

104 FERC ¶61,220
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

New York Independent Transmission System Operator, Inc.	Docket Nos. ER03-690-000 ER03-690-001 EL03-126-000
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ORDER CONDITIONALLY ACCEPTING PROPOSED TARIFF REVISIONS

(Issued August 22, 2003)

1. This order addresses proposed tariff revisions submitted pursuant to section 205 of the Federal Power Act (FPA),¹ in Docket Nos. ER03-690-000 and ER03-690-001, by the New York Independent System Operator (NYISO), in order to implement new pricing rules (proposed pricing rules) for the Hydro-Quebec Proxy Generator Bus (HQ Generator Bus)² and limit the extent to which prices at the HQ Generator Bus can be established at non-competitive levels. As discussed below, the Commission will conditionally accept for filing the proposed pricing rules, to become effective May 31, 2003. This action will benefit the public by reducing significant price distortions resulting from a lack of competitive import and export offers at the HQ Generator Bus.

The Filing

2. NYISO first submitted the proposed pricing rules on April 1, 2003 (April 1 Filing) and, in response to a deficiency letter,³ subsequently amended its filing on

¹16 U.S.C. § 824(d) (2000).

²As defined in NYISO's Services Tariff (Article 2.149), a Proxy Generator Bus is "A Generator bus located outside the [New York Control Area] that is selected by the ISO to represent a typical bus in an adjacent Control Area and for which LBMP prices are calculated." In an affidavit submitted with NYISO's filing, Dr. David Patton, the Independent Market Advisor (IMA) for NYISO, states that the interface between New York and Hydro-Quebec is comprised of multiple transmission facilities; however, these facilities are represented as a single point for which a price is calculated. That single point is the HQ Proxy Generator Bus.

³Deficiency Letter issued in Docket No. ER03-690-000 (May 30, 2003).

June 24, 2003 (June 24 Filing).⁴ Under the proposed pricing rules, the HQ Generator Bus would be designated a "Non-Competitive Proxy Generator Bus,"⁵ subject to certain Real-Time pricing rules, as follows. For periods when the HQ Generator Bus interface is constrained for net imports to New York, the Locational-Based Marginal Pricing (LBMP) at that bus will be the higher of: (1) the BME-determined price for the HQ Generator Bus; or (2) the lower of the LBMP determined by Security Constrained Dispatch (SCD) for the HQ Generator Bus or zero.⁶ If the interface is constrained for net exports from New York, the LBMP at the HQ Generator Bus will be the lower of: (1) the BME-determined price at the HQ Generator Bus; or (2) the higher of the LBMP determined by SCD for the HQ Generator Bus or the Day-Ahead LBMP determined by SCUC for the HQ Generator Bus. If individual interface ramp constraints are binding, similar rules will be applied to setting LBMPs and settling real-time imbalances when such constraints are binding. This rule will not apply when a control area-wide Desired Net Interchange constraint is binding. NYISO will not make Real-Time supplemental guarantee payments to External Generators or other Suppliers for imports scheduled at the HQ Generator Bus if the interface to Hydro-Quebec is export constrained.

3. In support of the proposed pricing rules, NYISO states that significant price distortions have occurred during certain congested conditions at the HQ Generator Bus in the absence of competitive import or export offers at that bus. NYISO explains that these

⁴Unless otherwise indicated, the April 1 Filing and June 24 Filing will be collectively referred to as the "proposed pricing rules."

⁵More specifically, the NYISO seeks to add to the NYISO's Open Access Transmission Tariff (OATT) and Services Tariff the new term "Non-Competitive Proxy Generator Bus," defined to mean: "(a) The Proxy Generator Bus for the Hydro-Quebec Control Area; and (b) any other Proxy Generator Bus for an area outside of the New York Control Area that has been identified by the NYISO as characterized by non-competitive import or export prices, and that has been approved by the Commission for designation as a Non-Competitive Proxy Generator Bus."

