

124 FERC ¶ 61,174
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

New York Independent System Operator, Inc.

Docket No. ER08-1281-000

ORDER ACCEPTING TARIFF SHEETS

(Issued August 21, 2008)

1. On July 21, 2008, New York Independent System Operator, Inc. (NYISO) filed under section 205 of the Federal Power Act,¹ proposed revisions to its Open Access Transmission Tariff (OATT) and its Market Administration and Control Area Services Tariff (Services Tariff) under the “exigent circumstances” provisions of section 19 of its Independent System Operator Agreement (ISO Agreement). The revised tariff sheets preclude the scheduling of flows over eight different transmission paths for which there are more direct routing options.

2. As discussed below, the Commission accepts the proposed tariff sheets to be effective from July 22, 2008 through November 18, 2008.²

I. Background

3. NYISO asserts that beginning in January 2008, an increasing number of transactions were scheduled by a small number of market participants around Lake Erie so that they would supposedly exit NYISO, be wheeled through the Independent Electricity System Operator of Ontario (IESO) and the Midwest Independent

¹16 U.S.C. § 824d (2006).

² The Commission also notes that, as discussed more fully below, its Office of Enforcement is currently investigating the scheduling of flows over the circuitous paths that are addressed in the instant order.

Transmission System Operator (MISO), and sink in PJM Interconnection, L.L.C. (PJM).³ In fact, however, approximately 80 percent of the power flowed over the common border between NYISO and PJM.⁴ NYISO determined that a small number of market participants were scheduling transactions in these circuitous routes around Lake Erie to take advantage of differences in the way regional transmission organizations (RTOs) price transactions that exit their systems. NYISO asserts that, by scheduling the NYISO-IESO-MISO-PJM route, rather than the more direct NYISO-PJM route, these market participants were able to take advantage of the relatively lower market clearing prices at NYISO's western border and avoid the relatively higher market price at the congested NYISO-PJM border. For example, for one hour on May 26, 2008, the market clearing price at the NYISO-IESO proxy generator bus was \$80/MWh while the price at the NYISO/PJM proxy generator bus was \$100/MWh, a difference of \$20/MWh.⁵

4. NYISO points out that because the RTOs have not implemented technologies to control how the power flows, the power actually flows over the path of least resistance rather than the scheduled path and therefore the circuitous scheduling is causing market distortions and increasing congestion and uplift costs.⁶ NYISO asserts that one of the factors contributing to the increases in congestion costs is the different methods by which the RTOs price external transactions. For example, NYISO states that it prices imports, exports and wheels by using the marginal costs of energy at the proxy generator buses associated with the scheduled route over its systems. NYISO states that it does not rely on the North American Electric Reliability Corporation (NERC) tag data in determining marginal costs and the associated prices to be paid or charged for external transactions on its system. Thus, NYISO states that it may charge different prices for transactions that

³ The number of transactions increased from almost nothing in January 2008 to more than 1,000 MW in some hours in April 2008 and more than 2,000 MW in some hours in May and June 2008. NYISO Filing at 10.

⁴ NYISO Filing at 7.

⁵ This rate difference is based on NYISO's study of the impact of the circuitous scheduling for one hour on May 26, 2008. In this study, NYISO explains that it re-ran its real-time markets software, using actual market conditions and assumed that transactions actually flowed as scheduled. NYISO Filing at 17-18.

⁶ Under NYISO market rules, all resources that are committed by NYISO and/or instructed by NYISO to produce energy are guaranteed to receive at least enough revenue to cover their full as-bid costs. To the extent that revenues from marginal locational prices do not fully cover such as-bid costs, the resource will receive an additional payment from NYISO. This additional payment is known as an uplift or a bid production guarantee payment.

source in NYISO and sink in PJM depending on whether the scheduled path is NYISO-IESO-MISO-PJM (in which case, NYISO will charge the locational marginal price for the IESO proxy generator bus) or the direct path of NYISO-PJM (in which case, NYISO will charge the locational marginal price for the PJM proxy generator bus).

5. On the other hand, NYISO states that PJM relies on NERC tag data and utilizes the original source and the ultimate sink to identify the transaction -- not the route of the transaction. Therefore, under PJM's methodology, transactions that identify NYISO as the source and PJM as the sink receive the same price under PJM's tariff whether they are scheduled to take the direct NYISO-PJM route or the circuitous NYISO-IESO-MISO-PJM route. NYISO asserts that because of these different methods for pricing external transactions, if the cost of scheduling energy from NYISO through IESO and MISO to PJM is less than the difference between the marginal costs of energy at NYISO's proxy generator buses at IESO and PJM, arbitrage opportunities exist.

