

164 FERC ¶ 61,053
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

New York Independent System
Operator, Inc.

Docket No. ER18-1889-000

ORDER GRANTING TARIFF WAIVER

(Issued July 25, 2018)

1. On June 29, 2018, the New York Independent System Operator, Inc. (NYISO) requested a temporary, limited waiver of sections 2.2.2, 19.2.3, and 19.8.3 through 19.8.5 of its Open Access Transmission Tariff (OATT or Tariff). These Tariff sections make available for sale, in NYISO-administered Transmission Congestion Contract (TCC) Auctions, all transmission capacity that is not needed to serve existing and valid TCCs. NYISO's TCCs include Historic Fixed Price TCCs, which are TCCs that derive from grandfathered transmission agreements, i.e., transmission agreements pre-dating NYISO's commencement of operations. NYISO seeks authority to reserve 256 MW, from two forthcoming TCC auctions to satisfy certain about-to-expire Historic Fixed Price TCCs. For the reasons discussed below, we will grant the waiver request.

I. Background

2. In Order No. 681, the Commission required each transmission organization that is a public utility with one or more organized electricity markets to make available long-term, firm, transmission rights with provisions that satisfied certain guidelines.¹ The Commission also required that these rights be made available with terms (and/or rights to renewal) that are sufficient to meet the reasonable needs of load-serving

entities (LSE) to support the long-term power supply arrangements used to satisfy their service obligations. NYISO complied, amending its Tariff to provide for LSEs with

¹ See *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226 at 30,574-75, *reh'g denied*, Order No. 681-A, 117 FERC ¶ 61,201 (2006), *order on reh'g and clarification*, Order No. 681-B, 126 FERC ¶ 61,254 (2009).

grandfathered transmission agreements to obtain Historic Fixed Price TCCs for a period of up to ten or, in some cases, twelve years.² The first group of these Historic Fixed Price TCCs became effective on November 1, 2008, and is scheduled to expire permanently on October 31, 2018. The Tariff amendments did not provide for eligible LSEs to extend their Historic Fixed Price TCCs after term expiration. Nevertheless, NYISO committed, contemporaneously, to explore with its stakeholders the development of an extension option.³

3. NYISO and its stakeholders have developed a proposal (Proposal) to provide affected LSEs with the opportunity to purchase extensions of their Historic Fixed Price TCCs after expiration of the initial full term. The Proposal was presented to and approved at the June 20, 2018 meeting of NYISO's Business Issues Committee and the June 26, 2018 meeting of NYISO's Management Committee.⁴ The Proposal would provide LSEs that previously purchased Historic Fixed Price TCCs the opportunity to extend their Historic Fixed Price TCCs for one year at a time, with the first available extensions beginning on November 1, 2018. The extensions would apply to fourteen LSEs and to their purchase of up to 256 MW of transmission capacity. NYISO anticipates presenting the Proposal to its Board of Directors (NYISO Board) in July 2018. If approved, NYISO states that it will file implementing tariff revisions with the Commission, under section 205 of the Federal Power Act,⁵ later in July.

4. OATT section 2.2.2 sets forth the requirement that transmission capacity associated with expired grandfathered rights and/or grandfathered TCCs, other than that need to support Historic Fixed Price TCCs, shall be made available for the next

² See *N.Y. Indep. Sys. Operator, Inc.*, 123 FERC ¶ 61,044 (NYISO Order), *order on compliance*, 125 FERC ¶ 61,206 (2008) (NYISO Compliance Order), *order on compliance and reh'g*, 127 FERC ¶ 61,042 (2009).

³ Waiver Request at 4 & n.9 (citing *N.Y. Indep. System Operator, Inc.*, Docket No. ER07-521-000, Post-Technical Conference Reply Comments of the New York Independent System Operator, Inc. at 5-6 (November 9, 2007); NYISO Order, 123 FERC ¶ 61,044 at P 63).

