

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
102 FERC ¶ 61,021

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

New York Independent System Operator, Inc. Docket No. ER03-180-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued January 10, 2003)

Introduction

1. In this order, the Commission conditionally accepts for filing a new Attachment U to the Open Access Transmission Tariff (OATT) of the New York Independent System Operator, Inc. (NYISO) which pertains to the declaration and recovery of bad debt losses. This action will benefit customers by having a thorough explanation of the process for declaring and recovering bad debt losses in NYISO's OATT.

Background

2. On November 13, 2002, the NYISO filed proposed Attachment U to its OATT to clarify its process for declaring and recovering bad debt losses. The NYISO explains that several of its tariff provisions currently in place allow recovery of bad debt losses through a Rate Schedule 1 charge, and that it developed proposed Attachment U to explain that process. The proposed recovery will be on the basis of each remaining transmission customers' load ratio share during the month that the loss originated, although the ISO has the discretion "to adjust such proportionate shares of recovery, on a ratable basis, if necessary to fully recover a loss."¹

3. The NYISO states that its Management Committee approved the proposed clarifications by an affirmative vote of 62.07 percent, providing the required stakeholder approval. The requested effective date is January 12, 2003.

Notice of Filing, Interventions and Protests

¹Proposed Attachment U, section 3.0, Original Sheet No. 707.

4. Notice of the NYISO's filing was published in the Federal Register, 67 Fed. Reg. 70,726 (2002), with motions to intervene and protests due on or before December 4, 2002. Timely motions to intervene raising no substantive issues were filed by Dynegy Power Marketing, Inc. (Dynegy), the New York Power Authority (NYPA), the NRG Companies (NRG), and Reliant Resources, Inc. (Reliant). The New York Transmission Owners² filed a timely motion to intervene and protest. On December 5, 2002, the Municipal Electric Utilities Association of New York State (MEUA) filed a motion for leave to intervene out-of-time and protest.

5. The New York Transmission Owners and MEUA protest the filing on the basis of their understanding that the proposed bad debt policy was going to be enacted on an interim basis only, and that a new loss sharing formula would be developed to supersede it as part of an overall credit policy for prospective effect. According to the New York Transmission Owners, the new bad debt policy was to have been filed with the Commission in July 2002, and they request that the Commission condition any approval of this filing on the NYISO's filing the new bad debt policy as soon as possible. MEUA requests that the Commission reject this filing, or, in the alternative, direct that the proposed bad debt policy be accepted only on the condition that it is interim and that the new bad debt policy be filed as soon as practical.

6. In addition, MEUA contends that the proposed revisions are not just and reasonable because they would charge losses only to transmission customers taking service under the OATT, even if a default occurs under the NYISO's Market Administration and Control Area Services Tariff (Services Tariff). MEUA asserts that the NYISO has not justified this result. According to MEUA, in contrast, the new bad debt policy that was to be filed in July 2002 would spread bad debt losses and credit risk among all NYISO customers, not just those serving load.

7. Further, MEUA objects to NYISO's proposal to revise its funding mechanism to make the charges retroactive to the month in which the transactions occurred which created the bad debt losses. Thus, MEUA asserts that certain transactions entered into by Enron occurring

²The New York Transmission Owners include Central Hudson Gas & Electric Corp., Consolidated Edison Company of New York, Inc., LIPA, New York State Electric & Gas Corp., Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corp., and Niagara Mohawk Power Corp., all of which are members of the Transmission Owners Committee of the Energy Association of New York State.

during the summer of 2000 which led to unfunded liabilities (and which were not recognized until the summer of 2002), will lead to surcharges on transmission customers which took service under the OATT during those months in 2000. MEUA states that this would not be consistent with generally accepted accounting principles (GAAP) and that the NYISO has not explained how the revisions are reasonable.

Discussion

Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), the timely, unopposed motions to intervene of Dynegy, NYPA, NRG, Reliant, and the New York Transmission Owners serve to make them parties to this proceeding. We will grant MEUA's motion to intervene out-of-time given its interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

Commission Analysis

9. As explained below, we will conditionally accept NYISO's filing subject to the clarifications discussed below.

10. The protestors claim that the proposed policy was intended to be implemented on an interim basis while the NYISO puts in place a comprehensive credit policy. In support, the protestors point out that Attachment A to the New York Transmission Owners' filing, which is a description of the proposed policy, states: "A revised credit policy and revised loss formula will shortly be filed with the Commission. The following policy is an interim policy pending Commission approval of said loss recovery formula and credit policy." In addition, according to the June 13, 2002 Meeting Minutes of the NYISO Management Committee Meeting, the motion to pass a comprehensive Financial Assurance Policy was approved with a vote of 81.52 percent.³ Thus, it appears that the proposed policy was intended by NYISO stakeholders to be implemented on an interim basis, and we will condition acceptance of this filing on NYISO's submitting the comprehensive Financial Assurance Policy as soon as practicable.

³MEAU Protest Attachment A, pp. 5-6.

11. On Original Sheet No. 707, the NYISO proposes the following: "... the ISO shall recover the amount of the bad debt loss from Transmission Customers that were subject to Rate Schedule 1 of this OATT during the month the bad debt loss originated." MEUA argues that this aspect of NYISO's proposal violates GAAP. Although we are not persuaded that this aspect of the proposal violates GAAP, we have other concerns about the proposed revision. Neither the tariff language nor the transmittal letter indicate that the proposed allocation will only be applied to future transactions. Because the allocation is based on customers' load ratio share during the month that the loss originated, and is therefore determined without reference to current or future purchases or service levels, if applied to transactions that occurred prior to the effective date of this filing, it would constitute a retroactive rate adjustment, and would violate the filed rate doctrine.⁴ Thus, we clarify that this provision may apply only to transactions that occur after the effective date of the tariff revisions.⁵

⁴The filed rate doctrine forbids a regulated entity from charging rates for its services other than those properly filed with the Commission, and thus neither the utility nor the Commission has the power to alter a rate retroactively. See *Associated Gas Distributors v. FERC*, 893 F.2d 349 (D.C. Cir. 1989) (finding that a Commission policy of allocating current take-or-pay expenses based on a customer's past purchasing patterns violated the filed rate doctrine).

⁵Although MEUA states that the NYISO proposes to assess a surcharge on transmission customers that took service under the OATT in May and June 2000, when the transactions leading to certain bad debt losses of Enron occurred, as we clarify above, the proposed provision may not be applied to transactions that occurred prior to the effective date. Any bad debt losses for earlier transactions should be recovered in

12. Lastly, we are not persuaded by MEUA's argument that the NYISO's revisions are unjust and unreasonable because they purportedly assess all costs of bad debt losses to transmission customers under the OATT rather than to all customers of the NYISO. Currently, the NYISO has provisions in its OATT that allow it to collect bad debt losses from transmission customers.⁶ The purpose of the instant filing, according to the NYISO, is to clarify the procedures of the bad debt collection process, and the proposed provisions do not change the scope of customers that are to be assessed these costs. Thus, MEUA is challenging an aspect of the policy that is already part of the NYISO's tariff. In addition, we are accepting this filing as an interim measure, and we expect the NYISO to address this question in the context of its comprehensive Financial Assurance Policy.

The Commission orders:

The NYISO's filing is hereby conditionally accepted, to become effective January 12, 2003, subject to the clarifications discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

accordance with the policy and procedures that were in place at the time that the losses were recognized.

⁶FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 83.