

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Mirant Americas Energy Marketing, LP,)	
Mirant Bowline, LLC,)	
Mirant Lovett, LLC and)	
Mirant NY-Gen, LLC)	
)	
v.)	Docket No. EL02-8-000
)	
New York Independent System Operator, Inc.))	

**ANSWER OF
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
TO COMPLAINT OF MIRANT COMPANIES**

Pursuant to Rules 206(f) and 213 of the Commission’s Rules of Practice and Procedure, 18

385.206(f) and 213 (2001), the New York Independent System Operator, Inc.

(“NYISO”), by counsel, hereby answers the Complaint of the Mirant Companies and Request for Fast Track Procedures (“Complaint”) and demonstrates that the Complaint should be dismissed. The NYISO will first demonstrate that, in light of a recently proposed change in NYISO operations, the Complaint is moot. Even if the Commission does not dismiss the Complaint as moot, it should dismiss the Complaint on its merits. The Commission has expressly rejected the Mirant Companies’ argument with regard to the NYISO’s provision of firm service and expressly found that the NYISO Open Access Transmission Tariff (“OATT”) is consistent with or superior to the *pro forma* OATT. Moreover, NYISO is in compliance with its OATT.

Copies of Correspondence

Communications regarding this proceeding should be addressed to:

Robert Fernandez, General Counsel and Secretary
Belinda Thornton, Director of Regulatory Affairs
Mollie Lampi, Assistant General Counsel
New York Independent System Operator, Inc.
3890 Carman Road
Schenectady, NY 12303
Tel: (518) 356-6000
Fax: (518) 356-4702
rfernandez@nyiso.com
bthornton@nyiso.com
mlampi@nyiso.com

Arnold H. Quint
Ted J. Murphy
Hunton & Williams
1900 K Street, NW
Suite 1200
Washington, DC 20006
Tel: (202) 955-1500
Fax: (202) 778-2201
aquint@hunton.com
tmurphy@hunton.com

The Complaint Should be Dismissed as Moot

On or about October 18, 2001 a group of companies calling themselves the “Mirant Companies” filed a Complaint and Request for Fast Track Procedures¹ (“Complaint”) with the Commission. The Mirant Companies have summarized their complaint as follows:

The Mirant Companies request that the Commission find that the NYISO has violated its own Open Access Transmission Tariff (“OATT”), and the requirements of Order 888 in failing to offer long-term physically firm transmission service, and that it order the NYISO to: (1) offer and provide long-term firm transmission service, including prior reservations of capacity, consistent with the terms of its OATT and the requirements of Order 888; and (2) implement the software and other changes necessary to accommodate long-term firm transmission reservations in time for next summer’s capability period, including calculation of available transmission capacity (“ATC”) in advance of the commencement of service and across interfaces with neighboring systems.

Complaint at 1.

¹ In light of the fact that the Commission has provided 20 days for an answer, the NYISO has no objection to a prompt dismissal of the Complaint.

Although the Complaint requests long-term physically firm transmission service, the NYISO urges the Commission to read the Complaint more narrowly as requiring the NYISO to permit entities like the Mirant Companies' to satisfy PJM's deliverability requirements for Installed Capacity

See id. at 2, where the Mirant Companies state: "In particular, the Commission should ensure that generation resources that must rely on transmission service from the NYISO have access to service of sufficient quality to allow their active participation in the ICAP market in PJM." *See, also, id.* at 10. The Mirant Companies have requested that the new procedures be in place for the summer 2002 capability period. *Id.* at 17.

The NYISO has recently adopted an Unforced Capacity ("UCAP") methodology that closely mirrors the ICAP market design in PJM. The Commission concluded that the "introduction of the UCAP methodology in New York will make the two markets more compatible and help eliminate some of the seams issues." *See New York Independent System Operator, Inc.*, 96 FERC ¶ 61,251 (2001), mimeo at 6.

As part of an Operations Working Group, the NYISO has been working closely with PJM, ISO New England and the Ontario IMO to improve the ICAP market in the Northeast. Ultimately, the four entities are working toward a single ICAP market. Toward that end, the four entities have recently developed a draft of General Principles for ICAP in the Northeast. Continued refinement of the General Principles with each ISO's individual stakeholders will take place this month.

The NYISO has also been working with PJM to develop an operating procedure to satisfy PJM's ICAP deliverability requirements² so that entities like the Mirant Companies can sell generating

² The PJM requirements are described in the text of the Complaint at 10 and at n.20.

capacity located in New York to PJM and have the capacity be treated by PJM as a “Capacity Resource.” As part of those discussions, the NYISO has recently proposed changes in NYISO operations that will assure PJM that the energy associated with ICAP committed to PJM will be available to PJM when PJM most needs it, *i.e.*, during a period of Maximum Generation Emergency. The NYISO understands that such an approach is acceptable to PJM and would satisfy its ICAP deliverability requirement. Section 4.13 of the NYISO Services Tariff already requires that transactions involving units not committed as ICAP in New York not be curtailed.

