

UNITED STATES OF AMERICA 90 FERC ¶ 61,045
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
Vicky A. Bailey, William L. Massey,
Linda Breathitt, and Curt Hébert, Jr.

Central Hudson Gas & Electric
Corporation
Consolidated Edison Company of
New York, Inc.

New York State Electric & Gas
Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities, Inc.
Rochester Gas and Electric
Corporation

Docket Nos. ER97-1523-013
and -014, OA97-470-012 and
-013, ER97-4234-010 and -011

ORDER DENYING IN PART AND GRANTING IN PART
REHEARING AND CLARIFICATION AND
ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued January 14, 2000)

This order addresses the proposed revisions to the New York Independent System Operator's (New York ISO) Open Access Transmission Tariff (ISO Transmission Tariff) and the New York ISO Services Tariff (ISO Services Tariff) submitted by the Member Systems of the New York Power Pool (NYPP) (collectively Member Systems or Applicants) in compliance with our July 29, 1999 order (July 29 order).¹ With the modifications discussed below, we conditionally accept the compliance filing of the Member Systems. In this order, we also address the requests for rehearing and clarification of the July 29 order.

I. Background

On January 27, 1999, the Commission issued an order conditionally accepting, with modifications, the proposed New York ISO Tariff and the proposed market rules of the New York

¹Central Hudson Gas & Electric Corp., et al., 88 FERC ¶ 61,138 (1999).

ISO.² The order also required the Member Systems to submit a compliance filing reflecting a number of changes within 90 days of the order. The Member Systems submitted a compliance filing on April 30, 1999 (April 30 compliance filing). On July 29, 1999, the Commission conditionally accepted the Member Systems' April 30 compliance filing, subject to the Member Systems filing certain additional revisions.

Requests for Rehearing and Clarification

Timely requests for rehearing and/or clarification of the July 29 order were filed in Docket No. ER97-1523-014, et al. by the Sithe/Independence Power Partners, L.P. (Sithe) and Public Service Electric & Gas Company (PSE&G). In addition, PG&E Generating (PG&E Gen) filed a motion for clarification.

On October 1, 1999, Sithe filed a limited response to PSE&G's request for rehearing. On October 15, 1999, PSE&G filed a response to Sithe's October 1 response.

Compliance Filing

On August 26, 1999, the Member Systems submitted a filing in compliance with the July 29 order. The Member Systems request that the Commission grant all waivers necessary to allow the tariff sheets to become effective on the date the ISO becomes operational.³

In this order, we shall address the requests for rehearing and clarification of the July 29 order as well as the August 26, 1999 compliance filing submitted by the Member Systems in response to the July 29 order. As discussed further below, we grant, in part, and deny, in part the requests for rehearing and clarification of the July 29 order and accept the Member Systems' compliance filing, as modified.

II. Notice of Filings and Interventions

Notice of the Member Systems' compliance filing was published in the Federal Register, 64 Fed. Reg. 49,001 (1999), with protests and interventions due on or before September 15, 1999.

² Central Hudson Gas & Electric Co. et al., 86 FERC ¶ 61,062 (1999), order on reh'g, 88 FERC ¶ 61,138 (1999) (January 27 order). The Commission conditionally authorized the establishment of the New York ISO in Central Hudson Gas & Electric Co. et al., 83 FERC ¶ 61,352 (1998), order on reh'g, 87 FERC ¶ 61,135 (1999).

³At the time of their filing, the Member Systems noted that October 12, 1999 was the projected start date of the ISO. However, the ISO commenced operations in November, 1999.

Protests and/or comments to the compliance filing were submitted by Coral Power, L.L.C. and Enron Power Marketing, Inc. (Coral and EPMI), Sithe, Allegheny Electric Cooperative, Inc. (Allegheny), Niagara Mohawk Energy Marketing, Inc. (NMEM) and the Municipal Electric Utilities Association (MEUA).⁴

On September 30, 1999, the Member Systems filed a response to the protests and comments filed by the intervenors.