⁴ *Id.* & n.10.

⁵ 16 U.S.C. § 824d (2012).

Centralized TCC Auction⁶ facilitated by NYISO. OATT section 19.2.3 governs the transfer of load from an LSE holding Fixed Price TCCs to an acquiring LSE and the reassignment of the associated Fixed Price TCCs. OATT sections 19.8.3 and 19.8.5 govern transmission capacity sold in Centralized TCC Auctions. OATT section 19.8.5 governs transmission capacity sold in Reconfiguration Auctions.⁷

II. Waiver Request

5. In its waiver request NYISO seeks authority to reserve 256 MW of transmission capacity from certain upcoming TCC auctions. NYISO points out that, absent the requested tariff waivers, it would not be able to offer extensions to LSEs for their Historic Fixed Price TCCs after November 1, 2018. It anticipates that the requested waiver would apply only to two auctions, the Centralized TCC Auction conducted in advance of the 2018-2019 Winter Capability Period⁸ (Autumn Centralized Auction), which is expected to begin in early- to mid-August 2018, and the November 2018 Reconfiguration Auction (November Reconfiguration Auction), which is expected to occur in early- to mid-October 2018.⁹

6. NYISO states that should the NYISO Board not approve the Proposal, or the Commission not accept the implementing tariff revisions, or should eligible LSEs elect to purchase less than the full quantity of Historic Fixed Price TCCs available for extension in 2018, then NYISO will make any transmission capacity not utilized for Historic Fixed Price TCC extensions available to support the sale of TCCs in the first available TCC auction following these events.¹⁰

⁶ The NYISO Tariff defines Centralized TCC Auction as, “The auction in which TCCs are released for sale for one or more Capability Periods through a bidding process administered by the ISO.” NYISO OATT at section 1.3.

⁷ The NYISO Tariff defines Reconfiguration Auction as, “The monthly auction administered by the ISO which will either be: (i) a Balance-of-Period Auction; or (ii) an auction in which Transmission Customers may purchase and sell one-month TCCs; provided, however, that the ISO shall only conduct one Reconfiguration Auction type in a month.” NYISO OATT at section 1.18.

⁸ The NYISO Tariff defines a Capability Period as a six-month period, with the Winter Capability Period running from November 1 of each year through April 30 of the following year. *See* NYISO OATT at section 1.3.

⁹ *Id.* at 1 & n.4.

¹⁰ *Id.* at 3, 7-8.

7. NYISO discusses what outcomes may occur should the Commission not grant the requested tariff waivers. If the Commission fails to grant the requested waivers, NYISO states that it would make all transmission capacity not used to serve existing and valid TCCs and grandfathered transmission agreements, including the transmission capacity associated with the Historic Fixed Price TCCs, available to support the sale of TCCs in the upcoming Autumn Centralized Auction. If utilized to support TCCs sold during this auction, the subsequent purchase of Historic Fixed Price TCC extensions, to become effective on November 1, 2018, could result in NYISO effectively having oversold the amount of available transmission capacity in the New York Control Area (NYCA). Such over-sale could violate the tariff requirement that the set of existing and valid TCCs awarded by NYISO for any given time period be capable of being accommodated without violating the effective limits applied to facilities and constraints modeled in the Day-Ahead Market. NYISO states that the over-sale could result also in adverse consequences, such as persistent congestion rent shortfalls.¹¹ Additionally, without timely tariff waivers from the Commission, NYISO states that it may be required to delay the start of the Autumn Centralized TCC Auction and reconsider the viability of offering term extensions, with a November 1, 2018 effective date, to the expiring Historic Fixed Price TCCs.¹²

8. NYISO contends that its tariff waiver request satisfies the Commission's four criteria for granting waiver of tariff requirements: (1) NYISO has acted in good faith; (2) granting the waiver would remedy a concrete problem; (3) the waiver is of limited scope; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹³

