UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.) Docket No. OA08-52-006

REQUEST FOR LEAVE TO ANSWER, AND ANSWER, OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ORANGE AND ROCKLAND UTILITIES, INC., NEW YORK POWER AUTHORITY, AND LONG ISLAND POWER AUTHORITY

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213 (2009), the New York Independent System Operator, Inc. ("NYISO"), Consolidated Edison Company of New York, Inc. ("Con Edison"), Orange and Rockland Utilities, Inc. ("O&R"), the New York Power Authority ("NYPA"), and Long Island Power Authority ("LIPA"), (collectively the "Filing Parties") respectfully request leave to answer, and submit an answer to, the June 9, 2009 protest of New York Regional Interconnect, Inc. ("NYRI") to the May 19, 2009 Compliance Filing ("May 19 Filing") submitted in this docket by the NYISO and the New York Transmission Owners ("NYTOs") (collectively, the "Joint Filing Parties").[1] The May 19 Filing addresses directives that the Commission issued to the Joint Filing Parties in orders issued on October 16, 2008 and March 31, 2009.[2]

The Commission should reject NYRI's protest because it badly mischaracterizes the May 19 Filing and the overall economic planning process which the Joint Filing Parties have developed, with the input and agreement of the large majority of the New York stakeholders, for

[1] The NYRI filing is styled as both a motion for extension of time and a protest. Because the Filing Parties are submitting this answer to NYRI's protest and the Commission has already acted on NYRI's motion for extension of time, the Filing Parties believe that this answer is being timely submitted pursuant to 18 C.F.R. § 213(d)(2) which provides a 30 day deadline. However, to the extent that the Commission deems the Filing Parties to have submitted this answer after the deadline for answering a motion, which is 15 days, the Filing Parties respectfully seek permission to file one day out-of-time.

[2] *See New York Independent System Operator, Inc.*, 125 FERC ¶ 61,068 (2008) ("October 16 Order"), *order on rehearing*, 126 FERC ¶ 61,320 (2009) ("March 31 Order").

evaluating and approving the cost allocation and recovery for proposed Regulated Economic Transmission Projects, and which the Commission has approved. NYRI's misstatements appear to result, in large measure, from the fact that NYRI declined to participate in the NYISO stakeholder process that led to the development of the May 19 Filing. From the commencement of this proceeding, NYRI has participated in very few of the stakeholder meetings that have led to the development of the NYISO's enhanced planning process in compliance with Order No. 890; and since the issuance of the October 16 Order, NYRI has been entirely absent from the NYISO's stakeholder meetings.

Instead of playing a constructive role in the development of the NYISO's enhanced planning process, NYRI has been content to submit to the Commission bombastic protests to each of the filings made by the Joint Filing Parties. Invariably, NYRI's protests have made wild and unsubstantiated allegations against the Joint Filing Parties, and have blatantly mischaracterized the clarifications submitted by the Joint Filing Parties. NYRI should not be rewarded by the Commission for its failure to participate in the NYISO stakeholder process. As directed by the Commission, the May 19 Filing merely clarifies the cost allocation and the evaluation methodologies for Regulated Economic Transmission Projects that the Commission already accepted. NYRI's arguments appear designed only to mischaracterize what are otherwise straightforward and clear tariff clarifications, and thus should be summarily rejected.

Furthermore, to the extent that NYRI repeats earlier protests and unsubstantiated allegations that already have been rejected by the Commission, those arguments and allegations should be summarily rejected. The Commission has already considered and rejected those arguments and, perhaps more importantly, NYRI has sought judicial review of those decisions in

a Petition for Review filed with the United States Court of Appeals for the District of Columbia Circuit on May 28, 2009.[3]

I. Request for Leave to Answer

The Filing Parties recognize that the Commission generally discourages answers to protests.[4] However, the Commission has the discretion to accept answers to protests, and has done so when they help to clarify complex issues, provide additional information, correct misstatements or mischaracterizations, or are otherwise helpful in the development of the record in a proceeding.[5] This answer is necessary because it will correct NYRI's numerous and fundamental mischaracterizations of the May 19 Filing, and thus will ensure a complete and accurate record. Accordingly, the Commission should permit the Filing Parties to file this answer.

