

107 FERC ¶ 61, 292
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

New York Independent System Operator, Inc. Docket No. EL04-110-000

ORDER GRANTING WAIVER OF TARIFF PROVISIONS

(Issued June 22, 2004)

1. In this order we grant New York Independent System Operator, Inc.'s (NYISO) emergency request for a one-time waiver of various tariff provisions¹ that require it to conduct the Transmission Congestion Contract (TCC)² Reconfiguration Auctions by the end of each month.
2. This order benefits customers by preventing a potentially inefficient TCC auction from taking place and by encouraging the development of a plan that will have consensus stakeholder support to address the effects of the error in the current capability period.

NYISO's Filing

3. On June 18, 2004, NYISO filed an emergency request for a one-time waiver of various tariff provisions that require it to conduct the Transmission Congestion Contract (TCC) Reconfiguration Auctions³ by the end of each month (Emergency Request). It

¹ Sections 1.37.1 of NYISO Open Access Transmission Tariff (OATT), sections 2.0, 8.5, and 9.2 of Attachment M to its OATT, section 2.155a of its Service Tariff, and sections 2.0, 8.5, and 9.2 of Part IV of Attachment B to its Service Tariff, and any other tariff provisions that require the auction.

² TCCs are financial instruments that serve as a hedge against congestion costs in the day-ahead energy market administered by the NYISO.

³ Reconfiguration Auctions are held monthly and are limited to TCCs of one month's duration. They provide market participants with an opportunity to "purchase
(continued...)

does not want to hold the July auction, which is currently scheduled to be held on June 23, 2004. NYISO requests that the Commission issue an order on this request no later than June 22, 2004.

4. NYISO states that the requested waivers will allow it to address the complex effects of a recently discovered database transcription error on a number of NYISO-administered TCC auctions. NYISO states that it has disclosed the error to all stakeholders, and state and federal regulators, in order to involve all parties in resolving the error. While NYISO states that it has been working with all interested parties and has corrected the error so that it does not affect future actions, there is still a danger that uncertainty concerning the effects of the error and possible remedies will deter many TCC holders from participating on June 23, 2004. This would greatly limit the value of the reconfiguration process, and the auction might produce results that would not be produced by an efficient competitive bidding process. These potential results could include such things as extreme positive or negative TCC prices and an increased potential for gaming.

5. NYISO states that it does not believe that canceling the TCC auction will result in material harm to stakeholders. Reconfiguration Auctions normally provide a useful opportunity for TCC holders to adjust their positions and acquire short-term TCCs. In this case, however, continuing uncertainty concerning the database transcription error and possible remedies, and NYISO's announcement of its proposal to cancel the auction, can be expected to diminish the auction's utility. Further, many TCC holders will be able to make any necessary adjustments through bilateral transactions.

6. In conclusion, NYISO stresses that the error was inadvertent, that it is working to resolve it and that the error has brought no benefit to NYISO. Further, NYISO states that if the Commission does not grant its waiver request, NYISO would be required to conduct a TCC auction on June 23, 2004, which could exacerbate the problems the error has caused, limit options for remedying it, and undermine the NYISO's ability to fashion a remedy with consensus stakeholder support.

Notice of Filing and Responsive Pleadings

7. Notice of the filing was issued on June 18, 2004 with interventions and protests due on or before June 21, 2004. On June 21, 2004, Mirant Americas Energy Marketing, LP filed a Motion to Intervene. Interventions and comments were filed by Coral Power,

and sell short-term TCCs" and to "capture short-term changes in transmission Capacity." See NYISO Open Access Transmission Tariff, Attachment M at §8.5; NYISO Market Administration and Control Area Services Tariff, Attachment B at Part IV, §8.5.

L.L.C. (Coral) and DC Energy, L.L.C. (DC Energy) jointly, Citadel Energy Products LLC (Citadel), and the New York Transmission Owners.⁴ New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (Rochester G&E) jointly filed to intervene and protest.

8. Most of the intervenors stated that they would support NYISO's request for a one-time waiver of its tariff provisions that require it to conduct TCC Reconfiguration Auctions by the end of each month for the month of July 2004, provided it is granted for only one TCC Reconfiguration Auction. In addition, Coral and DC Energy request that the Commission validate that the TCCs that have already been sold remain unimpaired, and that NYISO's future acts to address this error are market-based.