6. NYISO asserts that an additional factor that contributes to the increases in congestion costs in New York is that NYISO's real-time market software continually dispatches generating resources located in New York in response to actual power flows and real-time transmission constraints. However, NYISO states that it incurs additional congestion costs when actual power flows include unscheduled power flows, such as when actual power flows move directly from NYISO to PJM, although the scheduled flow is NYISO-IESO-MISO-PJM. The unscheduled flows exacerbate west-to-east constraints in New York, thereby increasing congestion costs.⁷

7. NYISO explains that it performed a number of studies to substantiate that scheduled paths for service were indeed different from the actual paths of the power and to quantify the financial impact of the unscheduled flows. First, NYISO states that it determined a statistical correlation between the scheduling of NYISO-IESO-MISO-PJM transactions and actual flow of power from NYISO to PJM. Then, NYISO's Operations Department and its Market Monitor studied the impact of the unscheduled NYISO-PJM flow on congestion costs in New York.⁸ NYISO states that it determined, *inter alia*, that its real-time production costs would have been reduced by \$52,000 for the selected hour had scheduled transactions and actual flows been more accurately aligned.⁹ NYISO

⁷ NYISO Filing at 7-8.

⁸ NYISO (a) calculated interchange transfer distribution factors between NYISO and PJM, (b) determined the impact that the scheduling of transactions from NYISO's IESO proxy generator bus to PJM, and (c) re-ran its real-time market software to simulate actual market conditions and the actual flow of power. NYISO Filing at 17.

⁹ NYISO Filing at 17.

asserts that almost \$800,000 of real-time production costs for 15 hours on that selected day were attributable to the circuitous scheduling.¹⁰

II. NYISO's Proposed Tariff Changes

8. In order to alleviate the impacts of circuitous scheduling, NYISO has submitted revised tariff sheets to preclude the scheduling of external transactions over the following eight "Scheduling Paths:"

- External transactions that (a) exit the New York Control Area (NYCA) at NYISO's proxy generator bus that represents the interface between the NYCA and the control area operated by IESO, and (b) sink in the control area operated by PJM;
- External transactions that (a) exit the NYCA at NYISO's proxy generator buses that represent the NYCA's common border with PJM, and (b) sink in the IESO;
- External transactions that (a) enter the NYCA at the proxy generator buses that represent the NYCA's common border with PJM, and (b) source from IESO;
- External transactions that (a) enter the NYCA at the proxy generator bus that represents the NYCA's interface with IESO, and (b) source from PJM;
- Wheels through the NYCA that (a) enter the NYCA at the proxy generator buses that represent the NYCA's common border with PJM, and (b) sink in the control area operated by MISO;
- Wheels through the NYCA that (a) exit the NYCA at the proxy generator buses that represent the NYCA's common border with PJM, and (b) source from MISO;
- Wheels through the NYCA that (a) enter the NYCA at the proxy generator bus that represents the NYCA's interface with the IESO, and (b) sink in MISO; and,
- Wheels through the NYCA that (a) exit the NYCA at the proxy generator bus that represents the NYCA's interface with IESO, and (b) source from MISO.

9. NYISO requests waiver of the 60-day prior-notice requirement to implement its proposed revisions effective July 22, 2008.

¹⁰ NYISO Filing at 18.

10. NYISO recognizes that its proposed temporary tariff changes will not eliminate all loop-flow issues. Rather, NYISO states that its actions here will reduce unscheduled power flows until there are adequate operational controls in place, such as phase angle regulators (PARs), to ensure that actual and scheduled flows are closely aligned. Further, NYISO asserts that, until permanent improvements to its bid valuation software are deployed, NYISO will manually screen real-time market bids for transactions over the eight paths. In addition, NYISO will assess “financial impact charges” for transactions scheduled over the eight paths.¹¹

11. NYISO requests that, if its proposed tariff revisions are accepted for filing to be effective July 22, 2008, the Commission also grant limited waiver to excuse possible imperfect implementation of the proposed scheduling prohibitions for (a) day-ahead and real-time market bids that have already been validated, (b) day-ahead wheels through the NYCA, and (c) real-time external transactions scheduled over impermissible scheduling paths identified by the instant filing that NYISO does not timely identify in its best efforts review of real-time market bids. NYISO states that a limited waiver until September 16, 2008, the day it intends to implement certain software changes, is necessary to excuse possible imperfect implementation of the prohibited transactions until then.

