

FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, Linda Breathitt,
Pat Wood, III and Nora Mead Brownell.

New York Independent System Operator, Inc.

Docket No. ER01-2230-000

ORDER ON INFORMATIONAL FILING

(Issued July 31, 2001)

On June 1, 2001, the New York Independent System Operator, Inc. (NYISO) filed, pursuant to a November 17, 1999 settlement approved by the Commission in an order issued July 31, 2000 (July 31 Order),¹ an informational filing describing the operation of its transmission service charge formula. For the reasons set forth below, we accept NYISO's filing, subject to condition.

Procedural Background

In the July 31 Order, the Commission approved the November 17, 1999 settlement filed by the Member Systems of the New York Power Pool (Member Systems)² which, among other things, provided for changes in how the various components of NYISO's Transmission Service Charge (TSC) would be calculated for each of the Member Systems. NYISO was not a party to the settlement. The settlement further required NYISO to make an information filing describing the operation of the TSC formula as set

¹Central Hudson Gas & Electric Corporation, et al., 92 FERC ¶ 61,128 (2000).

²The Member Systems of the New York Power Pool subsequently reconstituted themselves as the Members of the Transmission Owners Committee of the State of New York. They are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., the Long Island Power Authority, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., the Power Authority of the State of New York, Niagara Mohawk Power Corporation, and Rochester Gas and Electric Corporation.

forth in Attachment H to NYISO's OATT after it has been operational for 15 months. The filing was to include all input data and workpapers showing the derivation of the transmission charges under the TSC formula for the first 12 months. Pursuant to a notice issued March 9, 2001, the time by which NYISO was required to make the filing was extended to June 1, 2001. NYISO tendered the instant filing to comply with the November 17 settlement and the July 31 Order.

Notice of Filing and Pleadings

Notice of NYISO's filing was published in the Federal Register, 66 Fed. Reg. 32,345 (2001), with comments, protests, and interventions due on or before June 22, 2001. A protest and motion to intervene was filed by the Municipal Electric Utilities Association of New York State (MEUA). Motions to intervene were filed by Dynegy Power Marketing, Inc. and the Member Systems. The New York State Electric & Gas Corporation filed a motion to intervene and clarifying comments. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³ the timely, unopposed motions to intervene serve to make those who filed them parties to this proceeding. Section 385.213(a)(2) of the Commission's regulations prohibits an answer to a protest unless otherwise ordered by the decisional authority. Accordingly, the July 9, 2001 answer of NYISO and the Member Systems is rejected.

Intervenor Comments

MEUA states that, contrary to the Commission's July 31 Order and the November 17 settlement, NYISO's filing fails to provide the description of the operation of the TSC formula and fails to include all the input data and work papers necessary to show the derivation of the transmission charges under the TSC formula. MEUA states that the filing fails to provide any of the required information for the annual transmission revenue requirement/annual scheduling, system control and dispatch costs/billing units components (RR/CCC/BU) of the TSC formula for the six investor-owned Transmission Owners. MEUA believes that updated information would show that the TSC rates are not just and reasonable because the RR/CCC/BU data reflected in Table 1 of Attachment A of NYISO's filing is stale 1996 data, and because Commission staff determined in the hearing in Docket No. ER97-1523-011, *et al.*, that the NYPA Transmission Adjustment Charge was excessive because the BU component of that charge was based on 1996 data. MEUA also believes that the Transmission Owners should file additional information concerning the WR component of the TSC formula which is designed to reflect revenue from grandfathered OATT agreements since an examination of the workpapers for the months before and after March 1, 2001 fails to show any change in Niagara Mohawk's WR component attributable to the termination of these grandfathered agreements.

³18 C.F.R. § 385.214 (2000).

Discussion

MEUA contends that the information filing fails to include all the input data and workpapers necessary to show the derivation of the transmission charges under the TSC formula. MEUA urges the Commission to require the NYISO to provide workpapers supporting the RR/CCC/BU components of the TSC formula. We will deny MEUA's request because the settlement specifically excluded these items from those requiring workpapers. In addressing what the informational filing must include, the settlement states, in part:

Workpapers showing the derivation of each component of the formula, except for (i) the Transmission Revenue Requirement ("RR"), the Scheduling, System Control and Dispatch Costs ("CCC") and Billing Units ("BU") components which remain fixed absent a Section 205 filing by the Transmission Owner to change its RR, CCC, or BU, or a Section 206 determination by the Commission....[Footnotes omitted] ⁴

Thus, contrary to MEUA's assertion that workpapers for the RR, CCC and BU components are required in the information filing, workpapers applicable to these components are specifically excluded under the above settlement provision. We therefore deny MEUA's request that workpapers be provided for the RR/CCC/BU components.

⁴Joint Offer of Settlement of the Member Systems of the New York Power Pool and the Interested Parties at 5.

MEUA also asserts that updated data would show that the TSC rates are unjust and unreasonable because the RR/CCC/BU components are based on stale 1996 data. In support of its assertion, MEUA cites to another proceeding, Docket No. ER97-1523-011, et al., where it was shown that total sales to ultimate consumers in the State of New York had increased by 17 percent (133 million MWh in 1996 to 155 million MWh in 1999). Commission staff in that proceeding used this 155 million to determine the NYPA Transmission Adjustment Charge (NTAC).⁵ As applicable to this proceeding, once the information filing is publicly noticed, all participants have the opportunity to intervene and request the Commission to establish a proceeding under Section 206 of the Federal Power Act. However, neither the NYISO nor the Transmission Owners agreed to waive the allocation of the burden of proof under Section 206.⁶ As we have explained in other proceedings,⁷ the complainant seeking a Section 206 investigation of rates must provide some basis, such as a preliminary cost study, to question their reasonableness. MEUA looked at only one component of a cost study, aggregate sales to ultimate consumers in New York. However, in order to sustain its burden of proof under Section 206, at a minimum, MEUA would need to proffer evidence on the changes in the revenue requirements of all Transmission Owners, i.e., provide a preliminary cost-of-service study for each Transmission Owner. Clearly, MEUA has not met its burden of proof under Section 206. Therefore, we will decline to entertain MEUA's assertion that the charges produced by the TSC formula may not be just and reasonable.

MEUA also notes that nineteen MEUA Members converted their transmission service from grandfathered service agreements under Niagara Mohawk's OATT. According to MEUA, examination of the workpapers fails to show any change in Niagara Mohawk's "WR" (Wheeling Revenue) component attributable to the termination of these grandfathered contracts. We agree with MEUA that the filing lacks an explanation of the effect on the WR component when a grandfathered OATT service agreement or grandfathered transmission arrangement is terminated. We therefore direct NYISO and Member Systems to address these concerns in a compliance filing.

⁵NYPA's transmission facilities are the backbone to the New York transmission grid and as such NTAC is charged to all sales to New York ultimate consumers, external wheeling transactions and transactions that go through the New York control area.

⁶Joint Offer of Settlement of the Member Systems of the New York Power Pool and the Interested Parties at 6.

⁷See, e.g., Wabash Valley Power Association, Inc. v. Northern Indiana Public Service Company, Inc., 82 FERC ¶ 61,139 (1998) and Houlton Water Company, et al. v. Maine Public Service Company 55 FERC ¶ 61,037 (1991).

The Commission orders:

(A) NYISO's June 1, 2001 information filing in this proceeding is accepted, as discussed in the body of this order, subject to the condition set forth in ordering paragraph (B) below.

(B) Within 30 days of the date of this order, NYISO and Member Systems are directed to make a compliance filing explaining the WR component, as discussed in the body of this order.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.