

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

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| New York Independent System Operator, Inc. |) | Docket No. ER08-1281-000 |
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**REQUEST FOR CLARIFICATION OR, IN THE ALTERNATIVE, REHEARING
OF THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Section 313 of the Federal Power Act (“FPA”), 16 U.S.C. § 8251, and Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. § 385.713 (2009), the New York Independent System Operator, Inc. (“NYISO”) respectfully submits the following request for clarification or, in the alternative, rehearing of the Commission’s *Order Authorizing Public Disclosure of Enforcement Staff Report and Directing the Filing of an Additional Report*, 128 FERC ¶ 61,049 (2009) (the “Order”).

I. Introduction

On June 30, 2008, in accordance with the requirements set forth in Appendix A to the Commission’s then-effective *Policy Statement on Market Monitoring Units* (“Policy Statement”),¹ the NYISO’s Market Monitoring and Performance Department (“MMP”) submitted the final version of its “Referral” to the Commission’s Office of Enforcement, Division of Investigations (“OE”). The Referral asked OE to consider whether certain specifically described bidding/trading activities violated the Commission’s Prohibition of Electric Energy Market Manipulation. 18 C.F.R. § 1c.2. In its Referral the NYISO’s

¹ *Market Monitoring Units in Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,267 (2005).

MMP presented “sufficient credible information to warrant further investigation”² of the concerns it identified.³ At that point, consistent with the Policy Statement, MMP ceased investigating the concerns it had referred to the OE, except to the limited extent it was called upon to provide data to OE, or to respond to questions posed by OE.⁴

On July 16, 2009 the Commission issued the Order in the above-captioned docket, publicly disclosing the OE’s report on its *Non-Public Investigation into Allegations of Market Manipulation in Connection with Lake Erie Loop Flows* (“OE Report”) and instructing the NYISO to “expeditiously develop long-term comprehensive solutions to the loop flow problem with its neighboring RTOs, including addressing interface pricing and congestion management” (footnote omitted). The Order requires the NYISO to submit a report detailing its efforts to develop long-term comprehensive solutions to Lake Erie loop flows within 180 days. The Order also “encourage[d] all interested parties to pursue a constructive, workable consensus addressing these matters as expeditiously as possible.”

Consistent with the Commission’s instructions, the NYISO is working diligently with its neighboring ISOs and RTOs to develop a comprehensive solution to Lake Erie loop flows.⁵ The NYISO intends to fully comply with all requirements of the

² The quoted language reflects the standard specified in Appendix A to the Policy Statement at P. 4 (Protocol No. 1).

³ Under the Policy Statement, and under the updated Order No. 719 standards, the Market Monitoring Unit is required to report “all instances in which the MMU has reason to believe that a Market Violation may have occurred” to OE. After the potential violation is reported the Market Monitoring Unit must “desist from independent action related to the alleged Market Violation[s].” Appendix A to the Policy Statement at P. 4 (Protocol No. 1).

⁴ Although it ceased its investigative activities, the NYISO’s MMP continued to assist the NYISO’s efforts to quickly craft and implement a remedy to mitigate some of the concerns identified in the NYISO’s July 21, 2008 “Exigent Circumstances Filing” in the above-captioned docket.

⁵ The NYISO has also been working with its Market Participants to develop proposed Tariff revisions for the Commission’s consideration that will clearly state that Commission-determined violations of the

Commission's Order and does not question the ultimate conclusions the Commission arrived at in the Order. However, the NYISO requests that the Commission take actions within its power to actively encourage the timely implementation of the Ontario-Michigan Phase Angle Regulators, and to encourage their effective operation to conform actual power flows to scheduled power flows at the Ontario-Michigan border, by clarifying or, in the alternative, grant rehearing of its Order in the manner suggested below.