9. NYISO states that its good faith actions regarding Historic Fixed Price TCC term extensions are shown by NYISO responding to its prior commitment to seek term extensions, and to the requests from LSEs that purchased the Historic Fixed Price TCCs that expire over the next two years to extend their terms. Also, NYISO has informed stakeholders of the impending October 31, 2018 expiration date for the Historic Fixed Price TCCs and that a tariff waiver would be necessary to accommodate term extensions.¹⁴

10. NYISO states that the requested waiver addresses the concrete problem that the Historic Fixed Price TCCs will expire before revision of the NYISO OATT. NYISO states that despite expeditiously pursuing the extension Proposal with stakeholders, it is impossible to complete the required process of review and approvals, including

¹¹ *Id.* at 6.

¹² *Id.* at 8.

¹³ *Id.* at 3, 5-7 & n.12, (citing *N.Y. Indep. Transmission Sys. Operator, Inc.*, 160 FERC ¶ 61,124 (2017)).

¹⁴ *Id.* at 5-6.

Commission review, prior to the Autumn Centralized TCC Auction that begins in early- to mid-August 2018.¹⁵ Without a tariff waiver, NYISO would have to make all transmission capacity not used to serve existing and valid TCCs and grandfathered agreements, including the transmission capacity associated with the Historic Fixed Price TCCs that expire on October 31, 2018, available to support the sale of TCCs sold during the Autumn Centralized Auction. Further, as earlier described, NYISO risks overselling the amount of available transmission capacity in NYCA, which would be a tariff violation and could result in persistent Congestion Rent Shortfalls.¹⁶

11. The limited scope of the requested waiver, NYISO states, is shown by its being narrowly tailored in scope and duration. It would apply only to the 256 MW of transmission capacity supporting the sale of Historic Fixed Price TCC extensions in 2018, during the Autumn Centralized TCC Auction and, if necessary, the November Reconfiguration Auction. Further, as earlier described, the 256 MW of transmission capacity is only approximately one percent of average, total transmission capacity supporting new TCCs sold during the prior four Centralized TCC Auctions, and is limited to six discrete transmission paths.¹⁷

12. NYISO states that the tariff waiver will not result in undesirable consequences for other Market Participants because of the minimal nature of the transmission capacity at issue and because the waiver will affect only the Autumn Centralized TCC Auction and possibly the November Reconfiguration Auction. Without the requested tariff waiver, NYISO will be unable to accommodate term extensions for the fourteen LSEs that would otherwise qualify to purchase extensions for their Historic Fixed Price TCCs under the Proposal.¹⁸

13. NYISO asks the Commission to issue an order on the waiver request by July 25, 2018, so that NYISO may proceed with the activities required for timely commencement of the Autumn Centralized TCC Auction and also so that Market Participants will understand, in advance of this auction, how the 256 MW of transmission capacity at issue will be treated.¹⁹

¹⁵ *Id.* at 6 & n. 13.

¹⁶ *Id.* at 6. *See also supra* P 7.

¹⁷ *Id.* at 7 & n.7. *See also supra* P 5.

¹⁸ *Id.* at 7.

¹⁹ *Id.* at 8.

III. Notice and Responsive Pleadings

14. Notice of NYISO's Waiver Request was published in the *Federal Register*, 83 Fed. Reg. 32,103 (2018), with interventions or protests due on or before July 9, 2018. The New York Association of Public Power (Public Power) and the New York Municipal Power Agency (Municipal Power) filed motions to intervene. Public Power and Municipal Power also filed comments supporting the Waiver Request. NRG Power Marketing LLC and GenOn Energy Management (NRG Power) jointly filed a motion requesting late intervention.

15. Municipal Power explains that it is a joint action agency of 36 member New York municipalities and supplies power to its members for their municipal electric systems. Each municipal system is a preference power²⁰ customer of the New York Power Authority's (NYPA) Niagara Project.