⁶BME refers to the Balancing Market Evaluation. The BME is an evaluation that takes place approximately 90 minutes ahead of each hour, to ensure that the day-ahead First Settlement schedules meet all of the reliability requirements. Based upon the day-ahead commitment and updated Load forecasts and Generator schedules, the BME will assess new bids for the LBMP markets and new requests for bilateral transaction schedules for the Dispatch Hour to which the Security Constrained Unit Commitment (SCUC) applies. The BME will re-dispatch Internal Generators, schedule External Generators, schedule new Bilateral Transactions if feasible, update Desired Net Interchanges if needed, and Reduce or Curtail Bilateral Transactions with Non-Firm and Firm Transmission Service as needed for the Dispatch Hour for which the SCUC applies.

pricing distortions occur when energy that has been committed in the day-ahead market cannot be delivered, and NYISO is forced to schedule counterflows externally and has no competitive options. As a result, when New York is importing energy, an external entity in effect "buys back" energy from NYISO at extremely low negative prices, and NYISO makes large payments to that entity for not delivering energy. Similarly, when New York is exporting energy, an external entity in effect "sells back" energy from NYISO at extremely high prices, and NYISO makes large payments to that entity for not taking delivery of energy. Specifically, NYISO states that it has observed price distortions at the HQ Proxy Generator Bus in two situations, both of which entail a constraint on imports or exports across the interface: (1) when the interface between Hydro-Quebec and NYISO is derated; and (2) when wheel-through transactions (from Hydro-Quebec through NYISO to another control area) are scheduled and then subsequently curtailed in the receiving control area.⁷

4. NYISO contends that, when imports into New York at the HQ Generator Bus have been constrained, prices for counter-flow transactions into Quebec have dropped to negative \$999.99/MWh, forcing the NYISO to pay parties on the Quebec side of the HQ Generator Bus almost \$1000/MWh to receive power in Quebec from the New York system. NYISO maintains that, although these pricing anomalies have occurred for relatively brief periods, the economic costs to the New York market can be substantial. For example, NYISO states that costs greater than \$6.5 million were generated on April 17, 2002, when real-time prices at the HQ Generator Bus ranged from negative \$750 to negative \$903.69 in 11 consecutive hours.

5. NYISO further reiterates the IMA's conclusion that there is significant concentration in the ownership and control of both generation and load on the Quebec side of the HQ Generator Bus. Applying the Hirschman-Herfindahl Index (HHI), the IMA has determined that while there are nominally a number of sellers on the Quebec side of the HQ Generator Bus, approximately 90 percent of the generation in Quebec is owned or controlled by Hydro-Quebec. Consequently, the IMA concludes that "supra-competitive prices observed at the [HQ Generator Bus] during constrained periods can be attributed to a structural concentration of supply and load on the external side of the [HQ

⁷In the June 24 Filing, NYISO clarifies, however, that application of the proposed pricing rules is not limited to those situations; the proposed pricing rules would apply any time that: (1) real-time economic net import or export transactions exceed the Available Transfer Capacity (ATC) on the interface between the New York Control Area (NYCA) and the Control Area in which the Non-Competitive Proxy Generator Bus is located; or (2) proposed interchange schedule changes pertaining to increases in real-time net imports or exports between the NYCA and the Control Area in which the Non-Competitive Proxy Generator Bus is located exceed the Ramp Capacity imposed by the NYISO for the interface between the NYCA and the other Control Area.

Generator Bus] that has led to a pattern of a lack of significant competition for import and export offers at the [HQ Generator Bus]."⁸ NYISO contends that the proposed tariff revisions would remedy this condition by limiting prices at the HQ Generator Bus to, what is according to NYISO, a reasonable proxy for competitive pricing levels when necessary.

Notice of the Filings and Responsive Pleadings

6. Notice of the April 1 Filing was published in the Federal Register,⁹ with interventions, comments and protests due on or before April 22, 2003. The Commission subsequently extended that deadline through May 2, 2003. The New York Transmission Owners (NYTO) filed a timely motion to intervene and comments, and H.Q. Energy Services (U.S.), Inc. (HQUS) filed a timely motion to intervene and protest. On May 21, 2003, the NYISO submitted an answer to HQUS' protest.

