

125 FERC ¶ 61,184
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 Nos. ER09-198-000
ER09-198-001

ORDER ACCEPTING TARIFF SHEETS

(Issued November 17, 2008)

1. On October 31, 2008, as amended on November 4, 2008, the New York Independent System Operator, Inc. (NYISO) filed tariff sheets to preclude the scheduling of flows over eight different transmission paths for which there are more direct routing options.¹ NYISO requests waiver of the 60-day prior notice requirement to permit NYISO's proposed tariff sheets to become effective on November 19, 2008. As discussed below, the Commission will accept the instant tariff sheets as proposed.

Background

2. On July 21, 2008, in Docket No. ER08-1281-000, NYISO filed tariff sheets to implement 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 its Independent System Operator Agreement (ISO Agreement).² NYISO asserted that since January 2008, an increasing number of

¹ On October 31, 2008, in Docket No. ER09-198-000, NYISO filed Second Revised Sheet No. 122. Subsequently, on November 4, 2008 in Docket No. ER09-198-001, NYISO filed Thirteenth Revised Sheet No. 355, Second Revised Sheet No. 355.01, Eleventh Revised Sheet No. 472, Third Revised Sheet No. 472A.

² Section 19.01 of its 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."

transactions had been 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 Transmission System Operator (MISO), and sink in PJM Interconnection, L.L.C. (PJM). NYISO stated that the market participants scheduled their transactions in this manner in order to take advantage of differences in the way regional transmission organizations (RTOs) price transactions that exit their systems. However, NYISO stated, approximately 80 percent of the power actually flowed over the common border between NYISO and PJM, because power flows over the path of least resistance rather than the scheduled path. As a result, the circuitous scheduling caused market distortions and congestion and uplift costs.

3. NYISO, therefore, submitted tariff sheets to temporarily preclude the scheduling of flows over eight different transmission paths for which there are more direct routing options.³ NYISO stated that its proposed temporary tariff changes would not eliminate all loop-flow issues, but that the tariff prohibition would function as an interim measure designed to reduce congestion-related costs associated with circuitous external transactions. NYISO also recommended that the Commission address the Lake Erie loop-flow problem by encouraging the commissioning and operation of the Ontario-Michigan phase angle regulators.

³ NYISO's revised temporary tariff sheets preclude the scheduling of external transactions over eight separate "Scheduling Paths." These paths include: 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. The subject paths also include external transactions that (a) exit NYCA at NYISO's proxy generator buses that represent the NYCA's common border with PJM, and (b) sink in IESO. Further, these paths include external transactions that (a) enter NYCA at the proxy generator buses that represent NYCA's common border with PJM, and (b) source from IESO or external transactions that (a) enter NYCA at the proxy generator bus that represents NYCA's interface with IESO, and (b) source from PJM; paths that wheel through the NYCA by (a) entering the NYCA at the proxy generator buses that represent NYCA's common border with PJM, and (b) sink in the control area operated by MISO; or wheels through NYCA that (a) exit the NYCA at the proxy generator buses that represent NYCA's common border with PJM, and (b) source from MISO; also wheels through the NYCA that (a) enter the NYCA at the proxy generator bus that represents the NYCA's interface with IESO, and (b) sink in MISO; and, lastly 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.

4. On August 21, 2008, the Commission accepted the tariff sheets submitted by NYISO under the exigent circumstance section of its ISO agreement to be effective on July 22, 2008, for a 120 day period terminating November 18, 2008.⁴ The Commission also stated that NYISO should continue to work with its market participants, North American Electric Reliability Corporation (NERC), and neighboring RTOs to develop potential solutions to this issue. Moreover, the Commission stated that its Office of Enforcement had initiated a non-public investigation under Part 1b of the Commission's regulations into the scheduling of flows over the circuitous paths and that the Commission would determine what further action may be appropriate with respect to the above described-claims after it considered the results of the staff investigation.

Proposal

5. In the instant filing, as amended, NYISO states that it has submitted tariff sheets that contain the same language (with two minor differences) as that included in its July 21, 2008 "exigent circumstances" filing previously accepted by the Commission. As justification for its instant filing, NYISO states that it incorporates its July 21, 2008 filing by reference.⁵

6. The first difference from the July filing concerns Second Revised Sheet No. 122. NYISO states that, at the request of its market participants and its Management Committee, it proposes to change the language contained on this sheet from that previously accepted on a temporary basis by the Commission in its August 21, 2008 order. NYISO states that currently section 15.1 of its OATT contained on this sheet states that it is not required to make transmission service available to a transmission customer "if its Tariffs provide to the contrary." NYISO states that it has agreed with its market participants that such language is not necessary for it to possess adequate authority to reject requests to schedule external transactions or to curtail external transactions in accordance with its Tariffs.

⁴ *New York Independent System Operator, Inc.*, 124 FERC ¶ 61,174 (2008) (August 21 Order).

