

98 FERC ¶ 61,201

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket Nos. ER01-2967-002  
ER01-2967-003

ORDER ON COMPLIANCE FILING

(Issued February 27, 2002)

In this order we accept for filing, subject to modification, revisions to Attachment S of New York Independent System Operator, Inc.'s (NYISO) Open Access Transmission Tariff (OATT), which sets forth the rules for allocation of responsibility for the cost of interconnection facilities required for new generation projects and merchant transmission projects. This order benefits customers by providing certainty in the interconnection process.

I. Background

NYISO first submitted for filing a new Attachment S (Cost Allocation Rules) on August 29, 2001 (August 29 filing). The Cost Allocation Rules allocate to developers 100 percent of the cost of interconnection facilities, as well as the costs for transmission system upgrades that would not have been made "but for" the interconnection, minus the cost of any facilities that NYISO's regional plan dictates would have been necessary in any case for load growth and reliability purposes. By order issued October 26, 2001 (October 26 order), the Commission accepted, subject to several modifications, the Cost Allocation Rules, effective September 26, 2001.<sup>1</sup> On December 26 and 27, 2001, NYISO submitted

<sup>1</sup>Specifically, the October 26 order directed NYISO to: (1) eliminate any decision-making role of the transmission owners; (2) change the definition of the Annual Transmission Baseline Assessment (ATBA) to eliminate limitation of the ATBA to a transmission owner's district; (3) clarify the mechanism for allocation of costs to developers; (4) delete the material impact standards used in allocation of cost among

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Docket Nos. ER01-2967-002 and 000

- 2 -

the subject compliance filing (compliance filing) setting forth the modifications required by the October 26 order.<sup>2</sup> NYISO requests an effective date of September 26, 2001 for the compliance filing.

## II. Notice of Filing and Responsive Pleadings

Notice of the filing was published in the Federal Register, 67 Fed. Reg. 730 (2002), with interventions and comments due on or before January 17, 2002. PSEG Power, LLC; NRG Companies; and Reliant Resources, Inc. each filed a timely motion to intervene. Members of the Transmission Owners Committee of the Energy Association of New York State, formerly known as the Member Systems of the New York Power Pool (Member Systems) filed a timely motion to intervene, comments and request for clarification and, in the alternative, limited protest.

As further detailed below, Member Systems mainly request clarification of two aspects of NYISO's compliance filing: (1) the cumulative cost impact associated with

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<sup>1</sup>(...continued)

developers; (5) utilize rules consistent with those used by PJM regarding a transmission owner's right to recover reasonably incurred costs; (6) explain who will be responsible for prudently incurred costs in excess of the estimate and why that is a reasonable result; (7) eliminate or provide greater certainty with regard to Section IV(F) of the Cost Allocation Rules regarding a developer's obligation following the first round of cost allocation; and (8) address various intervenors' concerns, specifically: (a) whether the ATBA and Annual Transmission Reliability Assessment (ATRA) include deliverability criteria; (b) an inconsistency in the definition of "New Interconnection" in the Cost Allocation Rules and the cost rules approved by the NYISO Management Committee; (c) who determines, and how, a baseline assessment deficiency has been resolved; and (d) who is responsible for providing cost estimates, i.e., the transmission owners, NYISO, or another entity. The Commission also directed NYISO to file within 6 months of the date of the October 26 order, tariff provisions addressing the protestors' claim that the Cost of Allocation Rules offer no direction to entities developing small generators, *i.e.*, those with a MW rating below 10, since the rules apply to interconnection of generators 10 MWs and above. This order makes no finding regarding that directive, as NYISO did not submit those provisions in the subject compliance filing.

<sup>2</sup>On December 26, 2001, in Docket No. ER01-2967-002, NYISO submitted its compliance filing. On December 27, 2001, in Docket No. ER01-2967-003, NYISO filed revisions to Sheet Nos. 39 and 39A of its OATT to complete the compliance filing made on December 26, 2001.

Docket Nos. ER01-2967-002 and 000

- 3 -

multiple generation projects that individually meet the "de minimus" impact provision, but collectively impose non-de minimus impacts; and (2) NYISO's explanation of the proposed cost estimate provisions. In the alternative, Member Systems protest those two aspects of the compliance filing and request that the Commission revise the provisions to satisfy the October 26 order.

On January 31, 2002, NYISO filed a request for leave to submit a limited answer and an answer to Member Systems' intervention. In its answer, as discussed below, NYISO provides additional explanation of its cost estimate provisions and addresses Member Systems' concern regarding cumulative cost impacts.

On February 15, 2002, Member Systems filed a reply to NYISO's answer.<sup>3</sup>

### III. Discussion

#### A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2000), each timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding. While Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2001), allows answers to protests and replies to answers only at the discretion of the decisional authority, we will allow NYISO's answer and Member Systems' reply in this instance as they have aided us in understanding the matters at issue in this proceeding.