7. Notice of the NYISO's June 24 Filing was published in the Federal Register,¹⁰ with interventions, comments and protests due on or before July 15, 2003. NYTO filed a timely motion to intervene and supportive comments.

8. NYTO urges the Commission to accept NYISO's proposed pricing rules, as modified in accordance with NYTO's comments. First, NYTO seeks to clarify one aspect of NYISO's filing. NYTO notes that in its transmittal letter, NYISO states the following:

If individual interface ramp constraints are binding, similar rules will be applied to setting LBMPs and settling real-time imbalances when such constraints are binding. This rule will not apply when a control area-wide Desired Net Interchange constraint is binding.¹¹

9. NYTO maintains that the latter statement does not properly describe the proposed tariff language, which, according to NYTO makes no reference to control area-wide Desired Net Interchange. Indeed, NYTO asserts that the proposed rules should apply, regardless of whether a control area-wide Desired Net Interchange constraint is binding.

⁸April 1 Filing at 3-4.

⁹68 Fed. Reg. 18,613 (2003).

¹⁰68 Fed. Reg. 41,332 (2003).

¹¹NYISO Transmittal Letter at 4.

10. NYTO further submits that there are two minor errors in NYISO's proposed tariff language. NYTO contends that at sheet 106A of the OATT, NYISO deleted a sentence that appeared in the draft previously circulated to market participants. NYTO argues that the effect of the deletion is the elimination of NYISO's authority to pay Bid Production Cost Guarantees in the real-time market and that the sentence should be reinserted. Additionally, NYTO states that NYISO inserted a heading on page 457A of the Services Tariff that was not inserted in the OATT. In both cases, NYTO states that it has contacted NYISO, and that NYISO has authorized NYTO to state that the changes should be made.

11. In its protest, HQUS argues that NYISO's filing overstates market power concerns, by failing to account for the fact that Hydro-Quebec is functionally separated into three principal divisions: (1) Hydro-Quebec Distribution; (2) Hydro-Quebec Production; and (3) TransÉnergie's operation of the transmission system, including administration of the TransÉnergie OATT.¹² HQUS contends that NYISO's filing gives the wrong impression that these separate divisions have acted in concert to exercise market power. To that end, HQUS asserts that NYISO's filing falsely indicates that HQUS was solely responsible for the anomalous high prices at the HQ Generator Bus. HQUS contends that other parties set the prices for the majority of hours in question.¹³

12. Further, HQUS argues that NYISO's filing mischaracterizes the transmission service available in Quebec, incorrectly suggesting that participants other than Hydro-Quebec cannot obtain real-time transmission service in Quebec. HQUS submits that the TransÉnergie=s OATT allows any transmission customer to obtain available

¹²For example, HQUS maintains that the NYISO filing refers to bidding by Hydro-Quebec, although Hydro-Quebec itself engages in no bidding, and refers to the Hydro-Quebec tariff, instead of the TransÉnergie OATT (which, HQUS argues, is modeled after and effectively identical to the pro forma OATT in Order No. 888). HQUS asserts that, contrary to NYISO's statements, Hydro-Quebec is not the market participant in New York engaging in energy sales and purchases at the HQ Generator Bus; HQUS states that it serves this function as an affiliate of Hydro-Quebec.