⁵ NYISO states that it worked with its stakeholders to obtain Management Committee ratification of the tariff revisions that it filed under exigent circumstances on July 21, 2008 and that the Commission's August 21, 2008 order permitted to become temporarily effective. NYISO asserts that on September 25, 2008 its Management Committee ratified the proposed tariff sheets and on October 21, 2008 its Board of Directors authorized it to act to effectuate the Management Committee's ratification of these tariff revisions. November 4 Transmittal letter at 4-5; October 31 Transmittal letter at 8.

7. The second difference from the July filing, NYISO states, concerns Thirteenth Revised Tariff Sheet No. 355.01 of Attachment B to NYISO's Market Services Tariff, and reflects a pending tariff revision that is not related to NYISO's July 21, 2008 filing in Docket No. ER08-1281-000. NYISO states that this pending tariff revision was submitted by NYISO on October 16, 2008 to comply with the Commission's order in Docket No. ER07-521-000. In that proceeding, NYISO was required to establish detailed rules governing the awarding of incremental transmission congestion contracts for customers that construct or fund new transmission facilities or transmission upgrades.⁶

8. NYISO asserts that, until there are adequate operational controls in place to ensure that actual and scheduled flows around Lake Erie are reasonably closely aligned, or until NYISO, working with its market participants and neighboring ISOs and RTOs is able to develop an alternative solution, the tariff prohibition against scheduling power via the eight circuitous Scheduling Paths identified in NYISO's July 21, 2008 filing,⁷ is necessary to avoid an increase in circuitous power flows around Lake Erie and a resumption of the undesirable market impacts described in its July 21, 2008 filing.⁸ For example, in its July 21, 2008 filing, NYISO pointed out that its 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. It asserted that these unscheduled flows exacerbate west-to-east constraints in New York, and thereby increase congestion costs.⁹

⁶ See *New York Independent System Operator, Inc.*, 123 FERC ¶ 61,044 (2008).

⁷ See *supra* note 3.

⁸ As noted by the August 21 order:

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. 124 FERC ¶ 61,174 at P10. See also October 31 Transmittal letter at 4.

⁹ NYISO July 21 Filing at 7-8.

Notice, Interventions and Protests

9. The Commission issued notice of NYISO's filings, with interventions and protests due on or before November 10, 2008. No party filed in opposition to NYISO's proposal. The New York Transmission Owners filed comments in support of the proposal.

10. PJM filed comments in support of NYISO's proposal but is concerned that NYISO and its stakeholders have made insufficient progress in addressing broader inter-RTO issues such as congestion management, joint planning, cross-border cost allocation, and the elimination of rate pancaking. PJM states that it supports a congestion management process which would allow either RTO to manage congestion with the most appropriate resources which includes redispatch and settlements similar to the fully coordinated congestion management process in the Joint Operating Agreement between PJM and MISO. Therefore, PJM recommends that acceptance of NYISO's proposal be conditioned upon development of a congestion management process between PJM and NYISO within twelve months, that NYISO and PJM file periodic reports of the status of their efforts, and that the Commission appoint technical staff to help develop the process.

11. The Independent Market Monitor for PJM states that NYISO's proposal is acceptable. However, it contends that NYISO failed to explain why NYISO prohibits specific transactions rather than an approach applicable to all transactions and an approach that recognizes actual power flows. The Independent Market Monitor recommends that the revised tariff sheets be conditioned upon NYISO developing a more complete solution to interface pricing, congestion management and transmission planning at the NYISO-PJM interface, within a defined time frame.

12. The New York Municipal Power Agency and the Municipal Electric Utilities Association of New York State (New York Municipals) filed in support of NYISO's proposal. In addition, they requested that NYISO adopt a monitoring plan to ensure that future problems that unreasonably increase consumers' costs or affect system reliability are quickly identified and remedied. They also note that they are working through the NYISO stakeholder process to persuade NYISO to adopt such a monitoring and reporting program.

13. The FirstEnergy Companies suggest that the Commission allow affected stakeholders to investigate the physical scope of the Lake Erie loop flows and seek alternative resolution of their impacts. Alcoa Inc. also urges that investigations of the market dysfunctions continue.

Discussion

Procedural Issues

14. 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. Further, granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burden on the existing parties.