9. Further, NYSEG and Rochester G&E request that the Commission: (1) put all parties on notice that tariff violations and breach of contract issues have occurred as a result of the NYISO's issuance of the "phantom" TCCs; (2) take any and all actions under section 205 or section 206 of the Federal Power Act to fashion a complete remedy for the retroactive and prospective tariff violations, consistent with the provisions of the tariff and TCC agreements, and revise the TCC awards accordingly; (3) direct NYISO to file a remedy for the tariff violations within 30 days of the date of this order; and (4) grant waiver of any tariff provisions necessary to allow the NYISO to allocate any congestion rent shortfalls among transmission owners in the same relative proportion that transmission owners received revenues from the issuance of these TCCs.

10. New York Transmission Owners' support is based on the narrow scope of NYISO's request and on the understanding that the NYISO request does not address or prejudice any issue with respect to the nature or extent of the problems resulting from the issuance of excess TCCs, or the appropriate remedies to address those problems.

11. Citadel strongly disagrees with the statement in the Emergency Request that canceling the July Reconfiguration Auction is not likely to result in material harm to stakeholders. Further, Citadel states that the July Auction should not be canceled on the basis of some preconceived notion of what TCC prices should result from that auction, and recommends going forward with the July Auction as a viable market-based solution. By holding the July Reconfiguration Auction, the requisite number of TCCs can be repurchased at the prevailing market price. However, Citadel states that if the Commission grants NYISO's waiver request, that it should be granted as a one-time event.

⁴ Central Hudson Gas & Electric Corporation Consolidated Edison Company of New York, Inc., LIPA, New York Power Authority, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Niagara Mohawk Power Corporation, a National Grid Company.

Discussion

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.214 (2003), the unopposed motions to intervenors serve to make the entities that filed them parties to this proceeding. In this order, the Commission will only be addressing NYISO's request for waiver of various tariff provisions in order to cancel the July TCC Reconfiguration Auctions. Therefore, we will not at this time respond to intervenors' concerns about the issuance of excess TCCs and any potential remedies. Those issues are beyond the scope of this proceeding. We expect NYISO to work with the parties to resolve their concerns and to report the status of those discussions as a part of the report we are requiring below.

13. We will grant NYISO's motion to suspend the June 23, 2004, TCC Reconfiguration Auction. Given the uncertainty caused by NYISO's database error, the auction could produce results that are contrary to a competitive bidding process. We agree with NYISO that the best course is to cancel the reconfiguration auction for the month of July. Therefore, we will grant NYISO a one-time waiver of all tariff language requiring that the auction be held by the end of the month and will allow NYISO to cancel the TCC auction currently scheduled for June 23, 2004.

14. However, we remain concerned about the causes of the database transcription error in 2002 and the fact that the error remained undiscovered for so long. We note that NYISO has indicated that it has taken steps to correct the database transcription error so that it will not affect future auctions. Further, NYISO is developing a plan to address the effects of the error in the current capability period that will have consensus stakeholder support. Once that is done NYISO says that it will submit the plan to the Commission. Therefore, we will require NYISO to file a status report within 30 days providing an update on the internal controls that are being placed into effect to ensure that these types of errors do not occur again.

15. We also believe that it is important that NYISO develop on a timely basis a prospective solution for the database transcription error. We intend for this waiver of the monthly auction to be a one-time waiver. We expect that NYISO will be able to conduct the monthly reconfiguration auction for the month of August. Therefore, we will require NYISO to file an update with the Commission specifying the status of the efforts to resolve, correct or mitigate the database transcription error within 30 days. In that report, NYISO should also state how it plans to conduct future reconfiguration auctions given the database transcription error.

The Commission orders:

- (A) NYISO's request for a one-time waiver of all tariff language requiring that the TCC auction be held by the end of the month is hereby granted.
- (B) NYISO's request to cancel the TCC auction currently scheduled for June 23, 2004 is hereby granted.
- (C) NYISO is required to file a status report within 30 days as described in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.