¹³There were 14 total hours in 2002 where the real time price at the HQ Proxy generator bus was negative \$740 or lower: 11 hours on April 17th; two hours on July 2nd and one hour on July 5th. HQUS submits that it was responsible for high negative prices in only 3 of the 14 hours. Moreover, HQUS asserts that Dr. Patton incorrectly connects HQUS with the large economic costs incurred by NYISO. HQUS states that on April 17, 2002, HQUS set the clearing price in only one of eleven hours; in eight of those eleven, it submitted a bid approaching \$0; and it received \$1.5 million in payments, or about 20 percent of the total payments that day. Finally, HQUS argues that the BME function of NYISO's software set the negative \$999.99 price on July 5, 2002.

transmission capacity with very short notice, up to 30 minutes prior to the hour. HQUS further submits that, in practice, reservations need only be made immediately before a schedule is submitted. Thus, HQUS argues that TransÉnergie provides substantial scheduling flexibility. HQUS also asserts that, though the large majority of energy transactions at the HQ Generator Bus are engaged in by HQUS, other parties are free to transact at the HQ Generator Bus without discrimination, whether in the day-ahead or real-time markets, or to offer counter-flows.

13. Moreover, HQUS argues that the proposed pricing policy is discriminatory, since it focuses on the HQ Generator Bus, while publicly available data show that anomalously high prices can and do occur at other proxy buses during transmission constraints. HQUS points out that the proposed definition of "Non-Competitive Proxy Generator Bus" lists the HQ Generator Bus by name, without, according to HQUS, setting forth objective criteria for identifying non-competitive proxy generator buses. Indeed, HQUS contends that, during 2002, non-competitive prices occurred at all of NYISO's external proxy buses.¹⁴ HQUS submits that the number of high prices in 2002 at the HQ Generator Bus (i.e., 14 hours) is not inconsistent with the numbers at NYISO's other proxy buses.¹⁵ HQUS further argues that since the proposed pricing policy focuses solely upon the HQ Generator Bus, the proposal would discourage parties other than HQUS from bidding at the HQ Proxy Bus.

14. In any case, HQUS asserts that the proposed pricing rules send poor price signals, because, according to HQUS, they are applicable at all hours at the HQ Generator Bus.

15. Based upon the foregoing, HQUS urges the Commission to reject the proposed pricing policy and direct NYISO to adopt a rule that addresses prices at all of NYISO's external proxy buses when such prices are non-competitive. To that end, HQUS states that NYISO must develop objective criteria for designating an external proxy bus as non-

¹⁴HQUS submitted an affidavit from Michel Prévost, Senior Advisor, Regulatory Affairs, HQ Production, in which he examined anomalous high prices at other proxy generator buses. For the purposes of his examination, he defined anomalous high prices during constrained hours at a proxy bus as real time prices that "are at least 200% (3 times) higher or lower than the real time prices observed at two or more proxy buses in the same hour." (Prévost affidavit at 2.)

¹⁵HQUS puts these numbers at 10 for the New England proxy bus, 11 for the Ontario proxy bus, and 5 for the PJM Proxy Bus. HQUS adds that on April 17, the day during which the HQ Generator Bus was constrained for 11 hours, the New England proxy bus was also constrained and, significantly, likewise faced anomalous high prices for 5 hours (\$999, \$877, \$349, \$300 and \$299).

competitive, and that the NYISO should make an empirical finding for each of the external proxy buses.

16. In its answer to HQUS' protest, NYISO states that its definition of Non-Competitive Proxy Generator Bus is modeled after the Commission-approved definition of "Constrained Area" in NYISO's Market Mitigation Measures.¹⁶ NYISO states that, in those measures, New York City is the only area designated as a Constrained Area, just as the HQ Generator Bus is the only external bus proposed for designation as a Non-Competitive Proxy Generator Bus, and no specific criteria for such designation is specified in either case. Also in both cases, NYISO states, developing a single, formulaic specification of the conditions that would warrant the proposed designation, as suggested by HQUS, would be unlikely to encompass the range of fact-specific judgments that should be considered in a market concentration analysis.¹⁷ Therefore, NYISO maintains, it appropriately based the definition of Non-Competitive Proxy Generator Bus on a case-by-case showing, subject to Commission review and approval. According to NYISO, the Commission has found that this process allows all parties an opportunity to comment on the requested action.