I. Specifications of Error and Statement of Issues

Pursuant to Rule 713(c)(1) and (c)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(c)(1), (2) (2009), the NYISO respectfully submits the following specifications of error and statement of issues:

1. If the Commission does not grant the NYISO's requested clarification of its Order, then the Commission's decision to explicitly require the NYISO to address the development of market solutions (including interface pricing and congestion management) in its 180 day report to the Commission, without including a parallel requirement that the NYISO report on physical solutions to Lake Erie loop flows, including the implementation and effective operation of the Ontario-Michigan PARs to conform actual power flows to scheduled power flows, is unjust and unreasonable because it unduly discriminates against the implementation of a physical solution to Lake Erie loop flows in favor of market-based solutions. A just and reasonable solution is to require reporting on both physical and market-based solutions to Lake Erie loop flow by the affected parties.
2. If the Commission does not grant the NYISO's requested clarification of its Order, the Commission should instead grant rehearing of its Order and add a requirement that the NYISO, along with the parties to this proceeding that are directly involved in the implementation of the Ontario-Michigan PARs, or that will

Prohibition of Electric Energy Market Manipulation (18 C.F.R. § 1c.2), also result in violates of the NYISO's Tariffs.

participate in their operation, report to the Commission on: (i) the implementation status of the Ontario-Michigan PARs, (ii) the progress that has been made on the operating agreements for the Ontario-Michigan PARs, and (iii) the complementary role physical controls will play in the comprehensive solution to controlling Lake Erie loop flows.

II. Requests for Clarification or, In the Alternative, Rehearing

A. Better Conforming Actual Power Flows to Scheduled Power Flows is a Desirable Component of Any Plan to Address Lake Erie Loop Flows

In its July 21, 2008 Exigent Circumstances Filing in this docket, that sought authorization to implement the eight-path scheduling prohibition, the NYISO identified the Ontario-Michigan PARs as an effective means of mitigating Lake Erie loop flow and asked the Commission to encourage the commissioning and effective operation of the PARs to conform actual power flows to scheduled power flows at the Ontario/Michigan border. Implementation of this physical solution will go a long way toward reducing unscheduled, circulating power flows around Lake Erie. The NYISO has also asked the Commission to “take an active interest” in the process of developing an operating agreement for the PARs.⁶ In its August 21, 2008 Order in this docket, the Commission encouraged the parties responsible for operating the Ontario-Michigan PARs to place them in service as soon as practical.⁷

The Commission’s Order instructs the NYISO to “develop with its neighboring RTOs a long-term comprehensive solution to the loop flow problem” and requires the NYISO to address market-based solutions in its 180 day report. However, the Order fails to explicitly discuss or address the implementation or effective operation of the Ontario-

⁶ Exigent Circumstances Filing at p. 27.

⁷ *New York Independent System Operator, Inc.*, 124 FERC ¶ 61,174 at P. 24 (2008).

Michigan PARs. Implementing an effective physical solution to control or mitigate Lake Erie circulation should be a cornerstone of any comprehensive solution that the NYISO and its neighboring ISO and RTOs develop. Using the Ontario-Michigan PARs to more closely match actual power flows to scheduled power flows will reduce unscheduled Lake Erie loop flows and will permit the NYISO to more accurately determine LBMPs at its external Proxy Generator Buses.

Both the OE Report and the Order concentrate on market design as both the cause of, and remedy to, the Lake Erie loop flow problem. The Commission's focus on market design as the sole solution to Lake Erie loop flow is too narrowly focused; the optimal solution to Lake Erie loop flow will take all available options into account and incorporate a combination of physical and market methods of controlling or mitigating the effect of Lake Erie loop flows.

The method that the NYISO uses to determine prices at its external Proxy Generator Buses⁸ assumes power enters or exits the New York Control Area ("NYCA") at the locations where the power is scheduled to enter or exit the NYCA. This assumption is supported by the use of PARs or by back-to-back high-voltage DC converter stations to control or direct power flows on many of the NYISO's interconnections with neighboring Control Areas. Implementation and use of the Ontario-Michigan PARs to more closely align actual and scheduled power flows at the Ontario-Michigan border will further improve the accuracy of the method that the NYISO currently uses to determine LBMPs at its external Proxy Generator Buses. In addition, the use of the Ontario-Michigan PARs is expected to mitigate the unpredictable

⁸ Capitalized terms not specifically defined herein have the meaning ascribed to them in the NYISO's Market Administration and Control Areas Services Tariff.

and harmful effects of Lake Erie loop flows on the ISOs and RTOs surrounding Lake Erie, and to promote efficient scheduling of power flows.