16. Municipal Power refers to the NYISO Compliance Order as showing the Commission's approval of NYISO's commitment to municipal systems, that they could obtain Historic Fixed Price Transmission Congestion Contracts that correspond to their long-term supply contracts with NYPA for preference power, and of NYISO's understanding that these Fixed Price Transmission Congestion Contracts were always meant to provide transmission rights for the duration of the underlying long-term supply contracts.²¹

17. Municipal Power states that the municipal systems' current supply contracts do not expire until 2025, and that because the preference power rights exist in perpetuity the supply contracts have been renewed and extended several times. Therefore, it asks the Commission to grant the Waiver Request in order to be able to fulfill the statutory requirement of approving the provision of long-term transmission rights to support long-term supply arrangements.²²

18. Public Power emphasizes that NYISO's waiver request meets all elements of the Commission's criteria for granting waiver of tariff requirements. It states, additionally, that if the 256 MW of transmission capacity is sold in the Autumn Centralized Auction

²⁰ Preference power refers to the requirement, in the 1957 Niagara Redevelopment Act, 16 U.S.C. §§ 836, 836a (2012), that, upon construction and operation of a hydroelectric project on the Niagara River, half of the United States' share of the power produced must be sold to municipal electric utilities. The Niagara River Project, FERC Project No. 2216, was originally licensed in 1957 and relicensed in 2007. *N.Y. Power Auth.*, 118 FERC ¶ 61,206, *reh'g denied and clarification*, 120 FERC ¶ 61,266 (2007).

²¹ Municipal Power Comments at 4-5 (citing NYISO Compliance Order, 125 FERC ¶ 61,205 at PP 15, 22).

²² *Id.* at 6 & n.17.

and thus not available for the Historic Fixed Price TCCs, then NYISO may be unable to satisfy the requirement under section 217(b)(4) of the FPA that NYISO provide long-term transmission service to LSEs.²³

IV. Discussion

A. Procedural Matters

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

20. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2017), the Commission will grant NRG Power's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Commission Determination

21. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.²⁴ We find, as discussed below, that NYISO's request for tariff waiver satisfies the foregoing criteria.

22. First, we find that NYISO is acting in good faith by working with its stakeholders to fulfill the commitment it made to holders of Historic Fixed Price TCCs to develop an extension option. Second, we find that NYISO's request for tariff waiver is of limited scope because it applies only to two TCC auctions, both occurring this year, the Autumn Centralized TCC Auction and the November Reconfiguration Auction. Also, it applies only to 256 MW, about one percent of average total transmission capacity supporting new TCCs sold during the prior four Centralized TCC Auctions.

23. Third, we find that granting the waiver will remedy a concrete problem. NYISO will be able to meet the expectation of the LSEs currently holding the Historic Fixed Price TCCs, that extensions will be available starting November 1, 2018, without NYISO

²³ Public Power Comments at 4. Section 217(b)(4) of the FPA, 16 U.S.C. 824q(b)(4) (2012), requires the Commission to exercise its authority in a manner that enables LSEs to secure firm transmission rights on a long-term basis for long-term power supply arrangements.

²⁴ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Servs., L.P.*, 154 FERC ¶ 61,082, at P 12 (2016); *New York Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

violating its OATT or suffering other deleterious consequences. We rely also on Municipal Power's discussion of the need to continue the long-term transmission rights that support the long-term supply contracts between its member municipalities and NYPA that implement the Niagara Redevelopment Act. Finally, we find that granting the waiver will not have undesirable consequences, such as harming third parties, because of the very small amount of transmission capacity at issue.²⁵

24. Accordingly, we grant NYISO's request for a temporary waiver of sections 2.2.2, 19.2.3, and 19.8.3 through 19.8.5 of its OATT, to apply to the 2018 Autumn Centralized TCC Auction and the November 2018 Reconfiguration Auction.

The Commission orders:

NYISO's waiver request is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁵ No one has filed in opposition to the waiver request, as well.