17. In addition, NYISO states that HQUS' comments regarding Hydro-Quebec's disaggregation do not contradict the conclusions of NYISO's IMA. NYISO maintains that HQUS fails to assert or demonstrate that the various divisions of Hydro-Quebec are not all divisions, subsidiaries, or affiliates owned or controlled by Hydro-Quebec, and accordingly, the IMA's analysis appropriately considers Hydro-Quebec and its functional units as a single economic entity for purposes of market concentration analysis.

18. NYISO further asserts that the fact that relatively high pricing levels may have been reached at other external buses does not exonerate the HQ Generator Bus. NYISO states that it intends to monitor pricing performance and market conditions at all external proxy buses, but that the proposed pricing rules are needed now at the HQ Generator Bus.

¹⁶New York Independent System Operator, Inc., 99 FERC & 61,246 at 62,042 (2002).

¹⁷NYISO rejects the suggestion set forth in HQUS' filing that the NYISO should define anomalous high prices during constrained hours at the proxy bus as real-time prices observed at that proxy bus that are at least 200 percent higher or lower than the real-time prices observed at two or more other proxy buses at the same hour. NYISO states that this test does not exclude relatively high prices that can result from legitimate congestion arising from interaction of many buyers and sellers. NYISO adds that large negative values, such as those experienced at the HQ Generator Bus, are unlikely to correspond to legitimate congestion.

19. Finally, NYISO disputes HQUS' argument that the proposed pricing rules would be applicable at all hours. NYISO states that, by their own terms, the proposed pricing rules would apply only in congested hours, i.e., when import or export transactions exceed ATC.

Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. ' 385.214 (2003), each timely, unopposed motion to intervene, listed above, serves to make the entity that filed it a party to this proceeding. In addition, while Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. ' 385.213 (2003), prohibits answers to protests unless ordered by the decisional authority, we will allow NYISO's answer, as it has provided information that has aided us in better understanding the matters at issue in this proceeding.

Discussion

21. We will conditionally accept for filing, subject to modification, the proposed pricing rules, to become effective May 31, 2003. We note that all parties, including HQUS, agree that mitigation at the HQ Generator Bus is needed and that the proposed pricing rule is reasonable.¹⁸ As discussed below, the Commission finds that the proposed pricing rules should be applied in some, but not all, instances when NYISO becomes constrained for imports or exports involving the Non-Competitive Proxy Generator Bus. More specifically, we are persuaded that the proposed pricing rules should apply when NYISO must schedule counterflow transactions involving the Non-Competitive Proxy Generator Bus in the BME or in real-time to relieve the constraints, but not otherwise.

22. NYISO requests authority to apply its proposed pricing rules for Non-Competitive Proxy Generator Buses in all instances when either: (1) the real-time economic net import or export transactions exceed the ATC on the interface between the New York Control Area (NYCA) and the Control Area in which the Non-Competitive Proxy Generator Bus is located; or (2) the proposed interchange schedule changes pertaining to increases in real-time net imports or exports between the NYCA and the Control Area in which the Non-Competitive Proxy Generator Bus is located exceed the ramp capacity imposed by NYISO for the interface between the NYCA and the other Control Area.

23. The Commission believes that it is reasonable to apply the proposed pricing rule in order to mitigate market power, when a counterflow transaction involving a Non-Competitive Proxy Generator Bus is needed to relieve one of the two constraints. Under

¹⁸ See Affidavit of Roy J. Shanker, Ph.D., at 3-4, submitted with HQUS' protest.

this circumstance, NYISO has no choice but to accept a purchase or sale at the Non-Competitive Proxy Generator Bus. A purchase or sale at a bus in another control area would not relieve the constraint.¹⁹ Since the market at the Non-Competitive Proxy Generator Bus is highly concentrated, NYISO would be vulnerable to non-competitive prices for purchases or sales at those buses. The proposed pricing rules would establish prices at the bus that are more reflective of competitive market conditions.