#### B. Analysis

The October 26 order directed NYISO to make the several modifications to the Cost Allocation Rules. We find that NYISO has complied with the October 26 order. However, while we reject Member Systems' main protests to NYISO's compliance filing, Member Systems also suggests language modifications with which we agree. Therefore, we will accept the compliance filing, subject to modification, to become effective September 26, 2001, as requested.

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<sup>3</sup>Unless noted otherwise, the assertions set forth in Member Systems' protest and reply to NYISO's answer shall be addressed collectively herein.

Docket Nos. ER01-2967-002 and 000

- 4 -

Member Systems' protests are discussed below.

1. Material Impact Standard

The Cost of Allocation Rules in the August 29 filing provided that after costs are allocated between developers and transmission owners, developers' costs would be allocated among individual developers, if necessary. Section IV(F)(5)(e) stated:

No developer is responsible for any of the cost of any Individual System Upgrade Facility if his project does not have a Material Impact<sup>4</sup> on the reliability of the transmission system . . . If no developer's project reaches the Material Impact standard, but the cumulative effect of a group of new developments requires transmission facilities improvements, the material impact cutoffs are replaced with de minimus cutoffs.<sup>5</sup>

Concerned that the Material Impact standards as drafted could lead to an inequitable cost shift, the Commission directed NYISO to revise the Cost Allocation Rules and delete the Material Impact standards used in the allocation of costs among developers, without prejudice to refile with additional support.

In its compliance filing, NYISO states that it revised Section IV(F)(5)(d) of the rules to delete the Material Impact standards that it had proposed as cutoffs for measuring the impact of a Developer's project on the transmission system, while leaving de minimus impact cutoffs in place. NYISO states that, with these cutoffs, the cost responsibility of the projects in each class year group of projects is allocated among those projects that

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<sup>4</sup>The Material Impact Standard is defined as any one of the following: (1) Short Circuit contribution equal to or greater than 2 percent of the existing rating of the equipment; (2) thermal loading equal to or greater than a 5 percent distribution factor; (3) voltage effects equal to or greater than 5 percent of the voltage drop occurring with all class year projects; and (4) stability effects equal to or greater than 2 percent of the fault current for the most critical stability test that is causing the need for the System Upgrade Facility.

<sup>5</sup>The de minimis standards are defined as 100 amperes short circuit or stability fault contribution or 10 MW thermal contribution, or 2 percent of the voltage change at the most critical bus.

Docket Nos. ER01-2967-002 and 000

- 5 -

make at least a de minimus contribution to the need for one or more of the System Upgrade Facilities required by the class year group. NYISO asserts that, in the case of a short circuit impact, the de minimus cutoff is 100 amperes of the existing rating of the equipment that needs to be replaced.

Member Systems state that the compliance filing should, but fails to, specifically address the situation in which a group of generators individually qualify for the de minimus impact exemption, but in the aggregate cause non-de minimus impacts.

We reject Member Systems' argument. We agree with NYISO's position, set forth in its answer, that while theoretically possible, it is implausible that not a single project in a class year group of projects would trigger the requirement of additional breakers that would not already be required under the de minimis threshold of 100 amperes.<sup>6</sup> If however, this circumstance arises, we will address it on a case-by-case basis.

2. Responsibility for Prudently Incurred Costs  
in Excess of Cost Estimates

The Commission directed NYISO to explain from whom prudently incurred costs in excess of the estimate are to be recovered, and why that is a reasonable result. Subject to NYISO's providing that explanation, the Commission accepted Section IV(F)(11) of Attachment S, which caps a developer's cost once it has accepted NYISO's final cost figure and posted adequate financial security for that amount.

In its compliance filing, NYISO asserts that the provisions relating to developer-accepted costs estimates and a transmission owner's right to recover its reasonable costs, plus a reasonable return on investment, are both reasonable and workable. NYISO explains that if the actual cost of the developer's share of the required System Upgrade Facilities turns out to be less than the accepted and secured amount, then the rules provide that the developer is responsible only for that actual cost. If the actual cost of the System Upgrade Facilities required for a developer's project turns out to be greater than the accepted and secured amount, then Section IV(F)(12) of the rules allocates responsibility for that additional cost.

Member Systems contend that NYISO's transmittal summarily states that transmission owners will be responsible in certain ill-defined circumstances for the costs

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<sup>6</sup>As NYISO states, a common type of breaker currently installed on the New York State Transmission System has a rating of 63,000 amperes.

Docket Nos. ER01-2967-002 and 000

- 6 -

incurred in excess of NYISO's cost estimate, but fails to explain why transmission owners should be responsible for prudently incurred costs exceeding the NYISO's cost estimate. Member Systems maintain that a rule that holds a transmission owner responsible for generator interconnection costs because of an inaccuracy in a cost estimate developed by NYISO and not the transmission owner will discourage investment in transmission facilities. Member Systems argue that NYISO must clarify that under no circumstances will transmission owners be required to absorb prudently incurred interconnection costs simply because they exceed NYISO's estimate.