12. Subsequently, on July 31, 2008, NYISO filed a report on the first seven operating days following the prohibition of scheduling paths on the eight circuitous paths identified above. NYISO states that the average hourly flow for the first three weeks of July was 457 MW in a clockwise direction around Lake Erie, whereas for the fourth week, the average hourly flow was 67 MW in a counterclockwise direction around Lake Erie. NYISO states that the change in direction has reduced the loop-flow problem. NYISO reiterates that it does not expect the preclusion of the eight paths to eliminate loop-flows. Rather, its goal is to reduce the problem until there are adequate operational controls in place to ensure that actual and scheduled flows around Lake Erie are closely aligned.

III. Notice, Interventions And Protests

13. The Commission issued notice of NYISO’s filing with interventions, comments and protests due on or before August 1, 2008.

14. Motions to intervene were filed by American Public Power Association; Blue Ridge Power Agency; Dynegy Power Marketing Inc., Dynegy Northeast Generation, Inc., and Sithe/Independence Power Partners, L.P.; Exelon Corporation; FPL Energy, LLC; Mirant Energy Trading, LLC, Mirant New York, LLC, and Mirant Bowline, LLC;

¹¹ NYISO Filing at 24.

MISO; New England Conference of Public Utilities Commissioners, Inc.; New England Power Pool Participants Committee; Ontario Power Generation Inc.; PSEG Companies; New York Association of Public Power; NRG Power Marketing, LLC, Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Oswego Harbor Power LLC; and Reliant Energy, Inc.

15. Interventions with comments or requests for investigation were filed by AES Energy, L.P.; Alcoa Inc.; American Municipal Power – Ohio, Inc. (AMP-Ohio); Citigroup Energy Inc.; DC Energy, LLC (DC Energy);¹² Financial Institutions Energy Group (Financial Group); IESO; ISO New England; National Energy Marketers Association; Neighboring States;¹³ New York Association of Public Power; New York Municipal Power Agency¹⁴ and Municipal Electric Utilities Association of New York¹⁵ (NYMPA/MEUA); New York Public Service Commission; New York State Consumer Protection Board; New York Transmission Owners (TOs); Pepco Energy Services, Inc. (Pepco); PJM; Public Utility Law Project of New York, Inc. (Law Project); and Shell Energy North America (US), L.P. (Shell).

16. Motions to intervene and protests were filed by Independent Power Producers of New York, Inc. (IPPNY) and Multiple Intervenors.¹⁶ These two protests do not object to

¹² DC Energy performed its own analysis of the correlation of the scheduled and actual flows from July 1, 2007 through June 30, 2008. It states that its empirical analysis corroborates NYISO's analyses.

¹³ The "designated bargaining agents" for each of the neighboring states for purposes of dealing with the New York Power Authority are Allegheny Electric Cooperative, Inc. (Pennsylvania), the City of Cleveland (Ohio), Connecticut Municipal Electric Energy Cooperative (Connecticut), Massachusetts Municipal Wholesale Electric Company (Massachusetts), Pascoag Utility District (Rhode Island), Public Power Association of New Jersey (New Jersey) and the Vermont Department of Public Service (Vermont).

¹⁴ NYMPA is a joint action agency comprised of 36 municipally-owned electric utilities throughout New York State with a statutory obligation to serve their electric customers.

¹⁵ MEUA is an unincorporated association of 40 municipal electric utilities in New York State who are engaged in the distribution and sale of electricity.

¹⁶ Multiple Intervenors is an unincorporated association of over 50 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State.

NYISO's proposed tariff changes. Rather, IPPNY supports a different method for addressing future market flaws, while Multiple Intervenors object to NYISO's failure to request retroactive relief for consumers who have been forced to bear the brunt of the costs associated with these transactions.

17. International Transmission Company (ITC) filed an untimely motion to intervene.

IV. Discussion

A. Procedural Issues

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the unopposed timely-filed interventions serve to make the entities that filed them parties and ITC's motion to intervene out-of-time is granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burden on the existing parties.

B. Proposed Interim Tariff Changes

19. NYISO proposes to preclude the scheduling of transactions over eight different transmission paths as an interim measure designed to reduce congestion-related costs associated with circuitous external transactions. Parties to the instant proceeding either support NYISO's filing or do not object to NYISO's prohibiting the scheduling over certain paths in order to reduce congestion-related costs. NYISO states that section 19.01 of the ISO Agreement empowers the NYISO Board to direct NYISO to submit a section 205 filing that expires no later than 120 days after it is filed with the Commission without the concurrence of the NYISO's Management Committee, when the Board concludes that "exigent circumstances" relating to "the reliability of the NYS Power System" or "an ISO-Administered market" exist and the "urgency of the situation justifies a deviation from the normal ISO governance procedures."¹⁷