III. Discussion

A. Procedural Matters

Although the Commission's Rules of Practice and Procedure do not permit answers to protests,⁵ given that the answer helps in clarifying certain issues, we will accept the answer filed by the Member Systems. However, as the Commission's Rules of Practice and Procedure do not permit responses to requests for rehearing, we will reject the responses to the rehearing requests and clarification at this time.

B. July 29 Order Issues on Rehearing

Energy Imbalance Service

In the July 29 order, the Commission accepted the Member Systems' proposal to impose different imbalance charges depending on whether a customer takes service under the ISO Services Tariff or the ISO Transmission Tariff.

In its request for rehearing of the July 29 order, Sithe urges the Commission to eliminate the ISO Transmission Tariff energy imbalance service conditions, or alternatively, to direct Member Systems to impose the same energy imbalance charge on ISO Transmission Tariff customers that is imposed on ISO Services Tariff customers. Sithe states that the distinction is unjustified and unduly discriminatory.

In the July 29 order, we concluded that it was reasonable to impose different energy imbalance charges on customers taking service under different tariffs and to assess regulation charges

⁴Allegheny and NMEM have also filed to intervene in this proceeding. These parties were admitted as intervenors previously in the underlying dockets to this proceeding. Therefore, we do not need to act here on their requests for intervention.

⁵See 18 C.F.R. 385.213(a)(2) (1999).

on those customers who cause the need for the service.⁶ While Sithe disagrees with the Commission's decision in this regard, it has not submitted any new evidence to support altering the Commission's previous decision. Accordingly, we deny Sithe's request for rehearing of this issue.

One-Time Right to Convert to Transmission Congestion Contracts (TCCs)

In response to concerns of Sithe, the July 29 order granted grandfathered customers the right to convert their election of physical rights or TCCs any time before the Spring 2000 initial auction. On rehearing, Sithe requests that the Commission allow grandfathered customers the one-time right to convert to TCCs at any time after the first transitional auction as long as the grandfathered customer gives the ISO sufficient notice. Sithe argues, as it did previously, that this would not disrupt any planned TCC auctions.

In the July 29 order, we addressed Sithe's concerns and granted a right to convert to TCCs. On rehearing, Sithe is seeking to expand its earlier request for a one-time right to convert. We disagree with Sithe's position and find that allowing conversion for a limited time (until two weeks before the Spring 2000 initial auction) will allow auction participants certainty as to availability of TCCs. Sithe has offered no compelling reasons for altering our decision in this regard and accordingly, we deny Sithe's request.

Voltage Support Payments

The July 29 order required Member Systems to revise the ISO Services Tariff to state that non-utility generators (NUGs) are permitted to directly contract with the ISO to provide voltage support services to the ISO where permitted under the terms of their power purchase agreements (PPAs). In addition, the Commission directed that the tariff state that, if the purchaser agrees to stipulate to the ISO that the NUG should receive the payments, the payments could be made directly to the NUG. The Members Systems have incorporated language to reflect this change in Rate Schedule 2.

Sithe requests rehearing of the July 29 order on this point, suggesting that the relief granted is of little value. Sithe states that because most PPAs do not explicitly address voltage support service, NUGs operating under PPAs will rarely be compensated for providing voltage support to the ISO. Therefore, Sithe argues that unless the PPA explicitly states that voltage support is included as a service under the PPA, there should be no prerequisite on how the NUG receives payment for providing this service.

⁶ 88 FERC at 61,386.

As the Commission stated previously, NUGs should be allowed to contract on their own with the ISO to provide voltage support service and to receive payment when permitted by the PPA.⁷ However, to allow NUGs to bill the ISO without a stipulation from the purchaser would lead to an unmanageable position for the ISO where it would be forced to resolve billing disputes and contract issues between the NUGs and the purchasers. Such a position is clearly undesirable and unworkable. We note that if there is a dispute between a NUG and the buyer in interpreting the relevant portions of the PPA, the NUG is free to challenge the buyer's interpretation in an appropriate proceeding. For these reasons, we will reject Sithe's request for rehearing.

