

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

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

New York Independent System Operator, Inc.

Docket No. ER17-2327-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued October 17, 2017)

1. On August 18, 2017, pursuant to section 205 of the Federal Power Act (FPA),¹ the New York Independent System Operator, Inc. (NYISO) submitted proposed revisions to section 6.10 (Rate Schedule 10) and Attachment Y of its Open Access Transmission Tariff (OATT) to establish a mechanism for the cost recovery of any regulated transmission project that is eligible for cost allocation and recovery in NYISO's Comprehensive System Planning Process (CSPP). As set forth below, we accept NYISO's proposed tariff revisions effective October 18, 2017, as requested.

I. Background

2. NYISO states that to comply with Order No. 890,² NYISO and the New York Transmission Owners,³ in 2008, jointly proposed Rate Schedule 10, which established the manner in which the Reliability Facilities Charge (RFC) would be developed, filed, and charged to a Load Serving Entity (LSE) for the recovery of costs associated with

¹ 16 U.S.C. § 824d (2012).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

³ New York Transmission Owners include: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., Power Supply Long Island, and Rochester Gas and Electric Corporation.

regulated transmission solutions eligible for cost allocation and recovery under NYISO's reliability planning process. NYISO states that after the Commission's acceptance of the current Rate Schedule 10,⁴ NYISO implemented, in accordance with Order No. 890 and Order No. 1000,⁵ its Congestion Assessment and Resource Integration Study process for economic transmission planning (CARIS Process) and its Public Policy Transmission Planning Process (Public Policy Process). NYISO states, however, that its tariffs do not currently have a mechanism comparable to the RFC for the recovery of costs associated with regulated transmission projects eligible for cost allocation and recovery under the CARIS Process or the Public Policy Process. NYISO states that it developed the proposed tariff revisions to enhance and expand the applicability of Rate Schedule 10, so that it can be used for all regulated transmission projects in any of the three planning processes (i.e., reliability, economic, and public policy-driven) in NYISO's CSPP.⁶

II. Tariff Revisions

3. NYISO proposes to replace the existing RFC with a new Regulated Transmission Facilities Charge (RTFC) that will allow NYISO to recover from LSEs, and pay to transmission developers, the Commission-approved or -accepted costs that are associated with any regulated transmission project that is eligible for cost allocation and recovery in NYISO's CSPP. NYISO states that it will calculate the proposed RTFC in a manner largely consistent with the existing formula for the RFC in Rate Schedule 10.⁷ NYISO explains, however, that the proposed RTFC incorporates several enhancements that the Commission has already accepted in more recently filed Rate Schedules 15 and 17 of its OATT, which were modeled on the RFC in Rate Schedule 10.⁸ NYISO also proposes certain revisions to Attachment Y of its OATT to conform to the revisions in Rate Schedule 10.⁹ In addition, NYISO proposes revisions in sections 31.4.3.2 and 31.5.5.3 of

⁴ *N.Y. Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068 (2008).

⁵ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁶ NYISO Transmittal Letter at 3.

⁷ *Id.* at 5.

⁸ *Id.* at 3-6. NYISO also mentions that the enhancements are included in Rate Schedules 13 and 16 of the OATT, which are currently pending before the Commission. *Id.* at 3 nn.10-11.

⁹ *Id.* at 9-11.

its OATT to clarify the manner in which NYISO will allocate project preparation costs that certain transmission developers are eligible to recover in NYISO's Public Policy Process. In particular, NYISO proposes to revise sections 31.4.3.2 and 31.5.5.3 of its OATT to provide that, unless otherwise determined by the Commission, costs developers incur in preparing a proposed public policy transmission solution, which is requested by the New York Public Service Commission or the Long Island Power Authority but not selected by NYISO, will be allocated among all LSEs in the New York Control Area using NYISO's default state-wide load ratio share cost allocation method contained in the existing section 31.5.5.4.3 of NYISO's OATT.¹⁰ Finally, NYISO proposes revisions to specify the location in Attachment Y for any alternative cost allocation method for the Public Policy Process that the Commission approves or accepts.¹¹ NYISO requests an effective date of October 18, 2017 for the proposed tariff revisions.

III. Notice of Filing and Responsive Pleadings

4. Notice of NYISO's filing was published in the *Federal Register*, 82 Fed. Reg. 40,148 (2017), with interventions and protests due on or before September 8, 2017. The New York State Public Service Commission filed a notice of intervention and the ITC New York Development LLC filed a timely motion to intervene. New York Transco LLC (New York Transco) and New York Transmission Owners¹² filed timely motions to intervene and comments.

5. New York Transco supports NYISO's filing, stating that that the proposed revisions align the cost recovery requirements in Rate Schedule 10 with those already approved as part of NYISO's transmission planning process in Attachment Y.¹³ New York Transmission Owners generally support NYISO's filing, but object to NYISO's inclusion of tariff language, in section 31.2.8.2 of the OATT, stating that costs associated with halting reliability transmission projects will be recovered "to the extent permitted by the Commission in accordance with its regulations on abandoned plant recovery."¹⁴ New York Transmission Owners explain that NYISO added this language to its proposed tariff revisions to conform the tariff language on the reliability planning process to the tariff language that the Commission required regarding NYISO's Public Policy Process under Order No. 1000.¹⁵ New York Transmission Owners assert that these proposed tariff

¹⁰ *Id.* at 11-13.