¹⁷ Specifically, section 19.1 of the ISO Agreement states that:

the ISO Board may submit to the Commission a proposed amendment to the ISO OATT, the ISO Services Tariff or the ISO Agreement under section 205 of the FPA, without the concurrence of the Management Committee, under the following circumstances: the ISO Board certifies that (1) the proposed amendment is necessary to address exigent circumstances related to the reliability of the NYS Power System or to address exigent circumstances related to an ISO Administered Market; and (2) the urgency of the situation justifies a deviation from the normal ISO governance procedures. Any proposed amendment submitted unilaterally by the ISO

(continued)

20. In the Commission's view, expeditious action is required to resolve the issues raised by NYISO, and no party objects to NYISO's filing on procedural grounds. Accordingly, the Commission finds that NYISO's use of the exigent circumstances provision of section 19 of the ISO Agreement was appropriate under the circumstances described in the filing. Further, based upon the information provided, the Commission finds that the proposed tariff changes appear to be necessary to temporarily alleviate congestion-related costs, and are just and reasonable and not unduly discriminatory. Moreover, they have not been shown to be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, the Commission accepts the tariff revisions, effective July 22, 2008 through November 18, 2008.

21. NYISO also requests that the Commission grant limited waiver to excuse possible imperfect implementation of the proposed scheduling prohibitions. The Commission finds good cause to grant limited waiver of the provisions of the revised tariff sheets until September 16, 2008, as may be necessary, to excuse possible imperfection of implementation of the scheduling prohibitions as requested herein by NYISO.

22. NYISO notes that the quoted language from section 19 of the ISO Agreement reveals that any proposed amendment submitted unilaterally by the ISO shall contain an expiration date of no later than 120 days after it is filed with the Commission unless the NYISO Management Committee ratifies the filing during the 120-day period. The section also gives authority to the ISO Board to call a special meeting of the Management Committee to request its concurrence in the proposed revisions at issue here. NYISO requests that if its Management Committee does not ratify the instant filing, which was filed pursuant to the exigent circumstances provisions of the ISO Agreement, then the Commission should act under section 206 of the FPA to permit the revised tariff sheets to become effective on a permanent basis.

23. NYISO should first follow the requirements of its ISO Agreement and bring this matter before the Management Committee for its ratification, and provide a status report to the Commission on or before September 12, 2008, that informs us of the status of the

shall contain an expiration date of no later than one hundred and twenty (120) days after it is filed with FERC and shall expire no later than one hundred twenty (120) days after it was filed with FERC, unless the Management Committee files with FERC a written concurrence with the proposed amendment within the one hundred and twenty (120) day period or FERC approves the proposed amendment under the just and reasonable standard under section 206 of the FPA. The ISO Board shall have the authority to call a special meeting of the Management Committee to request its concurrence in a proposed amendment.

discussions with the Management Committee. The Commission reserves the right to undertake further consideration of the tariff revisions at issue here under section 206 of the FPA.

24. In its filing, NYISO also recommends several actions to the Commission to further address the Lake Erie loop-flow problem. For example, NYISO recommends that the Commission encourage the commissioning and operation of the Ontario-Michigan phase angle regulators. NYISO states that three of the four Ontario-Michigan PARs are already in place and capable of operation. However, NYISO notes that they have been in “by-pass” mode since the beginning of 2006. The fourth PAR, which initially failed, is expected to be in operation by the summer of 2009. NYISO contends that placing these PARs in service will help mitigate the Lake Erie loop-flow problem. Intervenors support NYISO’s suggestion that PARs at the Ontario-Michigan border should be commissioned and placed in service as soon as possible. They note that this will help ensure that scheduled paths more closely follow actual paths. However, as Financial Group notes, the better coordination of PARs may not, by itself, sufficiently address the loop-flow issue. The Commission encourages the parties responsible for operating the Ontario-Michigan PARs to place the three operational PARs in service as soon as practical.

25. NYISO also recommends that the Commission should (a) grant market monitors enhanced access to NERC tag data and (b) permit market monitors for different RTOs to share bidding and scheduling information related to external transactions. NYISO asserts that the inability of market monitors to share confidential information with each other impeded its efforts to try to identify and resolve the loop-flow issue. Therefore, NYISO recommends that the Commission grant the market monitors for NYISO, IESO, PJM, MISO, and ISO-New England unrestricted access to NERC tag data, as well as external transaction bids and schedule data. NYISO adds that the sharing of confidential information should only be permitted if there are appropriate tariff protections in place to ensure that confidential information is accorded the appropriate protection.