Grandfathered Terms and Conditions

PG&E Gen seeks clarification that all provisions of existing third-party transmission service agreements (TSAs) will be honored, including the ability to substitute alternate receipt and delivery points on a non-firm basis without incurring a transmission service charge (TSC). In addition, Sithe contends that the July 29 order failed to address: (1) its argument that its TSA with Niagara Mohawk Power Corporation (Niagara Mohawk) should obviate the need for Sithe to have a service agreement under the ISO Transmission Tariff; and (2) that the ISO Transmission Tariff should specifically preserve Sithe's rights to obtain non-firm transmission service under its TSA.

The July 29 order clearly states that, "Member Systems will honor the existing rates, terms and conditions of existing agreements until such time as they are modified under section 205 or 206 of the FPA."⁸ We clarify that grandfathered customers are not required to sign a TSA with the ISO. Moreover, we will grant PG&E Gen and Sithe's requests for clarification that rights under existing TSAs are unaffected by the ISO Transmission Tariff.

Scheduling Charge

The January 27 order directed that the ISO revise its funding mechanism to allocate costs for non-transmission services to the parties that benefit from those services.

On rehearing, Sithe states that the Commission failed to address its protest to the April 30 compliance filing, and argues that the scheduling charge residual adjustment continues to include certain costs that bear no relation to actual transmission scheduling costs. Sithe states that these charges should be removed from Schedule 1 and allocated to those customers that benefit from such service.

In the April 30 compliance filing, the Member Systems did not address the January 27 order's directive to revise the scheduling charge. The Commission agrees with Sithe that the Member Systems

⁷88 FERC at 61,387.

⁸ 88 FERC at 61,388.

continue to include items that are not related to scheduling transactions and, therefore, should not be included in the scheduling charge residual adjustment. Accordingly, we will again direct that the ISO's funding mechanism be revised to allocate costs for non-transmission services to the parties that benefit from those services.

Transmission Service Charge

The January 27 order accepted the Member Systems' proposal to adopt the present revenue requirements from their individual open access transmission tariffs for the purpose of rates under the ISO tariff and rejected Sithe's request to set the revenue requirements for hearing.

Sithe claims that certain Member Systems continue to include excessive transmission revenue requirements to develop the transmission rate used in the ISO Transmission Tariff. Sithe states that the Commission should: (1) direct the Member Systems to modify their transmission rates to comport with the results of their respective open access transmission tariffs; and (2) direct any of the Member Systems that have a pending transmission rate case in litigation or pending settlement to stipulate that the lower of such utilities' pending settlement or litigated open access transmission tariff rates will be incorporated for the transmission revenue requirement of the ISO Transmission Tariff.

Member Systems are using the revenue requirements which are currently on file. To the extent that litigation or settlement proceedings change these revenue requirements, the ISO Transmission Tariff should be revised to reflect any such revised revenue requirements to become effective on the effective date specified in the litigated or settlement proceeding. Moreover, to the extent that the revenue requirements in litigation are subject to refund, the same refund protection should apply to the ISO rates. Therefore, to the extent that litigation or settlement proceedings result in a change to any Members System's revenue requirements, the Member Systems should include such revised revenue requirements in the ISO Transmission Tariff on an ongoing basis and file to revise the transmission rate accordingly.⁹

Coordination of New Generation Interconnections with Neighboring Control Areas

Public Service Electric and Gas Company (PSE&G) requests that the ISO open access transmission tariff provisions be expanded to include explicit procedures to address the safety and reliability concerns of neighboring transmission system owners prior to interconnection of new generation. PSE&G states that it has been unsuccessful in efforts to meet with Consolidated Edison Company of New York (Con Ed) to discuss impacts of proposed new interconnects.

The pro forma tariff already sufficiently addresses procedures related to interconnection. With regard to third party additions, the pro forma tariff specifies that while the transmission provider is not

⁹ We expect that the revised revenue requirement will be filed at the appropriate time.

responsible for arrangements on other systems, the transmission provider will undertake reasonable efforts to assist the transmission customer in obtaining such arrangements.¹⁰ In addition, the pro forma tariff allows transmission providers to coordinate with neighboring utilities when construction on its system also requires construction on other systems.¹¹ This obligation includes construction necessary to interconnect new generators. Moreover, the pro forma tariff's requirements have not been eliminated for the New York ISO.