II. Answer

A. NYRI should not be permitted to circumvent the NYISO's stakeholder process, which is intended to address, and if possible resolve, stakeholder concerns before they are aired at the Commission.

As the NYISO has emphasized to the Commission in prior filings, the NYISO stakeholder governance processes are geared toward the development of tariff provisions that have as wide a consensus as possible, and that advance the NYISO's obligations to operate non-discriminatory and efficient electric markets. Accordingly, the Commission has on many

[3] *See* New York Regional Interconnect, Petition for Review, No. 09-1150, filed May 28, 2009.

[4] 18 C.F.R. § 385.213(a)(2) and (3).

[5] *See e.g., New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 at P 7 (2004) (accepting the NYISO's answer to protests because it provided information that aided the Commission in better understanding the matters at issue in the proceeding); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was "helpful in the development of the record…").

occasions accepted proposals that have been developed through the NYISO's stakeholder process and have received broad stakeholder support.[6]

The May 19 Filing was developed through the NYISO's stakeholder process, and received broad stakeholder support as part of that process. The measure of that support is reflected in the comments -- or lack thereof -- filed at the Commission on the May 19 Filing. Only one party, NYRI, has seen fit to file protests to the May 19 Filing, while all other stakeholders have felt no need to weigh in. NYRI's complaints about the May 19 Filing at the Commission and indeed, NYRI's overall level of participation after the Joint Filing Parties submitted the May 19 Filing, stands in inverse proportion to NYRI's participation in the stakeholder process. As outlined above, NYRI did not attend a single stakeholder meeting that was held to develop the May 19 Filing. Rather, NYRI chose to weigh in on the issues addressed in that filing for the first time in its June 9, 2009 protest. This lack of participation continues a pattern that has been evident throughout this proceeding. NYRI was mostly absent from all of the stakeholder meetings that have been held by the NYISO to develop its enhanced planning process in response to the requirements of Order No. 890, even before the issuance of the October 16 Order.

Given NYRI's patent lack of participation in any of the stakeholder proceedings that led to the development of the May 19 Filing, NYRI's protest should be summarily rejected. NYRI's protest continues a disturbing pattern in this docket in which NYRI disregards the NYISO's stakeholder process, and then submits a filing to the Commission that utterly misrepresents the

[6] *New York Independent System Operator, Inc.*, 124 FERC ¶ 61,238 at P 35 (2008) (accepting the NYISO stakeholder approved proposal which was "thoroughly vetted through the NYISO Stakeholder process and received unanimous approval" and falls within a zone of reasonableness); *New York Independent System Operator, Inc.*, 109 FERC ¶ 61,161 at P 19 (2004) (accepting the NYISO's proposed tariff revisions because they were developed through its stakeholder process and received the support of a large majority); *New York Independent System Operator, Inc.*, 90 FERC ¶ 61,319 at 62,064 (2000) (rejecting an alternative proposal and accepting the NYISO's proposed tariff revisions which had obtained greater stakeholder support).

clarifications filed by the Joint Filing Parties, and makes wild and unsupported allegations about the NYISO and the New York Transmission Owners. The Commission has held in past proceedings that stakeholders should not be permitted to circumvent the NYISO's stakeholder process by submitting to the Commission arguments that should have been aired first in the NYISO's internal processes.[7] Based on this often enforced principle, the Commission should reject NYRI's protest solely based on its failure to raise the relevant arguments in the NYISO's stakeholder process.

B. NYRI mischaracterizes, and fundamentally misunderstands, the net benefit calculation for voting and cost allocation purposes.

1. The purpose of the net benefit calculation is to identify accurately all beneficiaries of a proposed Regulated Economic Project.

In its protest, NYRI makes the puzzling assertion that the purpose of calculating net Locational Based Marginal Price ("LBMP") reductions in the determination of beneficiaries of a proposed Regulated Economic Project is to artificially reduce the benefits of a proposed project, and thus to make it easier for certain Load Serving Entities ("LSEs") to reject the proposed project. Notably, NYRI asserts that the May 19 Filing "is intended to include every potential conceivable reduction in NYISO-identified NYTO/LSE beneficiaries' revenues, whether from transmission congestion contracts ("TCCs"), energy sales, transmission service charges, power sales and purchase agreements or otherwise, to provide southeastern NYTOs with some basis for rejecting a competitor's economic transmission project."[8]

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[7] *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,290 at PP 24, 26 (2008) (declining to direct requested revisions without "giving other stakeholders an opportunity for comment" because it "would inappropriately circumvent [the] stakeholder process"); *New England Power Pool*, 107 FERC ¶ 61,135 at PP 20, 24 (2004) (declining to accept changes proposed for the first time in a FERC proceeding by an entity that participated in the stakeholder process because the "suggested revisions have not been vetted through the stakeholder process and could impact various participants").

