

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New York State Electric & Gas Corporation)	
)	
v.)	Docket Nos. EL03-41-000
)	
New York Independent System Operator, Inc.)	
and Niagara Mohawk Power Corporation)	

**ANSWER OF
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
TO COMPLAINT OF
NEW YORK STATE ELECTRIC & GAS CORPORATION**

The New York Independent System Operator, Inc. (“NYISO”), by counsel, hereby answers¹ the Complaint of New York State Electric & Gas Corporation (“NYSEG”). The NYISO responds as follows:

1. The NYISO welcomes clarification by the Commission. The Commission’s order in *Niagara Mohawk Power Corporation*,² upon which NYSEG primarily relies, does not resolve the issue as clearly as NYSEG would suggest.

2. The NYISO agrees with the Commission’s goal, expressed in *NMPC II*, “to move all customers to service under the applicable regional OATT (in this case, NYISO’s) as quickly as possible *consistent with the terms of existing grandfathered contracts*.” (Emphasis added).³

3. One reasonable interpretation of the transmission service agreement (“TSA”) between Niagara Mohawk Power Corporation (“NMPC”) and Allegheny Electric Cooperative,

¹ This Answer is filed pursuant to 18 C.F.R. § § 385.206(f) and 385.213 (2002).

² 100 FERC ¶ 61,247 (2002) (“*NMPC II*”).

³ *NMPC II* at P. 22.

Inc. (“AEC”) is that no amendment of that agreement is necessary for NMPC to continue to provide service under the terms of the TSA beyond June 30, 2001.

4. In addressing the Complaint, the Commission should review all of the relevant portions of the NYISO OATT, including Attachment K thereof.

I. Background

The NYISO is the independent body responsible for providing open access transmission service, maintaining reliability, and administering competitive wholesale electricity markets in New York State. It provides transmission service pursuant to its Open Access Transmission Tariff (“OATT”) on file with the Commission. Attachment L to the OATT provides a list of “Existing Transmission Agreements” that were permitted to continue even after the effectiveness of the NYISO OATT.

This proceeding involves the proper interpretation of a TSA between NMPC and AEC. If the Commission concludes that that agreement expired on June 30, 2001, as alleged by NYSEG, the NYISO will provide NYSEG and other transmission owners with the “billing information needed by NYSEG to bill AEC, or its designated agent under the NYISO OATT, for NYSEG’s TSC commencing as of July 1, 2001.”⁴ Thus, the NYISO has no objection to the NYSEG’s first request for relief, provided that the Commission first determines that the TSA expired on June 30, 2001 as alleged by NYSEG.⁵

If the Commission concludes that AEC took service from the NYISO under the NYISO’s OATT for the period commencing July 1, 2001, the NYISO will also need to rebill AEC

⁴ See Complaint at 3.

⁵ The second request for relief is directed to AEC (or the party contractually obligated to pay NYISO OATT charges for service to AEC). The third request for relief is directed to NMPC.

particularly to reflect the fact that the grandfathered contract had relieved AEC from day ahead congestion. In addition, the NYISO will need to adjust the historical settlements of all of the Transmission Owners to reflect the additional congestion rent collection from AEC. All of these computations would have to be performed on an hourly basis for over 18 months of prior settlements. Therefore, the NYISO should be permitted to utilize its normal rebilling process to avoid the substantial additional effort and cost that a process as short as thirty days would require.

II. Answer

A. The Commission Should Resolve the Issues Raised by NYSEG

The NYISO welcomes the complaint, and its request for expeditious resolution, to eliminate uncertainty with respect to service under the TSA between NMPC and AEC. The Complaint relies, among other support, on the Commission's *Order on Motion for Clarification* in *NMPC II*. The NYISO moved to intervene out of time in that proceeding and, in its Answer to the Motion for Clarification, had addressed a number of the issues raised here by NYSEG. The Commission rejected the NYISO's late intervention and its Answer to the Motion for Clarification.⁶ The Commission also concluded that NYSEG's arguments with respect to the AEC TSA were beyond the scope of that docket.⁷ The clarification provided in *NMPC II* does not address all of the issues raised in this docket.

