



ISO Agreements. The NYISO commenced operations under the ISO OATT and ISO Services Tariff on November 18, 1999. On December 1, 1999, the Member Systems of the New York Power Pool (“Member Systems”) officially transferred operational control over their designated transmission facilities to the NYISO.

Less than a year ago, the Commission issued an Order granting temporary waivers of annual charges to Independent System Operators (“ISOs”), Power Exchanges (“PXs”), and other similar entities.<sup>2</sup> The Commission recognized the potential problems of double counting presented by ISOs, PXs, and other entities that provide services over facilities owned by other companies.<sup>3</sup> The Commission stated it would address double assessment concerns in a later proceeding.<sup>4</sup> The *Annual Charges NOPR* deals with those issues.

## II. ASSESSMENT OF ANNUAL CHARGES

“[T]he Commission is proposing to assess annual charges to public utilities based on their transmission of electric energy in interstate commerce....”<sup>5</sup> The Federal Power Act (“FPA”) excludes from the definition of public utilities “a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing....”<sup>6</sup> To confirm its intent to limit annual charges to public utilities, the Commission continues that it “proposes to continue its existing policy that municipals and rural electric utility systems that are financed by the Rural Utilities Service will not be required to pay annual charges. While these entities may

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<sup>2</sup> *PJM Interconnection, L.L.C.*, 88 FERC ¶ 61,109 (1999).

<sup>3</sup> *Id.* at 61,258.

<sup>4</sup> *Id.*

<sup>5</sup> *Annual Charges NOPR*, slip op. at 14.

<sup>6</sup> 16 U.S.C. § 824(f).

be transmitting utilities subject to our authority under sections 211, 212, and 213 of the FPA, they are not public utilities under the FPA.”<sup>7</sup>

Two of the transmission-owning entities whose transmission facilities are subject to the Agreement between the NYISO and the Transmission Owners are agencies of a state or a political subdivision of a state, and therefore are not public utilities: the New York Power Authority (“NYPA”) and the Long Island Power Authority (“LIPA”). As entities that are not “public utilities,” transmission over NYPA and LIPA’s facilities should not be subject to the annual charges.

The Commission proposes to assess annual charges to public utilities based on their transmission of electric energy for: (1) unbundled wholesale transmission, (2) unbundled retail transmission, and (3) bundled wholesale power sales.<sup>8</sup> The Commission apparently proposes not to assess annual charges against transmission associated with the service provided to bundled retail load by the transmission owning public utilities.

### **III. COLLECTION OF ANNUAL CHARGES**

As public utilities, ISOs could potentially be subject to the annual charge, along with public utility members of the ISOs that retain ownership of transmission facilities. “[T]he Commission is concerned that the assessment of annual charges to them [ISOs] could result in a ‘double counting’ of transactions—by counting a single transaction both to the transmission-owning public utility and to the ISO or RTO public utility.”<sup>9</sup> The transmission-owning members of the NYISO, including public utilities, as well as NYPA and LIPA, retained ownership of their

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<sup>7</sup> *Annual Charges NOPR*, slip op. at 10-11 (citing 18 CFR § 382.102(b)).

<sup>8</sup> *Annual Charges NOPR*, slip op. at 14.

transmission facilities. The Commission proposes two methods to collect annual charges from transmission-owning public utilities while avoiding the double counting problem.

One way would be not to charge the ISO or RTO itself, but instead charge each *transmission-owning public utility* based on the MWh of transmission service provided on their lines. The *transmission-owning public utility* would include the annual charges, as a cost element, in its revenue requirement, which, in turn, is recovered by the ISO or RTO through the ISO's or RTO's open access transmission rates.<sup>10</sup>

The Commission's first approach to collecting the annual charge contemplates collecting annual charges only from transmission-owning public utilities, in accord with the rest of the *Annual Charges NOPR*. Under the first approach, public utilities providing transmission in interstate commerce would be subject to the charge, and NYPA and LIPA, which are not public utilities, would not be charged for transmission over their facilities.

The Commission suggests an alternative approach to collection that would produce different results. "Another way would be to allow the ISO or RTO to act as an agent for all of the *individual transmission owners* and have the ISO or RTO pay the annual charges rather than the *individual transmission owners*."<sup>11</sup> The *Annual Charges NOPR* contains over 35 references to public utilities and the Commission seems to have intended to limit annual charges to transmission by public utilities. Inexplicably, the Commission's second collection approach refers to "individual transmission owners" instead of "public utilities." Contrary to the Commission's stated intent and current practice, non-public utilities, like NYPA and LIPA, could be subject to the annual charge. The NYISO favors the first approach because the annual charge

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<sup>9</sup> *Annual Charges NOPR*, slip op. at 15.

<sup>10</sup> *Id.* (emphasis added).

<sup>11</sup> *Id.* (emphasis added).

would only apply to public utilities and would not reach NYPA and LIPA. As non-public utilities, NYPA and LIPA should not be subject to annual charges by the Commission.

The NYISO offers that the Commission's proposed collection methods should yield the same results, i.e., only transmission-owning public utilities would be subject to the annual charge. The only difference should be which public utility will pay the charge to the Commission: the individual transmission-owning public utility, or the ISO, as agent for the transmission-owning public utilities. The Commission's second approach would involve a change in the entities subject to the annual charge, and thus produce a different result. With an increase in the number of entities subject to annual charge, transmission costs for New York consumers would also increase. The NYISO will support any collection method that is just, reasonable, fair, and consistent. The second approach, as presently stated, does not satisfy these criteria.

As agent either for all transmission owners, or for only transmission-owning public utilities, the NYISO would have technical difficulties calculating the megawatt hours of transmission subject to annual charges. For example, the NYISO does not receive sufficiently detailed information with transmission service requests to make determinations of what transmission is subject to the annual charge and what transmission is not subject to the annual charge. Companies requesting transmission do not specify the number of megawatt hours of transmission they will be using to serve bundled retail load. Therefore, the NYISO does not know what portion of the transmission is exempt from the annual charge based on its service of bundled retail load. As a consequence, the NYISO will not be able to accurately collect proper annual charges as agents of the individual transmission owners or the individual transmission-

owning public utilities. With incomplete information, the NYISO would not be able to successfully implement the Commission's second collection proposal.

**IV. CONCLUSION**

The NYISO supports the Commission's new approach to assessing annual charges to public utilities based on their transmission of electricity in interstate commerce. With industry restructuring progressing at a steady pace, focusing on transmission is a logical way to assess regulatory charges. The NYISO is unable to act as an agent because it lacks the information with respect to bundled retail service that is exempt from annual charges. Therefore, the NYISO supports the Commission's first approach whereby transmission-owning public utilities would collect the annual charges for transmission over their facilities.

Respectfully submitted,  
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