[8] NYRI Protest at 3. NYRI repeats this argument on pages 15-17 of its protest.

This assertion not only mischaracterizes the purpose of the "net benefit calculation" under Section 15.4 of Attachment Y of the NYISO Open Access Transmission Tariff ("OATT"), it attacks a provision that was included in the Joint Parties' original compliance filing in December 2007 and approved by the Commission in the October 16 Order. The purpose of the net benefit calculation is not to weigh costs and benefits of a proposed Regulated Economic Transmission Project (the cost-benefit analysis of the proposed project is performed at an earlier stage in the evaluation). Rather, the purpose of the net benefit calculation is to establish voting rights and determine allocation of any approved project to the appropriate beneficiary load zones. Thus, the net benefit calculation about which NYRI complains does not serve as a barrier, but instead merely involves the identification of those load zones that will benefit directly from a proposed Regulated Economic Project, and for which the LSEs serving those zones will therefore: (1) be permitted to vote on whether the project should receive cost recovery under the NYISO OATT; and (2) pay the costs of the project if it receives the requisite approval.

NYRI fails to recognize that the reason that benefits are calculated by determining a load zone's LBMP reductions net of reductions in TCC payments and bilateral contracts -- rather than simply using LBMP reductions, without any offsets -- is that a load zone's LBMP reductions, by themselves, do not accurately reflect the benefits of a proposed Regulated Economic Project to that load zone. Without offsetting reductions in TCC payments and bilateral contracts -- both of which are financial instruments which can serve to hedge the cost of congestion actually paid by an LSE -- the use of only the LBMP reductions will overstate the benefits that a load zone will receive from the construction of a Regulated Economic Project. To ensure that voting rights and project costs are allocated fairly, it is necessary to use a net benefit calculation, rather than simply relying on a load zone's LBMP reductions.

NYRI appears to understand none of this, and instead makes the wild allegation that the offset of TCC payment reductions and bilateral contracts against a load zone's LBMP reductions in the determination of that load zone's overall benefit from a proposed Regulated Economic Project is simply a plan to discriminate against projects that would bring power to the southeastern portion of New York. NYRI's claim is baseless and without merit. A more careful examination by NYRI of the clarification in the May 19 Filing would have demonstrated that the net benefits determination involves only the allocation of votes and -- if necessary -- project costs. It has no bearing on the cost/benefit analysis performed for a proposed Regulated Economic Project.

2. NYRI misrepresents the mechanics of the net benefits calculation.

NYRI also mischaracterizes the offsets that the NYISO uses to calculate a load zone's net benefits by asserting that the NYISO proposes to deduct reductions in "NYTOs' transmission service revenues" from the zonal benefits calculation. NYRI cites to no provision of Attachment Y to support this assertion, and, indeed, there is no support for this assertion in the OATT. As should be clear from the express language of Section 15.4.b of Attachment Y, only TCC revenues and bilateral contracts are offsets to the reductions in LBMPs resulting from a proposed Regulated Economic Project; reductions in transmission service revenues are not offset against LBMP calculations as part of the zonal benefits calculation.

3. NYRI misrepresents the entities that receive the benefits of TCC revenues.

NYRI also erroneously asserts that offsetting LBMP savings with reductions in TCC revenues resulting from a Regulated Economic Project provides New York Transmission Owner LSEs with an incentive to vote against a project because -- according to NYRI -- the TCC reductions will hurt the shareholders of such LSEs. NYRI objects to "this approach because it

will [sic] places a southeast NYTO's company profits and shareholder value before the interest of its customers."[9] NYRI also assets that "[u]nlike ConEd, these ESCOs most likely do not receive Energy Revenue and they absolutely do not receive Excess Congestion Revenue so they have no sources of revenues to offset against the benefits they would receive.[10]

