

UNITED STATES OF AMERICA 113 FERC ¶61,004
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket No. ER05-1290-000

ORDER ACCEPTING PROPOSED REVISIONS TO
OPEN ACCESS TRANSMISSION TARIFF

(Issued October 3, 2005)

1. In this order, we accept revisions filed by the New York Independent System Operator, Inc. (NYISO) to its Open Access Transmission Tariff (OATT) to clarify the obligations of transmission owners, project developers and NYISO concerning transmission facilities related to interconnection projects following the completion of cost allocation studies for a particular Class Year.¹ The amendments proposed herein relate to three issues that have arisen in the NYISO's administration of its OATT for the initial allocation of system upgrade facilities pursuant to a settlement. We also clarify an issue raised by the Mirant Parties² as to the assignment of Developers to Class Years.

Background

2. NYISO's filing explains that the rights and obligations of Transmission Owners, project developers, and NYISO regarding interconnecting new generation and transmission projects to the New York State Transmission System are set forth in Attachments S and X to NYISO's OATT. Specifically, Attachment S sets forth the

¹ As we stated in *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,159 at P 6 (2004), "[s]tudies are conducted on a "class year" basis, with all Interconnection Requests received within a given time period studied together on a clustered basis. The fair assignment of interconnection costs to each member of the class year is governed by "Attachment S" of NYISO's current OATT."

² Comprised of: Mirant Americas Energy Marketing, LP; Mirant New York, Inc.; Mirant Bowline, LLC; Mirant Lovett, LLC; and Mirant New York-Gen, LLC.

detailed procedures that are used to determine developers' obligations for costs of System Upgrade Facilities necessary for the reliable interconnection of their projects, while Attachment X contains NYISO's version of the Large Facility Interconnection Procedures.³ NYISO requests that the proposed revisions become effective on October 3, 2005, sixty days from the date of filing.

Notice of Filing and Responsive Pleadings

3. Notice of NYISO's filing was published in the *Federal Register*, 70 Fed. Reg. 48,388 (2005), with motions to intervene and protests due on or before August 25, 2005. A timely motion to intervene was filed by New York Transmission Owners.⁴ The Mirant Parties' timely filed a motion to intervene and comments. On September 16, 2005, NYISO filed a motion for leave to file a limited answer to the Mirant Parties' comments.

Discussion

4. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits answers to protests unless authorized by the decisional authority. We will accept NYISO's answer because it provides information that aids us in our decision-making process.

5. NYISO states that the amendments proposed herein relate to three issues that have arisen in NYISO's administration of these two parts of its OATT. Specifically, NYISO's proposed tariff revisions clarify the rights and responsibilities of interested parties with regard to: (1) excess capacity (known as "Headroom") in the transmission facilities associated with interconnection projects; (2) assignment of developers to Class Year for project cost allocation purposes and the developer's ability to reenter the interconnection process; and (3) reporting by transmission owners and developers to each other, NYISO and all market participants on interconnection-related transmission facilities, project costs

³ Adopted in response to *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs., ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005).

⁴ Comprised of: Central Edison Company of New York, Inc.; LIPA; New York Power Authority; New York State Electric & Gas Corporation; Rochester Gas and Electric Corporation; Orange and Rockland Utilities, Inc.; and Niagara Mohawk Corporation.

and progress of construction activities. NYISO further states that its position on each of these three issues represents a negotiated, consensus proposal that was approved by the NYISO's Management Committee and NYISO's Board of Directors. We will now separately discuss each of these issues.

A. Excess Capacity

6. NYISO states that its proposed tariff changes would amend OATT Attachment S to clarify the rights of project developers with respect to interconnection facilities. Specifically, it proposes revisions to Attachment S to clarify that it is the NYISO that: (i) determines the depreciated costs of System Upgrade Facilities associated with Developer-created Headroom; (ii) measures Headroom on facilities; and (iii) publishes accounts showing the Headroom for each Class Year of Developers. NYISO states that it will update the accounts to reflect the effects of later projects, and close the Headroom accounts after 10 years or when the value of the account is reduced to zero.

7. NYISO also states that the amendments would clarify that if a subsequent Developer uses up a prior Developer's Headroom and also causes the need for new System Upgrade Facilities, the subsequent Developer is not obliged to compensate the prior Developer for the use of the existing System Upgrade Facilities. Instead, the prior Developer receives a pro rata share of the Headroom created by the new System Upgrade Facilities constructed by the subsequent Developer equal to the economic value the prior Developer held in the extinguished Headroom account.