Apart from these provisions, we have noted before that:

Interconnected utilities must, and do, work closely to ensure that the operation of one system does not jeopardize the reliability of a neighboring system, nor diminish the neighbor's ability to utilize its system in the most economical matter.

* * *

It is, in the first instance, for the interconnected parties as the owners and operators of utility systems to establish mutually acceptable operating practices. In addition, if [an affected utility] can demonstrate that this transaction is a burden on its system, [it] can file a transmission service rate for Commission consideration which would account for any unauthorized loop flows.^[12]

¹⁰ See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540, FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 at 30,527 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998).

¹¹ Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,527-28.

¹² Sierra Pacific Power Company, 85 FERC ¶ 61,314 at 62,235 (1998), order on reh'g, 86 FERC ¶ 61,198 (1999) (Sierra Pacific) (quoting American Electric Power Service Corporation, et al., 49 FERC ¶ 61,377 at 62,381 (1989), reh'g denied, 50 FERC ¶ 61,192 (1990)).

Moreover, we stated that utilities that choose to interconnect bear the responsibility to exercise all appropriate measures to resolve operational problems on a mutually acceptable basis.¹³ Accordingly, no additional tariff provisions are necessary and PSE&G's request is denied.

C. July 29 Order Issues on Compliance

Among other revisions, the July 29 order required Member Systems to explicitly state in Attachment J that external generators engaged in bilateral transactions would be permitted to substitute energy from the day-ahead or hour-ahead markets for their own energy. In addition, both the January 27 and the July 29 orders directed Member Systems to publicly report TCC transactions without revealing the names of TCC bidders along with the bids. The July 29 order permitted Member Systems to announce the percentages of TCCs to be awarded prior to each round of the TCC auction. Member Systems have made each of these revisions. Accordingly, we will accept the above aspects of the compliance filing without further discussion. We will discuss other specific provisions of the compliance filing below.

1. ISO Transmission Tariff Issues

Energy Imbalance Service

As noted above, the July 29 order directed Member Systems to incorporate the pro forma tariff energy imbalance service deviation band and transaction minimum in the ISO open access transmission tariff. Member Systems have revised the ISO open access transmission tariff to include the pro forma deviation band and transaction minimum as directed by the Commission.

MEUA maintains that the required changes were not incorporated properly in all areas of the ISO Transmission Tariff. MEUA argues that the ISO has incorrectly used the term "applicable tolerance band" rather than "applicable deviation band" consistent with the definition in Schedule 4. Further, MEUA proposes word changes in the following sentence in the schedule to avoid the appearance of a mismatch between over and under deliveries. MEUA also argues that high penalties for underdeliveries discourage attempts to correct imbalances within the deviation band and that customers should receive some payment for inadvertent overscheduled energy. Finally, MEUA contends that the ISO has inappropriately substituted "Transmission Customer" for "Generator," since this change was not required by the July 29 order.

We do not agree with MEUA that the use of "tolerance band" in the tariff creates confusion. We also find that MEUA's concerns regarding the wording of the following sentence are not appropriately raised in this proceeding because no change was made from the approved version. Further, we find that the objection to the penalty provisions is inappropriate in this proceeding because

¹³Sierra Pacific, 85 FERC at 62,235; AEP, 49 FERC at 62,381.

the penalty provisions are identical to the pro forma tariff. Lastly, the substitution of "transmission customer" for "generator" clarifies the responsibilities of the parties when read in conjunction with other Commission directed revisions. In sum, we find that the Member Systems have complied with the Commission's directives regarding the incorporation of the pro forma energy imbalance provisions and we will accept the revision submitted by the Member Systems.