These assertions are based upon a misrepresentation of who receives the benefits of TCC revenues that are collected as offsets to congestion costs, as well as a fundamental misunderstanding of the nature of TCCs. Contrary to NYRI's assertions, TCC revenues do not flow to an LSE's shareholders. Instead, TCC revenues are credited to each New York Transmission Owner's Transmission Service Charge ("TSC") and NYPA Transmission Adjustment Charge ("NTAC") on a monthly basis.[11] All of a NYTO's transmission customers -- both those of the specific NYTO and those of other LSEs -- benefit from this TSC/NTAC offset. Accordingly, TCC revenues are used for the benefit of ratepayers. Moreover, while all NYTOs receive a share of Excess Congestion Revenues, which are credited to the TSC, each NYTO also pays its pro-rata share of congestion shortfalls (which exists when the NYISO receives less congestion rents that it has to pay out). By paying for congestion shortfalls, which occur more frequently than Excess Congestion Revenues, the NYTOs "fully fund" TCCs, which enables the NYISO's TCC product to provide a 100% hedge against congestion. Other consumer benefits also arise from this market design including incentives to shorten transmission outage duration, and this design has been reviewed and accepted by the FERC.

[9] NYRI Protest at 16.

[10] *Id.*

[11] *See* NYISO OATT, Attachment N; NYISO Market Services and Control Area Services Tariff, Part V, Attachment B.

In making these arguments, NYRI either did not understand these aspects of the TCC mechanism, or misrepresented those aspects. Either way, NYRI's argument clearly has no basis, and should be rejected.

4. NYRI misrepresents the positions and motives of the Joint Filing Parties.

NYRI also misrepresents the motives of some of the Joint Filing Parties. For example, NYRI asserts that "[s]ome New York utilities appear to oppose transmission investment of any kind."[12] Yet, NYRI offers no evidence that any of the NYTOs oppose transmission investment. NYRI also takes issue with the supermajority voting aspect of the economic planning process by asserting that "ConEd could simply veto cost recovery."[13] NYRI's unsupported accusation essentially repeats claims from its December 16, 2008 answer, its November 17, 2008 petition for rehearing of the October 16 Order, its July 9, 2008 protest, its February 2, 2009 protest, and its April 29, 2009, petition for rehearing in this docket. Yet, as was the case with its prior pleadings, NYRI points to no action that would remotely suggest that Con Edison would veto a transmission project that could provide economic benefits to its customers.

C. NYRI's claim that the clarifications in the May 19 Filing would usurp the Commission's exclusive jurisdiction over rates reflects a fundamental misunderstanding of Attachment Y of the NYISO OATT.

NYRI misreads Section 15.4.e(i) of Attachment Y, which provides:

> The project cost allocated under this Section 15.4 will be based on the total project revenue requirement, as supplied by the developer of the project, for the first ten years of project operation. The total project revenue requirement will be determined in accordance with the formula rate on file at FERC. If there is no formula rate on file at FERC, then the developer shall provide to the NYISO the project-specific parameters to be used to calculate the total project revenue requirement.

[12] NYRI Protest at 4.

[13] *Id.* at 6.

According to NYRI, this provision means that if "a developer chooses not to use a formula rate to establish its revenue requirement, the NYTO/NYISO proposal would delegate the Commission's authority to establish the developer's revenue requirements to the NYISO."[14] This assertion is fundamentally wrong. First, the NYISO is itself a public utility pursuant to Section 201(e) of the Federal Power Act ("FPA"), and therefore all rates that the NYISO charges to third parties for FERC-jurisdictional service must be filed at the Commission, and are subject to Commission review under the just and reasonable standard of FPA Sections 205 and 206. The requirement that the developer provide to the NYISO the project-specific parameters to be used to calculate the total project revenue requirement is intended only to facilitate the NYISO's compliance with the rate filing and review requirements of FPA Sections 205 and 206 for rates and charges for jurisdictional service. This provision does not provide or grant the NYISO any right to separately file to establish a revenue requirement for the developer, and in fact contemplates the direct opposite.

