8/17/04

NYISO BOARD OF DIRECTORS DECISION
ON
APPEAL OF THE MANAGEMENT COMMITTEE VOTE ON THE RATE SCHEDULE 1 ALLOCATION PROPOSAL

INTRODUCTION

Entergy[1] and NY Municipals[2] (collectively Appellants") appeal from the Management Committee's June 4, 2004 approval of a modification to the allocation of costs contained in Rate Schedule 1 ("RS 1") of NYISO's Open Access Transmission Tariff ("OATT"). Five Motions in Opposition to the appeals were filed.[3] No Motions in Support of the appeals were filed.

For the reasons set forth below, we deny the appeals and direct the NYISO to file the modified allocation with the Federal Energy Regulatory Commission ("FERC") pursuant to Section 205 of the Federal Power Act.

DISCUSSION AND FINDINGS

NYISO's annual budgeted operating costs and FERC regulatory fees are assessed to and recovered from market participants under RS 1 of the OATT. The allocation methodology approved by the Management Committee revises the straight percentage allocation in the existing tariff, as ordered by FERC on September 15, 2002. The existing allocation is 85% to load and 15% to supply. The new allocation approved by the Management Committee is 80% to load and 20% to supply.

Appellants argue (i) that the proposed 80/20 cost allocation methodology results in an unfair allocation of costs to the bilateral side of the NYISO markets; (ii) that the 80/20 allocation violates FERC orders directing the NYISO to unbundle its rates and (iii) that the Board should not accept the proposed 80/20 allocation because it is a compromise solution and the Board rejected a previous "compromise" on July 17, 2001.[4]

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1 Entergy" refers collectively to the following entities that filed the same appeal: Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, and Entergy Nuclear Fitzpatrick, LLC.

2 "NY Municipals" refers collectively to a number of New York municipal electric utilities, including among others, the following: the City of Jamestown Board of Public Utilities, the Village of Freeport Electric Department, and the Village of Rockville Centre Electric Department.

3 The parties submitting Motions in Opposition were AES-NY, LLC, Mirant Corporation, Reliant Energy, Inc. and Sithe Energies, Inc. (collectively, "AES-NY"); (2) Multiple Intervenors ("MI"); (3) the City of New York ("City"); (4) Strategic Power Management ("SPM"); and (5) Central Hudson Gas & Electric Company, New York State Electric and Gas Corporation, and Niagara Mohawk, a National Grid Company, LIPA and the New York Power Authority (collectively, "TOs").

4 Entergy did not join in this argument. The "compromise" that the Board rejected was to allocate 98% of certain RS 1 costs to load and 2% to wheel-through and export transactions. That compromise was before the Board at a time when load was responsible for 100% of the costs.

A. *Alleged Subsidy by the Bilateral Market of the LBMP*

We are not persuaded that the 80/20 cost allocation methodology results in an unfair allocation of costs to the bilateral side of the NYISO markets Appellants cite recent changes made to working capital and bad debt loss allocations as justification for why modifications are necessary to account for the alleged lower costs to the NYISO in billing and scheduling bilateral loads.[5] In the cited examples, parties that entered into bilateral contracts were not receiving the same benefits as those conducting business in the LBMP market. Bilateral transactions do not clear their payments for energy through the NYISO, so it would have been unfair to allocate as much of the bad debt portion of working capital to bilaterals as to market transactions. In the case of the allocation of operating costs, however, almost all of those costs apply to both kinds of transactions. Thus, the analogy in the Appellants' arguments is inappropriate.

Appellants also argue that the proposed 80/20 allocation unfairly assigns credit support or risk/collateral management to bilateral transactions. Appellants do not specify which costs allocated through the 80/20 split are objectionable. Although opponents do not spell out their argument, they may be referring to the NYISO's overhead related to administering a credit department. This argument is incorrect, however, because bilateral transactions require some credit support for portions of the transaction other than energy. Since the credit support function is needed for both kinds of transactions, there is no basis for determining how much of that function is attributable to each kind.

With respect to scheduling and billing costs, Appellants presume that since bilateral transactions involve energy purchased outside the NYISO administered market, NYISO's scheduling and billing costs are reduced. This presumption is inaccurate. In performing its scheduling and dispatching functions, the NYISO does not distinguish between LBMP and bilateral transactions. The system operates on a least cost basis, regardless of type of transaction. The fact that load is from the bilateral market has no impact on the NYISO's processing until billing is generated. The scheduling burden on the NYISO for bilateral and LBMP energy is thus the same.

Similarly, the cost to the NYISO for billing a bilateral transaction is not less than the cost of billing a transaction through the LBMP market. Once scheduling is concluded, the billing system must separately identify bilateral transactions and charge those transactions appropriately. The billing system must also account for the fact that energy for those transactions was not purchased in the LBMP market.

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[5] Recent changes were made to the working capital and bad debt loss allocations whereby the load-ratio allocation was replaced with a dollar-volume allocation based in part upon recognition that bilateral loads should not count against market participants in those areas. Under a load-ratio allocation, costs were allocated based on a market participant's load as a percentage of the total load in the New York control area. Under the dollar-volume approach, costs are allocated based on the absolute value of a market participant's total accounts receivables and accounts payables as a percentage of the total dollars that pass through the NYISO.

We find, therefore, that the proposed allocation does not constitute a subsidy of the LBMP markets by the bilateral market.

B. ***Consistency With FERC Orders.***

We consider the proposed 80/20 cost allocation to be reasonably consistent with FERC's orders regarding the allocation of RS 1 costs. An Appellant characterizes FERC's order accepting the current 85/15 allocation as "recommend[ing] the development of unbundled RS 1 charges."[6] This characterization is incorrect. FERC's most recent order on this subject, accepting the current 85/15 allocation, encouraged the NYISO to complete its examination of whether the 85/15 allocation was an appropriate long-term allocation, and the order explicitly stated that FERC "expect[s] that NYISO will revise its cost allocation, if necessary, in accordance with its findings." The NYISO and its consultant have completed their examination of the 85/15 allocation, along with market participant participation and comment for over seven months, and determined that the modification to 80/20 is appropriate. This action appears to be entirely consistent with FERC's September 25, 2002 order.[7]

C. ***The 98/2 Allocation Rejected by the Board in 2001.***

One Appellant argues that the Board should refuse to approve the proposed 80/20 allocation, in keeping with an early decision not to approve a previous cost allocation "compromise" that would have allocated RS 1 costs 98% to load and 2% to wheel-through and export transactions. That early Board decision, however, was prior to any of the work done by NYISO management, Rudden and market participants to develop either the current 85/15 split or the proposed revision to that split. Equally important, it occurred before FERC's approval of such a split. As such, we find that the early decision no longer has any relevance to the issues at hand.

D. ***Additional Findings***

We also have determined that the costs and efforts required to do additional unbundling of RS1 charges would be significantly out of proportion to potential benefits, if any, to be derived therefrom. Moreover, the proposed five year term for the new allocation seems sensible in that it adds predictability to this element of our markets and was important in achieving the high degree of consensus represented in the Management Committee vote.

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6 Entergy Appeal, p. 3.

7 We are aware of the proceedings in the so called "unbundling docket," and of the distinction drawn therein by the Commission, wherein the Commission noted that the unbundling docket related to the separation of transmission related costs from non transmission related costs. We are constrained to follow the Commission's most recent and most relevant decision.

CONCLUSION

For the reasons discussed above, we deny the appeals and direct the NYISO management and counsel to file the modified allocation methodology revisions with FERC, pursuant to Section 205 of the Federal Power Act.