26. A number of parties support NYISO’s suggestion that market monitors be given better access to NERC tag information, and bidding and scheduling information. However, several parties, such as Shell, are concerned about safeguarding the confidentiality of data. IESO suggests that the Commission consider using the confidentiality provisions of its 2004 Agreement with NYISO as a model.

27. Several parties note that a long-term resolution to the instant scheduling problem needs to be developed. Financial Group notes that the ideal long-term solution may be to use consistent rules for pricing external transactions across the different RTO markets to prevent unfair arbitrage. Shell and IPPNY concur that a collaborative process of market participants working together is the best process. One solution that IPPNY proffers is to eliminate pancaked transmission charges between NYISO and PJM.

28. The Commission is concerned by the suggestion that its market monitoring rules may preclude prompt identification and resolution of possible market manipulation. The Commission cannot address this issue in the context of the exigent circumstances filing before us. However, NYISO should continue to work with its market participants, NERC, and neighboring RTOs to develop potential solutions to this issue. In addition, the Commission agrees that long-term solutions to the loop-flow problem should be worked out through a collaborative process where all such issues may be fully considered.

C. Office Of Enforcement Investigation

29. In the instant proceeding, numerous parties request that the Commission instigate an investigation of the “anomalous transactions,” “gaming,” “manipulation,” or “malfeasance” which are alleged to have taken place between January 1, 2008 and July 22, 2008.¹⁸ Parties also request that the Commission utilize its remedial authority to sanction the behavior, recompense injured entities, and prevent re-occurrence of the conduct in question.¹⁹ The remedies recommended include reimbursement of costs to generators and consumers, retroactive refunds, disgorgement of profits, and the revocation of market-based rates for those market participants who profited by circuitous scheduling.

30. NYISO contends that circuitous scheduling is not a violation of its tariff. On the other hand, Multiple Intervenors contend that NYISO’s tariff has been violated because NYISO’s mitigation measures apply to any conduct that causes or contributes to a material change in any price associated with NYISO administered markets including uplift costs. Law Project recommends that the Commission investigate whether NYISO’s rates, terms and conditions are unjust and unreasonable insofar as they do not (a) expressly prohibit gaming, (b) fail to provide for the disgorgement of profits from

¹⁸ Neighboring States contend that it began to notice growing congestion charges in 2007. Further, Neighboring States suspects that circuitous scheduling may not be the problem, or may only be part of the problem. Therefore Neighboring States recommends that the Commission begin its investigation with 2006 data.

¹⁹ See *Revised Policy Statement on Enforcement*, 123 FERC ¶ 61,156, at P 41 (2008) noting (Available remedies and sanctions include civil penalties for violations of Parts I and II of the FPA; disgorgement of unjust profits; and compliance plans and various other forms of non-monetary relief.).

unreasonable rates established as a result of gaming, and (c) fail to provide for the correction of clearing prices which are set artificially high due to gaming.

31. Several parties request that the Commission order NYISO to report on various issues. For example, Pepco requests that NYISO be instructed to provide further explanation to address the issues implicated by its filing. AMP-Ohio requests that NYISO be required to make monthly reports on the extent to which the termination of the eight circuitous paths reversed the congestion-related costs. TOs request that the Commission require NYISO to provide a detailed written report on, *inter alia*, the financial impact by load zone of various charges, the impact on reliability, and actions taken by NYISO to resolve issues.

32. The Commission's Office of Enforcement began a non-public investigation under Part 1b of the Commission's regulations in May of this year into the scheduling of flows over the circuitous paths such as those that are addressed in the instant order. The Commission will determine what further action may be appropriate with respect to the above described claims after it considers the results of the staff investigation. We also will not require NYISO to file reports beyond those directed above, as such issues are more appropriately addressed in the investigation.

The Commission orders:

(A) NYISO's revised tariff sheets are accepted for filing, effective July 22, 2008 through November 18, 2008.

(B) The Commission finds that good cause exists to waive the prior notice requirement to permit the revised tariff sheets to become effective July 22, 2008.

(C) The Commission also finds good cause to grant limited waiver of the provisions of the revised tariff sheets until September 16, 2008, as may be necessary, to excuse possible imperfection of implementation of the scheduling prohibitions for (a) validated day-ahead and real-time market bids, (b) day-ahead wheels through the NYCA, and (c) real-time external transactions scheduled over the subject scheduling paths identified by the instant filing that NYISO did not identify on a timely basis; subject to the findings and actions resulting from the investigation identified above.

(D) NYISO is directed to file a status report on or before September 12, 2008, that informs us of the status of the discussions with the Management Committee concerning its ratification of the instant filing.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.