NYRI's erroneous assertion regarding Section 15.4.e(i) is further undercut by the very next provision in Attachment Y -- Section 15.4.f -- which provides expressly that "FERC must approve the cost of a proposed economic transmission project for that cost to be recovered through the NYISO tariff." Thus, Attachment Y expressly requires that all project costs submitted to the NYISO for recovery be vetted first under the Commission's rate filing process. Far from attempting to "usurp" the Commission's exclusive jurisdiction over transmission rates, this provision expressly recognizes that authority, and makes cost recovery under Attachment Y subject to it. Clearly, NYRI either ignored this provision or failed to read it when NYRI

[14] *Id.* at 10.

developed its argument on usurpation of Commission rate-setting authority; either way, it should be clear that NYRI's argument is without merit and should be rejected.

D. NYRI's argument that the zonal allocation process is designed to provide under recovery of a project's costs mischaracterizes the allocation process, and should be rejected.

NYRI asserts that the "May 19 Filing proposes to deny full recovery of an economic transmission project's Commission-approved revenue requirements."[15] NYRI proceeds to accurately describe the formula for allocating costs to each beneficiary load zone -- in which the total project cost is multiplied by the ratio of the zonal benefits to the total zonal benefits for zones with positive benefits -- but then goes on to assert that if "a zone received benefits but those benefits did not exceed that NYTO's costs, that share of the project's costs would not be allocated."[16]

This is a fundamental mischaracterization of the cost allocation mechanism. There is no provision in Attachment Y for the non-allocation of a project's costs if the benefits in a specific zone do not exceed a specific New York Transmission Owner's costs. Once a project has been approved under Attachment Y for cost recovery, all of the Commission-approved project costs are allocated to all of the LSEs in each of the beneficiary zones. There is no possibility that a project's Commission-approved costs would not be recovered. NYRI's assertions to the contrary are baseless and should be rejected.

E. The clarification in the May 19 Filing to require that the cost parameters used in the cost/benefit analysis be used also in the cost allocation process is just and reasonable.

NYRI objects to the proposed requirement under Section 15.4.e that "[o]nce the cost benefit analysis is completed the amortization period and the other parameters used for cost

[15] *Id.* at 22.

[16] *Id.*

allocation for the project should not be changed, unless so ordered by FERC or a court of applicable jurisdiction, for cost recovery purposes to maintain the continued validity of the cost benefit analysis." NYRI erroneously asserts that this provision is not responsive to the Commission's directives in the October 16 Order, and prohibits a project developer from recovering all of its costs.

1. For economic projects, it is reasonable to link the cost parameters used to evaluate costs and benefits to the cost parameters used for cost allocation and recovery.

Both steps in the evaluation of a proposed Regulated Economic Project -- the cost/benefit analysis and the voting and resulting cost allocation to beneficiary load zones -- are closely related. The projects evaluated under Section 15 of Attachment Y are proposed economic transmission projects -- meaning that they will provide economic benefits (*i.e.,* reductions in the cost of delivered power), but otherwise are not required for the continuing reliability of the transmission system. Under this circumstance, it is reasonable to grant such projects cost recovery under the NYISO OATT only if their benefits outweigh their costs, and the beneficiaries of such projects otherwise consent to paying for them. Thus, the first step in evaluating proposed Regulated Economic Projects is to perform a cost/benefit analysis of those projects.

Given the importance of performing an accurate cost/benefit analysis to the determination of whether to grant a proposed Regulated Economic Project cost recovery under the OATT, it is entirely reasonable to require that the cost/benefit analysis retain its ongoing validity in order to permit continued cost recovery under the OATT. It would defeat the purpose of performing a threshold cost/benefit analysis to permit the cost parameters submitted by the developer for cost/benefit purposes to change once the project's costs are allocated for cost recovery purposes.

Accordingly, the clarification in the May 19 Filing that the cost parameters used in the cost/benefit analysis of a proposed economic project should not change for cost allocation purposes (in the absence of a Commission or court order) is just and reasonable and NYRI's protest should be denied.

2. The requirement that the cost parameters used in the cost/benefit analysis be used also in the cost allocation process applies equally to both merchant transmission developers and New York Transmission Owners.