Commission Determination

15. The Commission will accept NYISO's instant tariff sheets, because such tariff sheets (with two minor differences) address the same problem in the same manner as the tariff sheets accepted on a temporary basis by the August 21, 2008 Order. NYISO's instant tariff sheets preclude the scheduling of transactions over eight different transmission paths. The Commission concurs with NYISO that, for each of the eight paths over which NYISO is foreclosing scheduling, there is a more direct scheduling path available to market participants.¹⁰ In addition, the Commission finds that NYISO has adequately justified that its filing was necessary to alleviate unnecessary congestion-related costs. For example, NYISO states that, for the first 21 days of July 2008, average hourly Lake Erie circulating power flows were 457 MW in a clockwise direction, which exacerbate congestion in NYISO. Following NYISO's implementation of the eight-path prohibition, average hourly Lake Erie circulating power flows between July 23, 2008 and October 20, 2008 were 127 MW in a counter-clockwise direction, which do not negatively impact congestion in NYISO.¹¹

¹⁰ NYISO states, for example, that although it proposes to preclude market participants from scheduling Exports to the PJM Control Area at NYISO's Proxy Generator Bus that represents the NYCA's Interface with IESO, NYISO will still permit market participants to schedule Exports to the PJM Control Area at NYISO's Proxy Generator Buses that represent the common border between the NYCA and the PJM Control Area. Similarly, NYISO states, although the NYISO proposes to prohibit the wheeling of power sourcing at the PJM Control Area through the NYCA (and IESO Control Area) with the MISO as its destination, market participants will still be able to sell power directly from PJM to the MISO by scheduling a transaction between those two RTOs at their common borders. October 31 Transmittal letter at 3-4.

¹¹ October 31 Transmittal letter at 4 (from October 1 through October 30, 2008, hourly flows averaged approximately 200 MW in a counter-clockwise direction); *see also* 124 FERC ¶ 61,174 at P 12 (for the first week following the implementation of the
(continued...)

16. Further, as to the tariff sheets reflecting minor differences from those accepted by the August 21, 2008 Order, the Commission accepts Second Revised Sheet No. 122. Currently, section 15.1 of NYISO's OATT contained on this sheet states that NYISO is not required to make transmission service available to a transmission customer "if its Tariffs provide to the contrary." The Commission agrees with NYISO that this language is superfluous and should be removed, and that NYISO possesses adequate authority to reject requests to schedule external transactions, or to curtail external transactions in accordance with its tariffs.

17. Second, NYISO states that Second Revised Tariff Sheet No. 355.01 of Attachment B to NYISO's Market Services Tariff reflects a pending tariff revision that is not related to NYISO's July 21, 2008 filing in Docket No. ER08-1281-000 but that it was originally filed to comply with the Commission's order on rules governing the awarding of incremental transmission congestion contracts in Docket No. ER07-521-000. The Commission accepts Second Revised Tariff Sheet No. 355.01, subject to our action in Docket No. ER07-521-000.

18. The Commission finds that good cause exists for the Commission to grant the requested waivers and to permit the instant tariff sheets to become effective November 19, 2008 as requested.

19. The Independent Market Monitor argues that the Commission should expressly condition its approval of the instant filing on a requirement that NYISO work with PJM to develop a more complete solution for interface pricing, congestion management and regional planning. PJM, for its part, argues that the Commission should condition its approval based on a requirement that NYISO develop a congestion management process between PJM and NYISO within 12 months, that NYISO and PJM file periodic reports of the status of its efforts, and that the Commission appoint technical staff to develop the process. New York Municipals request that NYISO be required to adopt a monitoring plan to ensure that future problems that unreasonably increase consumers' costs or affect system reliability are quickly identified and remedied.

20. The Commission understands the need for a long-term comprehensive solution to these issues. As indicated in its August 21, 2008 Order, the Commission continues to encourage the parties responsible for operating the Ontario-Michigan PARs to place the three operational PARs in service as soon as practical. Moreover, the Commission directs NYISO to work with its market participants, NERC, and neighboring RTOs to develop

interim tariff sheets prohibiting the circuitous scheduling, the average hourly Lake Erie circulating power flows was 67 MW in a counter-clockwise direction).

potential solutions to the loop-flow problem through a collaborative process. Moreover, while PJM states that it has had only limited success in discussing congestion management procedures, the Commission directs parties to continue to address these matters on a comprehensive basis. Accordingly, the Commission directs the NYISO, within 90 days of the date of this order, to file a status report on its progress in developing solutions to the loop flow problem, including an inter-RTO congestion management process.

21. Alcoa Inc. states that the Commission should investigate the continuing market dysfunctions. FirstEnergy Companies request that the Commission allow stakeholders to investigate the physical scope of the Lake Erie loop flows. As the Commission declared in its August 21, 2008 Order, in May of this year its Office of Enforcement began a non-public investigation under Part 1b of the Commission's regulations into the scheduling of flows over circuitous paths such as those that are addressed in the instant order. This investigation is ongoing and, as set forth by the August 21, 2008 Order, the Commission will determine what further actions may be appropriate after it considers the results of the staff investigation.

The Commission orders:

(A) The tariff sheets listed in Footnote No. 1 are hereby accepted, to be effective November 19, 2008, subject to the outcome of Commission action in Docket No. ER07-521-000, as discussed in the body of this order.

(B) The Commission directs NYISO file a status report 90 days from the date of this order on the development of solutions to the loop flow problem and inter-RTO congestion management processes.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.