It is the NYISO's understanding that the last set of PARs needed to be able to more closely conform actual power flows to scheduled power flows at the Ontario-Michigan border are expected to be placed in-service on or about November 1, 2009. Once all of the Ontario-Michigan PARs are in place, they need to be effectively operated to more closely conform actual power flows to scheduled power flows (recognizing the capabilities of the technology being employed). In order to best achieve this goal, an effective operating protocol needs to be completed,⁹ and functional control over the U.S. interface facilities needs to be assigned to the Midwest Independent Transmission System Operator, Inc. ("MISO") so that MISO can coordinate the operation of the interface with the Independent Electricity System Operator of Ontario ("IESO"). Assigning operational control over the U.S. interface facilities, including the Michigan PARs, to a neutral administrator of markets, like the MISO, will ensure that the PARs are operated in a non-discriminatory fashion that will take into account the potential impacts of the PARs operation on other Control Areas.

The goal of conforming actual to scheduled power flows should not be set aside in favor of addressing local transmission congestion within the MISO or IESO Control

⁹ A factor that needs to be considered in developing an appropriate operating protocol for the PARs is interplay between the implementation and operation of the Ontario-Michigan PARs and the North American Electric Reliability Corporation's rules for administering the Transmission Line Loading Relief ("TLR") Procedure.

Areas. Using the PARs to address local congestion would result in continued Lake Erie loop flows affecting the New York State Transmission System.¹⁰

The NYISO again encourages the Commission to take actions within its power¹¹ to ensure the timely implementation of the Ontario-Michigan PARs, and the development of a protocol addressing their operation. The operation of the PARs will have a profound and lasting impact on several Commission-jurisdictional markets.

In order to ensure that the timely implementation of the Ontario-Michigan PARs and their effective operation to more closely conform actual power flows to schedules are addressed in the inter-ISO/RTO discussions related to developing a comprehensive solution to Lake Erie loop flow, the NYISO requests that the Commission indicate its interest in this topic by clarifying that the 180 day reporting requirement in its Order also requires reporting by the NYISO and other affected entities on: (i) the implementation status of the Ontario-Michigan PARs, (ii) the progress that has been made on the operating agreements for the Ontario-Michigan PARs, and (iii) the complementary role physical controls will play in the comprehensive solution to Lake Erie loop flow that the NYISO has been instructed to work with its neighboring ISO and RTOs to develop. In the alternative, the NYISO requests that the Commission grant rehearing of its Order to add a requirement that the NYISO, along with the parties to this proceeding that are

¹⁰ A method of assigning cost responsibility for transmission congestion that results from unscheduled power flows that exceed the control capabilities of the Ontario-Michigan PARs is one of the market-based improvements that needs to be jointly developed and implemented by the NYISO and its neighbors.

¹¹ The NYISO is aware of and has submitted comments in the ongoing United States Department of Energy (“DOE”) proceedings addressing the implementation of the latest set of Ontario-Michigan PARs. The NYISO is also aware of recent discussions held at the Department of Energy regarding the draft operating agreement that is being negotiated between the MISO, International Transmission Company, dba ITC Transmission, Hydro One Networks Inc., and the IESO. The NYISO believes the Commission can and should take actions within its powers to both inform and hasten the conclusion of the DOE proceedings, and the execution of an effective operating agreement for the PARs that will focus on operating them to more closely align actual power flows with scheduled power flows.

directly involved in the implementation, or that will participate in the operation of the Ontario-Michigan PARs, report back on the topics identified above.

III. Conclusion

The NYISO respectfully requests that the Commission grant the NYISO's requested clarification of its July 16, 2009 Order or, in the alternative, grant rehearing regarding the concerns that the NYISO identifies for the reasons set forth above.

Respectfully submitted,

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August 14, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2009).

Dated at Rensselaer, New York this 14th day of August, 2009.

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