8. NYISO explains that its proposed amendments would direct the NYISO to adjust Headroom accounts to reflect other changes to the electric system resulting from the installation, expansion or retirement of generation and transmission facilities, and from changes in load level and patterns. The Tariff would state that Headroom accounts will not be adjusted to take into account planning analyses that result in generic solutions proposed to meet reliability needs, except where a proposed generic solution becomes an actual Class Year project. Taken together, the amendments provide needed clarification for determining and accounting for Developer-created Headroom related to Class Year interconnection projects.

9. We find NYISO's proposed language just and reasonable and will accept NYISO's uncontested request to revise its OATT to make these clarifications.

B. Assignment of Developers to Class Year

10. NYISO states that Attachment S further provides that all eligible interconnection requests will be analyzed in an Annual Transmission Reliability Assessment for a group of projects known as a Class Year. Costs of System Upgrade Facilities over and above the costs of transmission facilities that are needed to maintain reliable service will be allocated among Developers for that Class Year.

11. NYISO adds that the Tariff specifies that a Developer may reject the cost allocation assigned to its project in a particular Class Year. Such rejections currently require the NYISO to redistribute System Upgrade Facilities costs among the remaining Class Year participants until all members have either accepted their cost allocations or dropped out of the group. The present Tariff, however, does not require Developers who reject their initial cost allocations to re-enter any particular Class Year and thus allows projects to remain in the queue and even to be constructed without an independent determination of their responsibility for System Upgrade Facilities costs.

12. Thus, NYISO is proposing tariff revisions that clarify what the rights of a Developer who rejects its initial allocation are when the Developer is ready to be interconnected. NYISO states that, following a Developer's initial rejection of its Class Year cost allocation, the proposed amendments to Attachment S would allow that Developer to enter any Class Year before beginning construction. If a Developer makes no election, NYISO states that it would assign it to the Class Year in which construction begins. If a Developer again rejects its cost allocation or defaults in posting security, either after entering a Class Year or being assigned to one in this manner, the Developer's interconnection request will be deemed to have been withdrawn.

13. NYISO states that the revised Tariff would allow any Developer whose interconnection request is deemed to have been withdrawn to reenter the interconnection process only by starting over with a new Interconnection Request. NYISO states that this is a negotiated solution that continues to provide Developers the flexibility to opt into a Class Year before commencing construction, but that provides needed certainty to other Developers, the Transmission Owners and the NYISO by providing rules by which a Developer would be assigned to a Class Year if the Developer opts not to make an affirmative selection.

14. The Mirant Parties request that the Commission clarify these proposed revisions. According to the Mirant Parties, NYISO's proposed revisions give a Developer two chances ("two strike" process) to reject a Class Year or cost allocation before its interconnection request is deemed withdrawn from the queue. Mirant Parties are concerned that the proposed language does not take into account Developers who have been placed in a "Catch-Up Class" as result of the settlement in Docket No. EL02-125-000.⁵ They explain that Developers with interconnection requests pending under the Settlement were placed into the "Catch-Up Class" and that their Interconnection Facilities Studies have been placed into either Class Year 2005 or Class Year 2006 by NYISO (the Mirant Parties' Bowline 3 was placed in Class Year 2006) for the Annual Transmission Reliability Assessment. The Mirant Parties express concern that, due to

⁵ See *Keyspan Energy Development Corp. v. New York Independent System Operator, Inc.*, 108 FERC ¶ 61,201 (2004) (Settlement).

provisions in the proposed amendment, if they opt out of Class Year 2006, this would be their first “strike.” They add that, if they reject the cost allocation of System Upgrade Facilities or default on the required security payment, this would be deemed their second “strike,” and they then would unjustifiably lose their position in the interconnection queue.⁶

15. The Mirant Parties argue that placement in the 2006 Class Year was involuntary and that their election to reject the cost allocation of system upgrades should not be counted against them. Otherwise, they contend, being placed in the 2006 Class Year would put them at a distinct disadvantage compared to other developers in other Class Years. The Mirant Comments request clarification of the NYISO’s proposed tariff revisions regarding the assignment of Developers to Class Years, particularly for those Developers that entered the Catch-Up Class pursuant to the KeySpan Settlement.