¹¹ *Id.*

¹² *See supra* note 3.

¹³ New York Transco Comments at 3.

¹⁴ New York Transmission Owners Comments at 3.

revisions may have the inadvertent effect of modifying the costs a transmission owner or developer is eligible to recover under the reliability planning process, and such modifications were not intended by NYISO nor discussed in the stakeholder process.¹⁶ New York Transmission Owners also state that, after discussing this issue with NYISO, NYISO has authorized New York Transmission Owners to state that NYISO does not object to the Commission directing NYISO to submit a compliance filing removing this tariff language.¹⁷

IV. Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

7. As discussed below, we find the proposed RTFC and other tariff revisions in Rate Schedule 10 and Attachment Y of NYISO's OATT to be just and reasonable and accept the proposed tariff revisions effective October 18, 2017, as requested. The proposed RTFC is consistent with the existing RFC that the Commission previously accepted in Rate Schedule 10,¹⁸ and it includes enhancements comparable to those that the Commission previously accepted in Rate Schedules 15 and 17 of NYISO's OATT.¹⁹ By replacing the RFC with the new RTFC, the proposed revisions consolidate into Rate

¹⁵ *Id.* at 3. *N.Y. Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,037, at P 22 (2016) (accepting NYISO's proposed revisions to sections 31.4.12.1 and 31.5.6.5 of the OATT, which address cost recovery requirements for transmission projects selected in the Public Policy Process, and requiring NYISO to add language to these sections to clarify that any cost recovery will be consistent with Commission regulations on abandoned plant recovery).

¹⁶ New York Transmission Owners Comments at 3-4.

¹⁷ *Id.* at 4.

¹⁸ *N.Y. Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068 (2008) (accepting the RFC in Rate Schedule 10).

¹⁹ *N.Y. Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,268, at P 28 (2016) (accepting New York Power Authority's proposed Rate Schedule 15); *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER17-1629-001, at 1 (July 20, 2017) (unpublished order) (accepting National Grid's proposed Rate Schedule 17).

Schedule 10 the cost recovery requirements for all transmission projects developed under the planning processes in Attachment Y, thus allowing NYISO to recover from LSEs, and pay to transmission developers, the Commission–approved or –accepted costs associated with any regulated transmission projects that are eligible for cost allocation and recovery under NYISO’s CSPP.

8. We also accept NYISO’s proposed revisions in sections 31.4.3.2 and 31.5.5.3 of its OATT to clarify the manner in which NYISO will allocate project preparation costs that certain transmission developers are eligible to recover in NYISO’s Public Policy Process. We find that using a default state-wide load ratio share cost allocation method to allocate project preparation costs is consistent with NYISO’s default state-wide load ratio share cost allocation method for public policy transmission projects in section 31.5.5.4.3 of NYISO’s OATT that the Commission previously found to be just and reasonable for allocating the costs of the projects themselves.²⁰

9. While the New York Transmission Owners assert that the proposed tariff revisions in section 31.2.8.2 of NYISO’s OATT may inadvertently modify the abandoned plant costs that a transmission owner or developer is eligible to recover under the reliability planning process, they do not support their position. The proposed tariff revisions in section 31.2.8.2 provide that the costs associated with halting reliability transmission projects will be recovered “to the extent permitted by the Commission in accordance with its regulations on abandoned plant recovery[.]” New York Transmission Owners object to the addition of this proposed tariff language, but they fail to support that position by pointing to any previously-accepted tariff language or previous ruling by the Commission that would grant them an exception from compliance with the Commission’s regulations on abandoned plant cost recovery. The Commission’s regulations require New York Transmission Owners to explain the basis in law or fact for their position.²¹ Without such specificity, it is unclear how the proposed language may impact a transmission owner’s or a developer’s abandoned plant cost recovery under the reliability planning process. Given the lack of specificity in the New York Transmission Owners’ comments, there is no basis for the Commission to act at this time.²² Furthermore, in Order No. 1000, the ~~Commission clarified that it will~~, consistent with Order No. 679,²³ grant abandoned plant

²⁰ *N.Y. Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,044, at P 331 (2014).

²¹ 18 C.F.R. § 385.214(b)(1) (2017) (requiring intervenors to state, to the extent known, their position and the basis in fact and law for that position). *See, e.g., Ocean State Power II*, 71 FERC ¶ 61,179, at 61,657 (emphasizing the importance of intervenors raising all of their arguments, with specificity, by the due date for comments, protests and interventions), *order on reh’g*, 72 FERC ¶ 61,041 (1995).

²² *See, e.g., Tennessee Gas Pipeline Company*, 71 FERC ¶ 61,265, at 62,057 (1995) (finding that, given the lack of specificity in the protest, there is no basis for Commission action at this time).

recovery on a case-by-case basis and that Order No. 1000 did not provide a blanket grant of abandoned plant recovery;²⁴ thus, being eligible to recover costs under NYISO's reliability planning process does not exempt a transmission owner or developer from compliance with the Commission's regulations on the recovery of costs for abandoned facilities.

The Commission orders:

NYISO's proposed tariff revisions are hereby accepted for filing, effective October 18, 2017, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²³ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

²⁴ Order No. 1000-A, 139 FERC ¶ 61,132 at P 489.