24. However, NYISO has not demonstrated that market power could be exercised at a Non-Competitive Proxy Generator Bus during instances where the constraint does not create a need to schedule a counterflow in the BME or in real-time. Under these circumstances, NYISO would not be required to accept a purchase or sale of energy at the Non-Competitive Proxy Generator Bus, so it would not be vulnerable to non-competitive prices at the bus.²⁰ Accordingly, there would be no need to apply the proposed pricing rules. Therefore, we will direct NYISO to modify its proposed pricing rules so that they would be applied only when NYISO must schedule a counterflow transaction involving the Non-Competitive Generator Proxy Bus in the BME or in real-time, in order to relieve one of the two constraints set forth in those rules (as described above).

25. With regard to HQUS' assertions that NYISO's filing overstates market power

¹⁹For example, suppose NYISO has scheduled net imports into New York from Quebec in the day-ahead market for a particular hour, and the Quebec-New York transmission interface is subsequently derated to a level that cannot accommodate the day-ahead scheduled imports. NYISO must then arrange a counterflow transaction from New York into Quebec to relieve the constraint. Because the counterflow must involve an energy delivery to Quebec, and because the Quebec market is so highly concentrated, buyers in Quebec would be able to exercise market power. The Commission believes that it is reasonable to apply the proposed pricing rule in this instance – which would establish prices at the bus that are more reflective of competitive market conditions – in order to mitigate market power.

²⁰For example, suppose that NYISO has scheduled net imports into New York from Quebec in the day-ahead market at a level that does not congest the transmission interface between the two control areas. Suppose also that demand in New York is higher in real-time than in the day-ahead schedule. In order to help meet the increased real-time demand, NYISO could accept additional real-time energy sales from Quebec in an amount that congests the transmission interface between the two control areas. Under these circumstances, NYISO would not be required to accept additional real-time energy sales from Quebec in order to meet the increased demand in New York or to alleviate the transmission constraint. This is because the increased demand also could be met with supply from other locations. As NYISO indicates in its June 24 Filing, sellers at the HQ Generator Bus would have to compete with suppliers in several other control areas, i.e., suppliers in Ontario, PJM, and New England, as well as in New York itself.

concerns at the HQ Generator Bus, we disagree. We are persuaded by the analysis of NYISO's IMA, which demonstrates that market concentration is sufficiently high in Quebec to warrant classifying the HQ Generator Bus as a Non-Competitive Proxy Generator Bus. In examining whether the HQ Generator Bus is competitive, the IMA calculated concentration measures for both supply and demand, based on the conclusion that the province of Quebec is the relevant geographic market. Within that geographic market, one seller, an HQ affiliate, owns 90 percent of the generating capacity, and one buyer, another HQ affiliate, serves 93 percent of the load. In addition, the IMA examined transactions at the HQ Generator Bus during 2002, and we are persuaded by his finding that an HQ affiliate scheduled 98 percent of physical imports and 83 percent of the physical exports at the bus. Data also show that Hydro-Quebec and its affiliates accounted for 91 percent of the transaction sources that could alleviate export constraints and 96 percent of the transaction sources that could alleviate import constraints.

26. The Commission is also persuaded that Hydro-Quebec has a significant ability to influence the market price at the HQ Generator Bus after line deratings due to its large share of generation capacity and load in Quebec and its large share of the day-ahead exports or imports scheduled at the HQ Generator Bus. When any significant schedule adjustments must be made after the close of the day-ahead market, at least a portion of those adjustments must ordinarily be made by Hydro-Quebec.²¹ While other entities submitted bids with high prices during the hours in question and some of these bids set the clearing price, NYISO accepted those bids only because there were insufficient bids offered at lower prices.