Further discussions with PJM will be required so that the NYISO can develop the detailed procedures to meet PJM’s deliverability tests. Additional time will also permit discussions with the --including the Mirant Companies--in order to ensure the timely implementation of such procedures. The NYISO expects to have the necessary procedures in place for the 2002 summer capability period as requested by Mirant.

Such an approach will provide generation resources located in New York the opportunity to participate in the PJM ICAP market. As a result, the Complaint should be dismissed as moot.

In light of this recent development, the Commission need not address the balance of the Complaint. The underlying thrust of the Complaint has been satisfied. Even if the thrust of the Complaint is, instead, intended as a broadside attack on the NYISO OATT and the NYISO’s administration of that OATT, the Complaint must be dismissed. The Commission has previously found

that the NYISO OATT fully complies with Order No. 888.³ Moreover, the NYISO is complying with its OATT.

The NYISO OATT Fully Complies with the *Pro Forma* OATT

The OATT in effect today, as relevant here, was submitted to the Commission on April 30, 1999 as part of a compliance filing made by the Member Systems of the New York Power Pool (“Member Systems”) in response to the Commission’s Order in *Central Hudson Gas & Electric Corp.*, 86 FERC ¶ 61,062 (1999) (“January 27, 1999 Order”). The Commission subsequently approved the OATT in an order issued in *Central Hudson Gas & Electric Corp., et al.*, 88 FERC ¶ 61,138 at 61,380 (1999) (“July 29, 1999 Order”). In addition to approving the OATT as a general matter, the Commission specifically found that the OATT satisfactorily complied with the Commission’s directive in the January 27, 1999 Order to provide for long-term transmission services:

We conclude that the Member Systems have complied with the requirement to provide long-term service, even though long-term TCCs will not be available until Spring 2000. We find that the service offered by the ISO is consistent with or superior to that offered under the *pro forma* tariff.

Id. at 61,382

³ Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh’g*, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part, remanded in part on other grounds sub nom.*, Transmission Access Policy Study Group, et al. v. FERC, 225 F.3d 667, Nos. 97-1715 et al. (D.C. Cir.), *cert. granted in part*, New York v. FERC 121 S.Ct. 1185 (2001).

In the Spring 2000 Auction, two year TCCs were sold with an effective date of May 1, 2000. In the Autumn 2000 TCC Auction, five year and two year TCCs were sold with an Effective Date of November 1, 2000.

As a result, the Mirant Companies' lengthy argument (Complaint at 13-15) that the NYISO OATT does not comply with the *pro forma* OATT promulgated in Order No. 888 is directly at odds with the Commission's findings. The Mirant Companies' numerous citations to the January 27, 1999 Order are totally misplaced. The shortcomings found by the Commission in the January 27, 1999 Order were addressed by the compliance filing. The Commission then found in the July 29, 1999 Order that the NYISO OATT filed as a part of that compliance filing was acceptable as a response to the January 27, 1999 Order. The Complaint is no more than a collateral attack on the Commission's July 29, 1999 Order. As an attack on the July 29, 1999 Order it is filed more than two years after the statutory deadline for the filing of requests for rehearing.

The NYISO is Operating in Compliance with its OATT

The Commission approved the NYISO OATT in the July 29, 1999 Order with the full knowledge that the NYISO OATT was different from the *pro forma* OATT. Indeed, the Member Systems supplied a detailed summary of their filing, specifically explaining the changes made to the previously filed documents in order to respond to the Commission's orders. They submitted a 62 page Filing Summary, together with the Affidavit of J. Stephen Henderson, explaining that the NYISO OATT was consistent with the LBMP congestion pricing model earlier approved by the Commission and demonstrating that the revised NYISO OATT provides transmission service that is equivalent or superior to the service provided in the *pro forma* OATT. They also supplied a separate Appendix that explained all of the significant differences between the NYISO OATT and the *pro forma* OATT.

The Filing Summary provided a detailed explanation of how the NYISO OATT provides Firm Point-to-Point Transmission Service, *within the context of the LBMP congestion pricing model.*

Filing Summary at 8.

In the LBMP congestion pricing model on which the revised ISO OATT is based, transmission customers receive firm service - network or point-to-point - by agreeing to pay congestion costs. Customers scheduling firm service under the OATT can obtain price certainty for their congestion costs through the purchase of TCCs (*i.e.*, rights to collect congestion rents) at a market price. The sale of long-term TCCs will allow Eligible Customers to obtain long-term firm transmission service at a fixed price, thus addressing a central directive of the January 27 Order.

Id. at 9.