Reinstatement of Section 4.6

The July 29 order directed the Member Systems to re-insert into the ISO Transmission Tariff section 4.6 which states that the ISO is responsible for the establishment of operating reserves as well as the implementation of the operating reserve requirements of the New York State Reliability Council. Member Systems have inserted this section into Rate Schedule 5 of the ISO Transmission Tariff. However, the Member Systems have added language to reflect that the ISO must offer operating reserves service to support export transactions.

Allegheny protests the Member Systems' addition of language stating that the ISO must offer operating reserve services to support export transactions. Allegheny believes that this change unreasonably imposes operating reserve requirements on the power Allegheny imports from the New York Control Area (NYCA). Allegheny also argues that such a change should not be placed in a compliance filing.¹⁴

We agree with Allegheny that the Member Systems' addition regarding operating reserves for exports was not required by the Commission's orders and is therefore beyond the scope of the compliance filing. Accordingly, we direct the Member Systems to delete the addition to Schedule 5 of the ISO Transmission Tariff.

One-Time Right to Change to Election of TCCs

As described above, the Member Systems modified the ISO Transmission Tariff to permit parties to elect to convert their existing rights to TCCs any time before the Spring 2000 initial auction. The July 29 order directed Member Systems to permit grandfathered transmission customers a one-time right to change their election of physical rights or financial rights (TCCs) after the first transitional TCC auction. Member Systems have revised the tariff to permit the conversion after the first transitional TCC auction but no later than two weeks before the first centralized TCC auction, which is scheduled to be held in the spring of 2000.

¹⁴ Allegheny also makes the same arguments with regard to the addition made by the Member Systems to offer imbalance service to export transactions.

As it argued on rehearing, Sithe requests that the Commission allow grandfathered customers the one-time right to change their election of physical rights or TCCs at any time after the first transitional auction as long as the grandfathered customer gives the ISO sufficient notice.

As we noted above, placing a deadline for conversion will allow auction participants certainty as to availability of TCCs. We disagree with Sithe's position that customers should have the right to change their election at any time. Therefore, we accept the revision made by Member Systems.

2. ISO Service Tariff Issues

Voltage Support Payments

As noted above, the July 29 order required the Member Systems to revise the tariff to: (1) allow NUGs to contract on their own to provide voltage support services to the ISO under certain circumstances; and (2) state that, if the purchaser agrees, such payments could be made directly to the NUG. Member Systems have incorporated language to reflect this change in Rate Schedule 2.

In response to the compliance filing, Sithe argues that NUGs should be eligible to receive payments for the provision of voltage support to the ISO without having to receive a stipulation from the purchaser under a PPA that the NUG is eligible to receive such payments.

As we stated above, to allow NUGs to bill the ISO without a stipulation from the purchaser would lead to an unmanageable position for the ISO where it would be forced to resolve billing disputes and contract issues between the NUGs and the purchasers. Such a position is undesirable. We will accept the Member Systems' revisions to the tariff as directed by the Commission.

Recall of Energy Exports During Emergencies and Curtailments

The Commission required Member Systems to clarify that a non-installed capacity generator located in the NYCA, which sells power outside the NYCA, would not have its transactions recalled during emergencies. Member Systems have codified this condition in the tariff to indicate that the ISO may purchase power from a non-installed capacity generator pursuant to ISO procedures during an emergency.

Coral, EPMI and NMEM are concerned that the revised language in the tariff will allow the ISO to force a non-installed capacity generator to sell energy to the ISO in emergency situations. They

argue that the proposed language is ambiguous as to what defines an emergency and gives the ISO authority to set the procedures for such purchases. They argue that this exposes marketers and generators to increased risk when making commitments to sell firm energy outside the NYCA. Therefore, they request that the provisions be clarified to clearly state that sales contemplated by this provision can only occur on a voluntary basis. Coral and EPMI also suggest that recall provisions should only be applied to generators currently contractually obligated to supply installed capacity to the NYCA and should not be extended to those generators that qualify as installed capacity providers but are not yet under contract.