NYRI erroneously suggests that the requirement that the cost parameters used in the cost/benefit analysis be used also in the cost allocation process applies only to merchant transmission developers, and not to New York Transmission Owners. Indeed, NYRI claims erroneously that this linkage "place[s] revenue recovery for [a] project at risk" and that the "NYTOs would never restrict their ability to improve their facilities and recover prudent costs in such an onerous fashion."[17]

NYRI fails to recognize that this linkage between the cost parameters used in the cost/benefit analysis performed for a proposed Regulated Economic Transmission Project and the cost parameters used in the cost allocation process applies equally to all developers of Regulated Economic Projects, whether they are merchant transmission developers, like NYRI, or New York Transmission Owners. Simply put, there is no discrimination in the evaluation and cost recovery process, and NYRI's claims to the contrary should be rejected.

3. The May 19th Filing is fully responsive to the October 16 Order.

Finally, NYRI's assertion that the requirement that the cost parameters used in the cost/benefit analysis be used also in the cost allocation process is beyond the scope of the Commission's compliance directives is patently wrong. The October 16 Order requires that the

[17] NYRI Protest at 12.

NYISO "file a detailed methodology for allocating the cost of eligible transmission projects constructed in response to congestion identified in the CARIS . . . ."[18] Indeed, NYRI's protest itself acknowledges that the October 16 Order requires the NYISO to provide additional details on "Step 2" of the evaluation and cost allocation methodology approved in the October 16 Order. The linkage between the cost parameters used in the cost/benefit analysis and the cost parameters used in the cost allocation process is a core element of the "detailed [cost allocation] methodology" ordered by the Commission, and thus is appropriate for inclusion in the May 19 Filing. NYRI's argument to the contrary should be rejected.

F. NYRI's arguments regarding the provision of bilateral contract information reflect a fundamental misunderstanding of the mechanism for determining beneficiaries of Regulated Economic Projects.

NYRI argues, without evidentiary support, that the mechanism for incorporating bilateral contracts into the net beneficiary determination provides an opportunity for abuse because "if a southeast NYTO that has been or may be identified as a benefiting LSE concludes that an existing power purchase or sales agreement would increase its share of allocated costs, it can simply withhold the data consistent with the proposed tariff provision."[19] NYRI obviously fails to realize that bilateral contracts are offset against LBMP reductions in the determination of project beneficiaries. Thus, contrary to NYRI's unsupported suggestion, a bilateral contract will not increase an LSE's share of the benefits of a proposed Regulated Economic Project. Rather, a bilateral contract can only help reduce a beneficiary's share of those benefits. For this reason, and contrary to NYRI's unsupported dark predictions of "abuse," LSEs have a distinct incentive to report fully the details of any bilateral contracts. Failure to do so could result in an

[18] October 16 Order at P 105.

[19] NYRI Protest at 18.

overstatement of the LSE's overall benefits from a proposed project, and thus the payment of a higher proportion of that project's costs if it is approved.

G. NYRI's allegations that the allocation procedures are designed to prevent the NYISO from developing information that could reveal abuse of the supermajority voting mechanism are nonsensical, and misrepresent the purpose of new Section 15.4.b(ii).

NYRI objects to the proposed language in Section 15.4.b(ii) providing that "[i]f the sum of the zonal benefits for those zones with load savings is greater than the revenue requirements for the project (both load savings and revenue requirements measured in present value over the first ten years from the commercial operation date of the project) the NYISO will proceed with the development of the zonal cost allocation information to inform the beneficiary voting process." NYRI asserts that this provision gives New York Transmission Owners an incentive to "manipulate cost data to cause a zone's costs to equal or exceed the NYISO-determined benefits and thereby halt any further analysis of cost allocation."[20] NYRI asserts further that if the sum of zonal benefits is less than the costs, and the NYISO therefore does not proceed with the zonal cost allocation, then "the Commission will not have that information available to determine whether there has been an abuse of the super-majority veto provision in the tariff."[21]

The purpose of Section 15.4.b(ii) is to clarify that the NYISO will proceed to calculate cost allocations only if there are savings for the project as a whole. If there are no net benefits, then there obviously is no way to allocate such benefits, and no point in doing so. This is all that Section 15.4.b(ii) clarifies. Since both benefits and costs will be developed in an open and transparent stakeholder process as required by the Commission, and benefits are mathematically netted against costs on a project-wide basis, it is simply incorrect -- and, indeed, nonsensical -- to

[20] *Id.* at 20.