16. The Mirant Parties note that NYISO has requested that the Commission grant the revised tariff sheets submitted with the August Filing an effective date of October 3, 2005.⁷ Accordingly, they argue that the entry or exit of *any* Developer into *any* class before October 3, 2005 should not be considered an election or assignment under Section IV(G)(9)(c). Furthermore, the Mirant Companies argue that a Developer rejection of cost allocations or defaults on security posting requirements before October 3, 2005 should not be considered a “strike” under proposed section IV(G)(9)(c) of the Tariff. Accordingly, the Mirant Parties request that the Commission clarify that developers in the Catch-Up Class are not subject to those interconnection reentry provisions.

17. NYISO responds that Mirant’s concern appears to be based, at least in part, on a misunderstanding of the application of the proposed tariff revisions and the KeySpan Settlement. NYISO agrees with Mirant that entry into the Catch-Up Class does not

⁶ According to Mirant Parties, after the initial allocation and rejection by the Developer of System Upgrade Facility costs, Attachment S, section IV(G)(9)(c) provides four options for processing a Developer’s Interconnection Request: (1) a Developer may elect a new Class Year or, if no election is made, NYISO will assign the developer to a Class Year consistent with the commencement of construction of the proposed facility; (2) if the Developer does not accept NYISO’s assignment to the Class Year consistent with construction of the proposed facility, its interconnection facility will be deemed withdrawn; (3) if the Developer submits a Non-Acceptance Notice (rejection of cost allocation) or commits another Security Posting Default after electing a new Class Year or being assigned by NYISO to a new Class Year consistent with construction of the proposed facility, its interconnection request will be deemed withdrawn from the queue; and (4) the Developer may file a new interconnection request upon withdrawal from the queue.

⁷ Citing August Filing at 2.

constitute an election under proposed section IV(G)(9)(c) of Attachment S. Additionally, NYISO states that the KeySpan Settlement does not, as feared by Mirant Parties, place members of the Catch-Up Class into either Class Year 2005 or Class Year 2006. Instead, NYISO states that the settlement actually designates the Catch-Up Class⁸ as a class in itself, albeit a class containing Developer Projects spanning several calendar years.⁹

18. Further, NYISO states that it did not intend for the proposed tariff revisions to apply retroactively. Instead, it requested that the Commission grant the revised tariff sheets submitted with the August Filing an effective date of October 3, 2005.¹⁰ Accordingly, in NYISO's view, the entry or exit of *any* Developer into *any* class before October 3, 2005, is not an election or assignment under section IV(G)(9)(c). Furthermore, NYISO states that, in its view, Developer rejections of cost allocations or defaults on security posting requirements prior to October 3, 2005, are not "strikes" under proposed section IV(G)(9)(c).

19. We find that NYISO's explanation of the proposed tariff language fully addresses the issues raised by the Mirant Parties and is consistent with the Settlement. Thus, we will adopt this explanation of the Assignment of Developers to Class Year as our own and will accept as just and reasonable NYISO's proposed revision to its OATT.

C. Reporting by Transmission Owners and Developers on Interconnection-Related Transmission Facilities, Project Costs and Progress of Construction Activities

20. NYISO states that the Tariff amendments to Attachment X would specify that, in addition to equipment, engineering, procurement and construction work, the Interconnection Facilities Study shall specify and estimate the cost of design work, permitting, site acquisition and facility commissioning. Attachment X would require the Interconnection Facilities Study to specify the costs of each of these categories of work by substation and/or feeder. NYISO further states that the amended Tariff would also require the Interconnection Facilities Study to include a detailed schedule showing the estimated time required to complete each phase of the work on interconnection projects, including milestones to facilitate project tracking. NYISO adds that Transmission

⁸ The Catch-Up Class includes all Developer Projects that have met the milestones identified in section IV(F)(5)(a)(1) of Attachment S to the OATT on or before the Study Start Date (*i.e.*, before June 27, 2005). *See* KeySpan Settlement at 14.

⁹ NYISO adds that, "as of the date of this filing, Class Year 2001, Class Year 2002, and the Catch-Up Class have closed. There is no Class Year 2005, and only one class, Class Year 2006, remains open."

¹⁰ Citing August Filing at 2.

Owners and project Developers would be required to report to each other and to NYISO on the progress of their projects every other month, including any material variance from their prior estimated schedules. Finally, NYISO states that the Transmission Owner would be required to report any material variance from earlier cost estimates for its work, and the reasons for the variance. NYISO states that these amendments would make available information that Class Year members, other Developers, Transmission Owners, and other Market Participants need to track the progress and cost of upgrades affecting the transmission system.

21. We find NYISO's proposed language just and reasonable and will accept NYISO's uncontested request to revise its OATT to make these clarifications.

The Commission orders:

NYISO's proposed revisions to its OATT are hereby accepted for filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.