Dr. Henderson provided further detail:

The basic difference between the *Pro Forma* tariff approach and that adopted in the ISO OATT stems from the emphasis placed on financial rights in the New York model versus the physical rights approach implicit in the *Pro Forma* tariff.

Henderson Affidavit at 4.

Dr. Henderson provided still further explanation of the way in which the NYISO OATT provides firm transmission service:

Under the Pro Forma tariff, firm transmission service has two important features: the price is fixed and the service cannot be interrupted for economic reasons. Under the ISO OATT, service with both of these features is obtained in a two-step process. First, firm service is provided if the customer is willing to pay for transmission congestion costs, in which case the service is not interrupted for economic reasons. This is true for both network and PTP service. The congestion cost of firm service could be quite high, depending on the severity of the congestion in any particular hour. Accordingly, firm service does not necessarily have a fixed price under this approach. Second, a fixed price can be secured by acquiring a TCC corresponding to the service desired by the customer in terms of MWs, point of injection, and zone of withdrawal. That is, customers interested in obtaining fixed-price firm service may purchase a TCC, which in effect converts a variable congestion charge to a fixed payment for congestion for the term and quantity of the TCC. The fixed payment is the market price of the TCC. Thus, a transmission customer at risk for congestion costs can fix the price of

transmission service by holding a TCC corresponding to the generation location and load zone of interest.

Appendix B: “Explanation of Deviations from the *Pro Forma* Tariff” provided a detailed listing of changes made to the *pro forma* tariff. As noted there, the Member Systems changed numerous provisions, including the definitions, in the OATT to make the NYISO OATT consistent with the LBMP model that had already been approved by the Commission. The definitions for “Firm Point-to-Point Transmission Service” and “Long-Term Firm Point-to-Point Transmission Service” were changed “to reflect the fact that under the LBMP model approved by the Commission Firm Point-to-Point service is available to customers willing to pay Congestion. . . . Long-Term Firm Point-to-Point Service is replaced by Firm Point-to-Point service, the price of which is fixed for a long term by a Transmission Customer acquiring sufficient TCCs with the same Points of Receipt and Delivery as its Transmission Service.” Appendix B at 2.

The Mirant Companies now argue that numerous provisions of the NYISO OATT contemplate firm reservations of physical capacity. Complaint at 6-7, 12. That is simply not the case. The April 30, 1999 compliance filing made clear that the NYISO is not utilizing a physically firm model. The NYISO OATT reflects, instead, the LBMP model. The Commission found that the long-term service offered by the NYISO OATT is “consistent with or superior to that offered under the *pro forma* tariff.” 88 FERC at 61,382.

In response to the Complaint, the Commission should interpret the NYISO OATT in a manner consistent with the manner in which it was submitted by the Member Systems and subsequently approved by the Commission.

**Compliance with Rule 213(c) of the
Commission's Rules of Practice and Procedure**

A. Disputed Factual Allegations

1. The NYISO denies that its OATT is inconsistent with the requirements of Order No. 888.
2. The NYISO denies that it has violated the terms of its own OATT.

B. Law Upon Which This Answer Relies

1. *Central Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,138 (1999)
2. The Mirant Companies may not collaterally attack a Commission order issued more than two years ago. Rehearing is statutorily barred.

C. Admissions and Denials of the Mirant Companies' Material Allegations.

1. The NYISO denies that its OATT is inconsistent with the requirements of Order No. 888.
2. The NYISO denies that it has violated the terms of its own OATT.

Conclusion

WHEREFORE, for the foregoing reasons, the Complaint should be dismissed.

Respectfully submitted,

NEW YORK INDEPENDENT SYSTEM
OPERATOR, INC.

By: _____
Counsel

Arnold H. Quint
Ted J. Murphy
Hunton & Williams
1900 K Street, NW
Washington, DC 20006

November 7, 2001

cc: Daniel L. Larcamp, Director Office of Markets, Tariffs and Rates, Room 8A-01,
Tel. (202) 208-2088
Alice M. Fernandez, Director Office of Markets, Tariffs and Rates -- East
Division, Room 71-31, Tel. (202) 208-0089
Andrea C. Wolfman, Lead Counsel for Market Oversight and Enforcement,
Room 9E-01, Tel. (202) 208-2097
Michael A. Bardee, Lead Counsel for Markets, Tariffs and Rates, Room 101-09,
Tel. (202) 208-2068
Stanley P. Wolf, Office of the General Counsel, Room 101-03,
Tel. (202) 208-0891

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party designated on the official service list compiled by the Secretary in Docket No. EL02-8-000, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 2010 (2001).

Dated at Washington, DC this 7th day of November, 2001.

Arnold H. Quint
Hunton & Williams
1900 K Street, N.W.
Washington, DC 20006-1109
(202) 955-1500