of New York

By: Alan T. Michaels
Assistant Counsel
3 Empire State Plaza
Albany, NY 12223-1305
(518) 474-1585

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Albany, New York