Member Systems respond that their proposal that the ISO be able to recall energy from any qualified installed capacity provider -- whether or not the generator is currently under contract -- is reasonable since, absent this requirement, a qualified generator would be able to contract after-the-fact to provide installed capacity for the period when export transactions of installed capacity generators would be curtailed.¹⁵ Member Systems offer further assurance that generators that have not qualified as installed capacity generators will not have their export transactions curtailed even if the ISO faces the possibility of shedding load in the NYCA.

The July 29 order sought to: (1) distinguish qualified installed capacity generators from those that are not qualified to fulfill this purpose; and (2) to ensure that New York ISO could only recall the capacity of those who had qualified during times of system emergencies. Intervenor is attempting to add a distinction which does not exist in that order: whether a qualified installed capacity generator is under contract to provide installed capacity at the time of the system emergency. In fact, once qualified, the only distinction would be the extent to which the generator is providing installed capacity to New York ISO. By qualifying as installed capacity providers, these entities have elected to participate in the installed capacity market and assume this obligation as a consequence of their choice to acquire the benefits of selling in that market.¹⁶ In light of the above, we deny the requests of the intervenors above and accept the revisions made by the Member Systems.

Scheduling and Unit Commitment

The July 29 order required that requests by transmission providers to commit generators not otherwise committed by the ISO in the Day-Ahead market be posted on the ISO's OASIS. The Member Systems have revised section 4.11 accordingly.

Coral and EPMI suggest that the tariff should also state that the ISO will post "promptly" any such requests and the responses by the ISO to such requests. The parties argue that prompt posting is

¹⁵ The New York ISO market rules permit Load Serving Entities to meet a certain portion of their installed capacity obligation after-the-fact from qualified generation.

¹⁶ See, e.g., PJM Interconnection LLC, 88 FERC ¶ 61,016 at 61,046 (1999).

necessary as day-ahead prices may be "stale" as a result of new information regarding units committed for local reliability.

We agree with Coral and EPMI's argument that to the extent the data is not posted promptly, it is of no value. Therefore, we will require the ISO to post the requests as they are received. We will not, however, require the ISO to post responses to such requests, as we find this beyond the scope of the compliance filing.

Bid Information

The July 29 order clarified that the names of bidders need not be released with the release of bid information that was ordered in the January 27 Order. However, the Commission required that the bid data be released in such a manner as to allow interested parties to follow the behavior of individual bidders over time. The Member Systems have included this change in section 6.3. The Commission also clarified that bid data from Load Serving Entities (LSEs) must be made public as well.

Coral and EPMI state that Member Systems have not complied entirely with the Commission's directions regarding the posting of bid information. In particular, they claim that Member Systems have not made it explicit that all bid data, including that of LSEs, will be made public. They request that Member Systems add this clarification.

Member Systems answer that all bid information, including the bid information from LSEs, will be made public. They claim the proposed addition is unnecessary since the tariff is clear, without exception, that all bid information will be made public.

We agree with the Member Systems that the language in the tariff is all-encompassing and clearly includes the release of bid information by LSEs. Moreover, the July 29 order clarified that bid data from LSEs would be made public without the need for Member Systems to revise the tariff. Accordingly, we will accept the Member Systems' revision in this regard as filed.

3. Other Compliance Filing Issues

Lastly, we note that Coral and EPMI renew their request for the Commission to order the ISO to use the average hourly load when conducting the Balancing Market Evaluation (BME) instead of the peak load for the hour. We note that, since no change to this calculation was required by the July 29 order, this request is beyond the scope of the compliance filing.

Effective Date

The Commission accepts the Members Systems' tariffs, with the modifications noted herein, and grants the Member Systems' request to allow the tariffs to become effective on the day the ISO becomes operational.

The Commission orders:

(A) The requests for rehearing and clarification are hereby granted in part and denied in part, as discussed in the body of this order.

(B) The Member Systems' compliance filing is hereby accepted, as modified, to become effective as discussed in the body of this order.

(C) The Member Systems are hereby directed to make a revised filing, with the modifications directed herein, within 30 days of the date of this order.

(D) The Member Systems will be informed of rate schedule designations at a later date.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.