27. Further, the Commission rejects Hydro-Quebec's argument that its functional separation into three divisions reduces the concern for market power in Quebec. As NYISO points out, Hydro-Quebec's functional separation does not alleviate market power concerns stemming from the fact that all divisions, subsidiaries or affiliates at issue are owned or controlled by Hydro-Quebec. Accordingly, we find that the IMA properly considered Hydro-Quebec and its functioning units as a single economic entity for purposes of market concentration analysis. Further, the IMA's conclusions do not rest on any assumption of inappropriate conduct among HQ affiliates, but on the dominance of each affiliate. The high market shares, along with transaction-specific information showing that an Hydro-Quebec's affiliates schedule virtually all transactions

²¹For example, suppose that 90 percent of the imports in an hour in the day-ahead schedule at the HQ Bus are from HQ and 10 percent is from other entities. Suppose that a transmission derating requires that the schedule of imports be cut by 25 percent below the day-ahead level. In this circumstance, even if the other entities fully cut their scheduled imports, at least 15 percent of the 25 percent import reduction must come from HQ. Conversely, even if the other entities provided no cut in their scheduled imports, HQ could provide the full import reduction.

to alleviate either an import or an export constraint, is strong evidence that the market is not competitive, even with each affiliate fully complying with all standards of conduct.

28. Moreover, with regard to Hydro-Quebec's assertion that the TransÉnergie Tariff allows other entities to schedule on short notice, that may be true in principle. However, as a practical matter there is little supply or demand in the market other than from Hydro-Quebec that uses the HQ Generator Bus. Thus, when day-ahead schedules at the HQ Generator Bus must be adjusted due to a transmission line derating, entities other than Hydro-Quebec typically account for too small a portion of the total schedule to accommodate the total schedule adjustment that is needed. Because Hydro-Quebec accounts for such a large portion of the day-ahead schedule at the HQ Generator Bus, some amount of the needed schedule adjustment typically must come from Hydro-Quebec.

29. The Commission also rejects HQUS' position that the proposed pricing rules are unduly discriminatory because they target the HQ Generator Bus, without analysis of non-competitive prices at other buses. Regardless of whether such concerns may develop elsewhere, NYISO has proffered, and the Commission is persuaded (as stated above) that market power concerns exist at the HQ Generator Bus. Thus, at this time, we are accepting the proposed pricing rules as they apply to the HQ Generator Bus.

30. Nevertheless, in reviewing the proposed pricing rules, the Commission has become concerned about market conditions at NYISO's three other proxy buses, *i.e.*, New England, Ontario and PJM. Accordingly, we will direct NYISO to examine whether similar structural problems are a concern at those buses and, within 90 days of the issuance of this order, report its findings to the Commission.

31. In addition, we take this opportunity to raise concerns regarding BME schedules that are not financially binding on market participants. Although NYISO plans to replace the BME with a real-time scheduling initiative, we note that any process to adjust schedules after the close of day-ahead markets and before real-time markets raises the concern that the process will not be financially binding, in which case an entity that has scheduled a transaction may curtail the transaction without paying a congestion charge. We expect that NYISO's real-time scheduling initiative will address these issues.

32. Finally, with regard to NYTO's concern regarding the discrepancy between the description in NYISO's transmittal letter of the proposed pricing rules, and the proposed revisions actually set forth in the tariff, the Commission notes that the language set forth in NYISO's tariffs govern the rates, terms and conditions of NYISO's services. In addition, while NYTO states that a certain sentence and heading should be, but are not included, in the proposed tariff revisions, NYTO fails to specify what that sentence and heading entail. Accordingly, the Commission is unable to make a finding in either regard.

The Commission orders:

(A) NYISO's proposed pricing rules are hereby conditionally accepted for filing, to become effective May 31, 2003, subject to Ordering Paragraphs (B) and (C) below.

(B) NYISO is hereby directed submit a compliance filing within 30 days of the date of this order modifying its proposed pricing rules so that they apply only when NYISO must schedule a counterflow transaction involving the Non-Competitive Generator Proxy Bus in the BME or in real-time, in order to relieve one of the two constraints set forth in those rules, as discussed in the body of this order.

(C) NYISO is hereby directed to investigate whether market power is a concern at its New England, Ontario and PJM proxy buses and, within 90 days of the date of this order, report its findings to the Commission.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.