In its answer, NYISO contends that the cost allocation rules as written provide a reasonable approach consistent with cost causation principles. As noted, in the October 26 order, the Commission directed NYISO to explain from whom prudently incurred costs in excess of the estimate are recovered, and why that is a reasonable result.

We are satisfied with NYISO's explanation. NYISO states that under section IV(F)(12), if a developer causes anything to increase the cost of the system upgrade facilities, it is responsible for those costs. Likewise, it is only in those limited circumstances when a transmission owner causes something to increase the cost of the system upgrade facilities that it is liable for that additional cost exceeding the original estimate. The Cost Allocation Rules include examples, such as additional construction man-hours due to transmission owner's management or correcting equipment scope due to the transmission owner's oversight. Furthermore, we are satisfied that, while NYISO is responsible for developing the cost estimates, the transmission owners have sufficient opportunity to ensure their accuracy, since they will have assisted in their development and the estimates will be reviewed and approved by the NYISO Operating Committee.

### 3. Other Cost Estimate Issues

The October 26 order further directed NYISO to address who is responsible for providing cost estimates, *i.e.*, the transmission owners, NYISO, or some other entity.

In its compliance filing, NYISO states that it revised several sections of the rules to make clear that NYISO staff is responsible for developing cost estimates as part of the ATBA and ATRA process. NYISO states that as part of that process, it will work with Market Participants, and contract for any expert services it may require to ensure that the cost estimates developed are sound.

Member Systems argue that while NYISO's transmittal letter purports to clarify this issue, the tariff provisions do not. Member Systems state that the tariff provisions provide that NYISO and its staff will conduct and are granted "decisional control" over the ATBA

Docket Nos. ER01-2967-002 and 000

- 7 -

and ATRA processes<sup>7</sup> and that the assessments include cost estimates for the System Upgrade Facilities.<sup>8</sup> Member Systems contend that the tariff amendments do not clarify "who" is responsible for providing, and the standards to be used in determining, cost estimates. Member Systems request that the Commission direct NYISO to clarify that NYISO is the entity responsible for providing cost estimates, the applicable standards to be employed in determining cost estimates, and that transmission owners are not at risk for the results of cost estimates that they do not control.

We are satisfied that NYISO has provided the requisite clarification. NYISO has revised portions of Attachment S to make clear that it will be responsible for providing the cost estimates.<sup>9</sup> In addition, we disagree with Member Systems' claim that the tariff provisions do not identify the standards to be used in determining cost estimates. The rules provide that:

[T]he least costly configuration of commercially available components of electrical equipment that can be used, consistent with good utility practice and Applicable Reliability Requirements....to connect reliably to the system in a manner that meets the NYISO Minimum Interconnection Standard.[<sup>10</sup>]

As NYISO highlights in its answer, Applicable Reliability Requirements and Minimum Interconnection Standard are defined terms that further specify just what interconnection facilities are required in the ATBA and ATRA. Lastly, as discussed above in Section 2, the Cost Allocation Rules are consistent with cost causation principles and provide transmission owners with the opportunity to assist in development of cost estimates. We find them reasonable on that basis.

#### 4. Additional Comments

Member Systems further assert that the Commission should require NYISO to make additional language modifications, including: (1) changing the terms "Commission-

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<sup>7</sup>Sheet Nos. 663, 664, 673.

<sup>8</sup>Sheet Nos. 664A, 664A, and 674.

<sup>9</sup>See, e.g., Sheet Nos. 679, 679A, and 680. "...NYISO staff will, in accordance with these rules, provide the Developer ...with a dollar figure.... The NYISO shall also provide a dollar figure for the total cost of the System Upgrade Facilities....

<sup>10</sup>See, Sheet Nos. 658A-659.

Docket Nos. ER01-2967-002 and 000

- 8 -

accepted tariff or agreements" to "agreements or Commission-approved tariffs" in Section IV-D, next to last line. Member Systems state that this change is appropriate, because not all agreements will be filed with the Commission; (2) changing the definition of Revised Project Cost Allocation at the end to add: "by another Member of the respective Class Year." Member Systems state that this would properly limit and clarify the definition of the relevant class year; and (3) reinstating the term "identified" instead of "considered" in Item 3, at 669, as the Commission accepted the filing with the previous term.

We will grant Member Systems' requests on these items. We find them reasonable and direct NYISO to file amended tariff sheets within 30 days of the order consistent with our finding.


The Commission orders:

(A) NYISO is directed to submit compliance filings, as discussed in the body of this order.

(B) NYISO's compliance filing is hereby accepted, to become effective September 26, 2001, as modified pursuant to Ordering Paragraph (A) above.

By the Commission.

( S E A L )

  
Magalie R. Salas,  
Secretary.



