

108 FERC ¶ 61, 075
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

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

Central Hudson Gas & Electric Corporation,
LIPA, New York Power Authority, New
York State Electric & Gas Corporation,
Niagara Mohawk Power Corporation, and
Rochester Gas and Electric Corporation Docket Nos. EL04-113-000
EL04-113-001

v.

New York Independent System Operator, Inc.

New York Independent System Operator, Inc. Docket Nos. EL04-115-000
EL04-115-001
ER04-983-000
ER04-983-001

ORDER ACCEPTING FILING AND
ACCEPTING TARIFF REVISIONS

(Issued July 22, 2004)

1. In this order, we accept a filing described by the parties as a settlement that resolves a complaint filed by a number of Transmission Owners in New York (Complainants)¹ against the New York Independent System Operator, Inc. (NYISO) concerning the NYISO's administration of its Transmission Congestion Contract (TCC) authority and that modifies an earlier filing by NYISO attempting to remedy the effects of an error in several TCC auctions. We also accept proposed tariff revisions and waive other tariff provisions which give the NYISO the authority to take several steps contemplated in the Settlement.

¹ The Complainants include Central Hudson Gas & Electric Corporation, LIPA, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, and Rochester Gas and Electric Corporation.

BACKGROUND

2. TCCs are financial instruments that serve as a hedge against congestion costs in the day-ahead energy market administered by the NYISO. A TCC holder collects the congestion rent associated with a particular portion of the New York State Transmission System. (TCCs do not provide a physical transmission priority.) TCC holders' congestion rents are funded by the hourly congestion charge payments made by NYISO customers. Because the value of these congestion charges is limited by the physical capacity of the transmission system, the number of TCCs outstanding at any one time should not exceed the amount of installed transmission capacity on the system. Also, congestion rent payments to TCC holders should equal the charges collected by the NYISO, but when the figures diverge, the congestion rent collected may be insufficient to fully fund all of the outstanding TCCs. If this occurs, the NYISO tariffs provide that the Transmission Owners must cover any congestion rent shortfalls.

3. TCCs are primarily available through NYISO-administered Centralized Auctions (Spring and Autumn Auctions corresponding to the Summer and Winter Capability Periods) and Reconfiguration Auctions (held monthly to permit the purchase and sale of short-term TCCs). All revenues generated by the auctions are paid to the Transmission Owners and are used to reduce their Transmission Service Charge (TSC) revenue requirements.

4. The NYISO recently discovered a TCC database transcription error that has substantially contributed to congestion rent shortfalls. The error involved a failure to classify a single 912 MW transmission contract into New York City as reserved by a Transmission Owner in the form of a grandfathered TCC (rights reflecting a transmission contract existing prior to NYISO formation), so that the associated transmission capacity would not be available in TCC auctions. The error was introduced into TCC auction software during the summer of 2002 and has flowed through to the Autumn 2002 Centralized Auction and all subsequent Centralized Auctions. Because the NYISO sold more TCCs than it should have, the TCC auctions have generated more revenues than they otherwise would have, and congestion rent shortfalls were created since congestion charges collected by the NYISO supported an extra 912 MW of TCCs. Further, the error has affected calculations under various formulas used to determine TCC-related charges and payments.

COMPLAINT

5. On June 24, 2004, the Complainants filed a complaint requesting that the Commission retroactively and prospectively remedy the tariff violations caused by the oversubscription of TCCs in NYISO's TCC auctions. The Complainants state that the NYISO has violated its tariffs and agreements based on the requirement that outstanding TCCs be simultaneously feasible and not exceed the amount of transmission capability of

the system. Further, the Complainants state that the oversubscription of TCCs has resulted in congestion rent payments to holders of erroneously awarded TCCs, and in the allocation of millions of dollars in erroneously calculated congestion revenue shortfalls to the Complainants and their customers. The Complainants believe that these congestion revenue shortfalls will continue to mount even if the monthly TCC reconfiguration auctions are cancelled. The Complainants state that to the extent they are allocated congestion rent shortfalls resulting from the issuance of the phantom TCCs, while not receiving the benefit of revenues from the issuance of the TCCs, they will continue to shoulder a disproportionate percentage of the continuing harm resulting from these tariff violations.

