

**NYISO BOARD OF DIRECTORS DECISION
ON
CON ED'S AND LIPA'S APPEALS OF THE MANAGEMENT COMMITTEE
VOTE ON A CONGESTION REDUCTION PROPOSAL
(APRIL 17, 2002)**

ConEd, the City of New York, and Consumer Power Associates (together, ConEd) and LIPA appeal from a Management Committee vote adopting a Congestion Reduction Proposal (CRP). The CRP is intended to encourage the reduction of transmission congestion by reallocating "congestion rent shortfalls" to Transmission Owners who have transmission facilities out of service under certain circumstances.

ConEd and LIPA challenge the CRP on several grounds, including that the CRP discriminates against owners of underground and submarine transmission facilities, that the CRP is unfair and upsets the original "business arrangements" that lead to the formation of the NYISO because it seeks to change only the methodology for allocation of congestion rent shortfalls while not changing the methodology for congestion rent surpluses in the same manner, that the CRP would violate the ISO/TO Agreement provision that prohibits the NYISO from taking any action that would adversely impact "Existing Transmission Agreements" in effect at the commencement of NYISO operations, that the CRP will "chill" future investments in transmission assets, and that the CRP fails to address the underlying reasons congestion rent shortfalls occur. In addition, LIPA argues that the CRP will discourage Transmission Owners from following good utility practice, and seeks to appeal from the Management Committee's refusal to accept two proposed amendments to the CRP.

Niagara Mohawk Power Corporation (NIMO), NYSEG, and RGE have filed Motions in Opposition to ConEd's and LIPA's appeals. NYPA has filed a Motion in Opposition seeking only to correct two statements made by other parties regarding the ownership and operation of the Y-49 cables. NIMO, NYSEG, and RGE all urge that the appeals be denied. They address each of ConEd's and LIPA's arguments, and argue that the CRP is on its face fair because it addresses a flaw of the current system that allows Transmission Owners to collect congestion rents even when their facilities are out of service. They argue that assigning "Outage TCCs" during material outages of transmission facilities will encourage Transmission Owners to keep their facilities well maintained and in service and assign the true costs of outages to owners of out-of-service facilities rather than to owners who happened to receive a large percentage of residual revenues in the last TCC auction. NIMO, NYSEG, and RGE admit that the CRP does not address the root cause of congestion rent shortfalls, but argue that the CRP was not designed to address this issue; they urge us to direct NYISO Staff to develop further proposals to reduce congestion rent shortfalls. NIMO, NYSEG, and RGE argue that ConEd and LIPA were entitled to transmission revenues on their facilities before the NYISO was created only while the facilities were in operation, and argue that the CRP would return ConEd and LIPA to this position by offsetting payment of congestion rents with charges for congestion rent shortfalls when transmission facilities are out of service.

They reject LIPA's claim that the CRP will discourage TOs from following good utility practices.

After careful review of the documents submitted by both sides, consideration of arguments made before the Governance Committee, and input from NYISO Staff and the Board's Market Advisor, we decline at this time to file the CRP with FERC, as approved by the Management Committee, under Section 205 of the Federal Power Act. We clarify first, however, that we do not think the CRP necessarily discriminates against the owners of any particular types of transmission facilities, nor that the CRP is unfair or inconsistent with the original business arrangements that preceded the formation of the NYISO. We decline to consider whether the CRP would "chill" investments in transmission assets, or discourage transmission owners or others from following good utility practices.

The reason we decline to file the CRP under Section 205 at this time is that we agree with all the parties to this appeal that there are a number of flaws with the current TCC provisions of the tariff, including a basic deficiency that makes it likely there will be significant congestion rent shortfalls in the future, and possible inequities in the allocation of both congestion rent surpluses and shortfalls. The CRP provides an ostensibly equitable "quick fix" for only one symptom of a larger problem.

The Board is reluctant to approve this "quick fix" to patch the congestion rent shortfall symptom. The problems identified by the parties with the TCC provisions of the tariff may require more fundamental improvements to prevent the underlying problem – excessive levels of congestion rent shortfalls. We prefer that the parties work together through the Management Committee process to attempt to develop a comprehensive solution with, we hope, consensus support from all sectors. Such a consensus proposal should provide proper signals to promote necessary transmission investment and appropriate transmission operations and maintenance.

We direct NYISO Staff to continue to work with the Committees to develop a comprehensive proposal that would reduce congestion rent shortfalls to a more reasonable level. If that proposal also includes provisions on the allocation of the remaining congestion rent shortfalls that are consistent with the CRP, we will consider those provisions as part of the overall solution. We direct NYISO Staff to report to us within 90 days on its success in working with the Committees to develop such a proposal.

The appeals are granted.

4/17/02