B. Service Under Grandfathered Agreements Should Be Converted to Service Under the NYISO OATT as Soon as the Terms of the Grandfathered Agreement Permit

The Commission reiterated in *NMPC II* that it "seeks to move all transmission customers to service under the applicable OATT (in this case, NYISO's) as quickly as possible consistent

⁶ *NMPC II* at P. 18.

⁷ *Id.* at P. 21.

with the terms of existing grandfathered contracts.”⁸ Earlier, in *Niagara Mohawk Power Corporation*,⁹ the Commission had stated that “We believe it is beneficial to require customers to move from bilateral agreements and company-specific OATTs to regional OATTs as agreements expire. This approach is consistent with the Commission’s efforts to encourage the development of regional transmission organizations for the benefit of all customers.”

The NYISO agrees with that approach. Nevertheless, the Commission will need to determine in this proceeding if the existing NMPC-AEC agreement has expired.

C. The NMPC-AEC TSA Has Not Clearly Expired

The clarification the Commission supplied in *NMPC II* was premised on an assumption that a grandfathered TSA has not yet expired under its own terms. The issue before the Commission here is just that. Has the TSA between NMPC and AEP expired under its own terms? That TSA contains the following language:

Service under this agreement shall terminate on June 30, 2001, which is the current termination date of the Agreement between Allegheny and NYPA. If the NYPA Agreement is extended, then this Agreement will be extended accordingly to equal the term of the NYPA Agreement.

Thus, the parties apparently intended that the duration of the transmission service agreement should track the duration of the underlying power supply agreement. One logical way to read that language is that the TSA is automatically extended beyond June 30, 2001, if the “NYPA Agreement” itself is extended. Neither party would have to seek timely extension of the agreement for the TSA to remain in effect.

⁸ *Id.* at P. 22.

⁹ 96 FERC ¶ 61,363 at 62,364 (2001) (“*NMPC I*”).

D. NYSEG Ignores a Relevant Portion of the NYISO OATT

The specific language of Section 2.2 of Attachment K to the NYISO OATT is also relevant to the Complaint. It contemplates that termination of a contract is governed by its terms by providing, in pertinent part,

Each existing TWA with a Third Party (“Third Party TWA”) all of which are listed in Attachment L, Table 1, where the “Treatment” column is denoted as “Third Party TWA or OATT,” will remain in effect in accordance with its terms and conditions, including provisions governing modification and termination.” (Emphasis added.)

That provision of the OATT confirms that the termination provisions of the TWA were not to be amended by the OATT.

III. Compliance with Rule 213

Pursuant to 18 C.F.R. § 385.213 (2002), the NYISO responds as follows:

A. Disputed Factual Allegations

The NYISO disagrees that the AEC expired on June 30, 2001.¹⁰ That is the issue to be determined by the Commission.

An interpretation of the NMPC-AEC TSA that it automatically extends without the need for a Section 205 or 206 filing,¹¹ is not “inconsistent with the clear intent of the Commission’s prior orders.”

B. Law Upon Which the Answer Relies

The law upon which the Answer relies is set forth in the Answer.

C. Admissions or Denials

1. The NYISO denies that the NMPC-AEC TSA has expired. That is an issue to be resolved by the Commission.

¹⁰ Complaint at 1, 2, 7, 11.

¹¹ *Id.* at 8.

2. The NYISO admits that Attachment L is a list of transmission service agreements that were temporarily grandfathered. The NYISO neither admits nor denies that Attachment L necessarily governs in the event of an inconsistency between the terms of a TSA and Attachment L.

D. Defenses Relied Upon

The defenses relied upon are set forth in the Answer.

WHEREFORE, the Commission should promptly resolve the issue raised by the Complaint.

Respectfully submitted,

NEW YORK INDEPENDENT SYSTEM
OPERATOR, INC.

By: _____
Counsel

Robert Fernandez, General Counsel and Secretary
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
mlampi@nyiso.com

Arnold H. Quint
Hunton & Williams
1900 K Street, NW
Washington, DC 20006
Tel: 202/955-1542
Fax: 202/778-2201
aquent@hunton.com
Of Counsel

February 3, 2003

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 this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18. C.F.R. 385.2010 (2002).

Dated at Washington, D.C. this 3rd day of February, 2003.

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