6. Notice of the complaint was published in the *Federal Register*, 69 Fed. Reg. 40,894 (2004) with motions to intervene and comments originally due on or before July 14, 2004.² A timely motion to intervene was filed by Constellation Power Source, Inc.

REQUEST FOR APPROVAL OF REMEDIAL PLAN AND PROPOSED TARIFF PROVISIONS

7. In a filing dated July 2, 2004, the NYISO requested that the Commission convene a conference, and, if the negotiations fail, authorize the NYISO to implement actions to address the economic effects of the database error. The NYISO proposes a voluntary program designed to extinguish the excess TCCs. If a voluntary program does not eliminate all of the excess TCCs, the NYISO suggests implementing a mandatory program to buy back one half of remaining excess TCCs and issue counterflow TCCs to eliminate the outstanding half of excess TCCs. The NYISO also presents a market-based alternative as an option, and suggests a method for compensating the Transmission Owners on an individual company basis.

8. Notice of the NYISO's filing was published in the *Federal Register*, 69 Fed. Reg. 42,050 (2004) with motions to intervene and comments originally due on or before July 12, 2004.³ Timely motions to intervene were filed by KeySpan-Ravenswood, LLC and PSEG Energy Resources & Trade, LLC.

² In light of the filing of the settlement discussed below, this date was extended to July 26, 2004 to avoid the parties' filing unnecessary pleadings.

³ In light of the filing of the settlement discussed below, this date was extended to July 26, 2004 to avoid the parties' filing unnecessary pleadings.

SETTLEMENT

9. On July 13, 2004, NYISO submitted a settlement on behalf of itself, the transmission-owning utilities of New York State, all affected Primary Holders of TCCs, and other interested stakeholders, intended to resolve all issues among the parties pending before the Commission in the above-captioned proceedings.⁴ The settlement addresses all of the issues associated with these proceedings historically, and going forward. NYISO states that the settlement “balances the need to protect consumers against the need to preserve the integrity of the NYISO-administered markets, and the need to uphold legitimate Market Participant interests.”⁵

10. The settlement is divided into two sections: remedies for the Current Period (the Summer 2004 Capability Period), and remedies for historic periods (the Winter 2002, Summer 2003, and Winter 2003 Capability Periods). For the Current Period, the NYISO initially plans to solicit voluntary offers to sell TCCs, and voluntary offers to purchase counterflow TCCs. In addition, the NYISO shall use the Net Excess TCC Auction Revenues from the Spring 2004 Centralized TCC Auction, as the first source of funds to pay for the retirement of TCCs and the issuance of Counterflow TCCs. Net Excess TCC Auction Revenue will be utilized to extinguish infeasibility and to compensate any Transmission Owners for which congestion rent shortfalls attributable to oversales exceeded auction revenues received from the Spring 2004 Centralized TCC Auction. It will also pay for Current Period congestion rent shortfalls attributable to oversales that occur after July 11, 2004, and make refunds of historic shortfalls. If the Net Excess TCC Auction Revenues are insufficient to pay for the removal of infeasibility, the NYISO will draw on its Working Capital Fund up to a maximum of \$27 million.⁶ If this is still insufficient, the NYISO will compensate the Transmission Owners using a shortfall

⁴ Settlement signatories include: NYISO, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, BP Energy Company, Citadel Energy Products, LLC, Constellation Power Source, Inc., Coral Power, LLC, D C Energy, LLC, Edison Mission Marketing & Trading, Mirant Americas Energy Marketing L.P., Morgan Stanley Capital Group, Inc., New York Municipal Power Agency, PSEG Energy Resources & Trade, LLC, Quark Power, LLC, Select Energy New York, Inc., and the New York State Consumer Protection Board.