[21] *Id.*

say that individual beneficiaries can "manipulate cost data to cause a zone's costs to equal or exceed the NYISO-determined benefits and thereby halt any further analysis of cost allocation."

With respect to the argument that the Commission will not be able to detect abuses in the supermajority voting mechanism if the voting is never held, that statement is true as far as it goes, but it otherwise is entirely irrelevant to the provisions of Section 15.4.b(ii). Furthermore, it presumes a level of bad faith on the part of beneficiary LSEs that is unsupported by the record. The NYISO will review and monitor the quality of the data it receives and the assumptions underlying the methodologies used and the results of calculations will be scrutinized by stakeholders. Accordingly, NYRI's arguments regarding Section 15.4.b(ii) are without merit and should be rejected.

H. The rule of reason permits the NYISO to address specified aspects of the TCC revenue reductions and bilateral contract determinations in the NYISO manuals.

NYRI's objections to the clarification to address certain aspects of the TCC revenue reductions and bilateral contract determinations in the NYISO manuals are baseless. Under the Commission's rule of reason, only those practices that "significantly" affect rates, terms, and conditions of service need be submitted in filed tariffs.[22] The Commission has held further that where an Independent System Operator or Regional Transmission Organization provides sufficient detail in the body of its tariff, the "implementation" details may be addressed in its manuals, rather than in its tariffs.[23]

In the case of calculations of reductions in TCC revenues, proposed Section 15.4.b(iii) requires that the NYISO take into account

[22] *See Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,283 at P 398 (2008).

[23] *Id.* at P 399.

> forecasts of: (1) the total impact of th[e] project on the Transmission Service Charge offset applicable to loads in each zone (which may vary for loads in a given zone that are in different Transmission Districts); (2) the total impact of th[e] project on the NYPA Transmission Adjustment Charge offset applicable to loads in that zone; and (3) the total impact of th[e] project on payments made to LSEs serving load in that zone that hold Grandfathered Rights or Grandfathered TCCs, to the extent that these have not been taken into account in the calculation of item (1) above.

With respect to the bilateral contracts that will be offset against LBMP savings, Section 15.4.b(v) requires that an LSE "provide the NYISO with bilateral energy contract data for modeling contracts that are not indexed to LBMP, and for which the time period covered by the contract is within the ten-year period beginning with the commercial operation date of the project." In both cases, the OATT provides the details that "significantly affect" the service provided under Attachment Y. The additional details to be addressed in the manuals simply expand upon the parameters established in the OATT itself, and thus do not significantly affect the rates, terms, and conditions of that service. Accordingly, the "implementation" details are perfectly appropriate for the NYISO manuals, and need not be included in the NYISO OATT itself. NYRI's arguments to the contrary should be rejected.[24]

I. There is nothing ambiguous about how TCC revenues resulting from a project are to be estimated.

NYRI makes the conclusory assertion that the clarifications in the May 19 Filing are "ambiguous" with respect to the manner in which TCC revenues resulting from a proposed project will be calculated. In fact, there is no ambiguity about how such revenues will be calculated under Section 15.4.b. TCC revenues from a new project are calculated in accordance with the same criteria used to determine reductions in TCC revenues under Section 15.4.b(iii)

[24] Similarly, NYRI's assertion that the NYISO manuals "are subject to unilateral revision by the NYISO" is incorrect. All NYISO manuals, including revisions, are developed in close consultation with stakeholders in accordance with the NYISO's stakeholder and shared governance process, and are subject to approval by the relevant NYISO committees.

and, therefore, will be based on: "(1) the total impact of th[e] project on the Transmission Service Charge offset applicable to loads in each zone (which may vary for loads in a given zone that are in different Transmission Districts); (2) the total impact of th[e] project on the NYPA Transmission Adjustment Charge offset applicable to loads in that zone; and (3) the total impact of th[e] project on payments made to LSEs serving load in that zone that hold Grandfathered Rights or Grandfathered TCCs, to the extent that these have not been taken into account in the calculation of item (1) above." There is nothing ambiguous about the calculation of TCC revenues. NYRI's attempt to make up "ambiguity" out of whole cloth is without merit and should be rejected.

III. Conclusion

For the reasons set forth herein, NYRI's protest to the May 19 Filing should be summarily rejected.

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