⁵ Transmittal Letter at 2.

⁶ NYISO submitted proposed tariff revisions expressly granting it the authority to take these steps.

reimbursement surcharge, for which it will submit a compliance filing to implement necessary tariff revisions after the Commission accepts the settlement. The surcharge will be a *de minimis* surcharge on congestion rent payments associated with TCCs sold in the future, beginning with the Autumn 2004 Centralized TCC auction.

11. In dealing with the historic periods, the NYISO will calculate the excess TCC auction revenues and excess congestion rent shortfalls owed to each transmission owner, and reimburse them the difference, plus interest. These funds are to be procured first through any remaining Net Excess TCC Auction Revenues from the Current Period, then through the NYISO's Working Capital Fund, and finally through the usage of a shortfall reimbursement surcharge. To the extent that infeasibility continues to exist after completion of the market-based extinguishment program, the NYISO proposes to conduct subsequent Reconfiguration Auctions in the current Capability Period without excluding the remaining infeasibility. In order to accomplish this, NYISO requests that the Commission clarify that it has the authority to do so, and/or waive any tariff provisions that may impede the NYISO's ability to do so.

12. The NYISO requests that the Commission allow an effective date of July 14, 2004 for the proposed tariff revisions, which would facilitate implementation of the settlement.

13. The NYISO requests that the Commission approve the settlement, accept the proposed tariff revisions, and grant the requested waivers by no later than July 22, 2004. It states that action on the settlement is needed by this date so that the NYISO may conduct a timely TCC Reconfiguration Auction for August and have the benefit of the Commission's policy guidance, and that the August Reconfiguration Auction must be held to avoid harming TCC holders and the integrity of the NYISO's TCC markets.

14. Notice of the settlement was issued, with motions to intervene and protests due on or before July 20, 2004. Timely motions to intervene were filed by the entities listed on Attachment A. A number of parties explicitly support the settlement, and none object to the settlement. The New York State Consumer Protection Board (NYSCPB) states that it supports the settlement and requests to be considered as a signatory to the settlement even though it was not able to sign the document prior to filing.

DISCUSSION

15. The timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they moved to intervene. We will grant NYSCPB's request to be considered a party to the settlement.

16. We will accept the settlement as a just and reasonable resolution of the matters at issue. Moreover, it is unopposed. In addition, the proposed tariff revisions that were included as part of the settlement appear to be just and reasonable and likewise will be

accepted for filing. For good cause shown, waiver of notice is granted to permit an effective date of July 14, 2004, as requested. To the extent necessary, any tariff provisions restricting NYISO from conducting Reconfiguration Auctions that include excess TCCs are waived.

17. Consistent with the terms of the settlement, the NYISO is directed to make a compliance filing to amend its tariffs to provide for the implementation of the shortfall reimbursement surcharge within 15 days of the issuance of this order.

18. This order terminates Docket Nos. EL04-110-000, EL04-113-000, EL04-113-001, EL04-115-000, EL04-115-001, ER04-983-000, and ER04-983-001. A new subdocket will be assigned upon receipt of the required compliance filing.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

Attachment A

Consolidated Edison Company Of New York, Inc.
Coral Power, L.L.C. and DC Energy, L.L.C.
Exelon Corporation
Independent Power Producers of New York, Inc.
New York Municipals ⁷
New York State Consumers Protection Board
New York State Public Service Commission
New York Transmission Owners
Select Energy New York, Inc.
Sithe Energy Marketing, LP

⁷ New York Municipals are comprised of: the Village of Bergen, Freeport Electric Department, Green Island Power Authority, Greenport Municipal Utilities, City of Jamestown Board of Public Utilities, Town of Massena Electric Department, Village of Rockville Centre, Salamanca Board of Public Utilities, Village of Sherburne, and City of Sherrill Power & Light.