

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New York Independent System Operator, Inc.) Docket No. ER10-811-000

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully requests leave to answer, and answers, the protest of the “New York Association of Public Power” (“NYAPP”) in this proceeding. NYAPP wrongly claims that the NYISO’s proposal to remove the Network Integration Transmission Service (“NITS”) provisions from its Open Access Transmission Tariff (“OATT”) would contravene Commission precedent. It mistakenly insists that the NYISO must make some unspecified additional evidentiary showing, beyond the fact that the NITS provisions have gone wholly unused over the decade long history of the NYISO, in order to justify their removal. In addition, NYAPP takes the untenable position that the continued existence of unused, and essentially vestigial, tariff provisions does not impose compliance obligations on the NYISO that it might reasonably wish to address. Finally, NYAPP seeks to inject questions concerning Long-Term Transmission Rights (“LTTRs”) that have nothing to do with this proceeding, and that will instead be addressed by the NYISO in an upcoming filing. Consequently, NYAPP’s arguments have no merit and its protest should be rejected in its entirety.

¹ 18 C.F.R. §§ 385.212 and 385.213 (2009).

I. Request for Leave to Answer

The Commission has often exercised its discretion to accept answers to protests when it finds that an answer would help to clarify complex questions or would otherwise help the Commission to resolve contested issues.² In this case, the NYISO's answer should be accepted because it will refute NYAPP's misleading claims that the NYISO's proposed tariff revisions are somehow inconsistent with precedent or might hinder the NYISO's ability to comply with the Commission's LTTR requirements. This answer also corrects the other assorted misstatements and mischaracterizations found in NYAPP's protest.

II. Answer

A. The NYISO's Proposal to Eliminate the NITS Provisions Is Consistent with Commission Precedent

NYAPP argues that the Commission's eleven year old order conditionally approving the original versions of the NYISO's OATT and market rules ("January 1999 Order")³ would be violated if the NITS provisions were removed. For the reasons set forth below, this argument is without merit.

At the time of the January 1999 Order the Commission was concerned that the then-novel proposal to use financial transmission reservations, along with Transmission Congestion Contracts ("TCCs") with a maximum duration of six months, might not result in transmission service "consistent with or superior to" that provided under the *pro forma*

² See e.g., *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 at P 7 (2004) (accepting the NYISO's answer to protests because it provided information that aided the Commission in better understanding the matters at issue in the proceeding); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was "helpful in the development of the record..."). To the extent that this answer is deemed to be untimely under Rule 213(d) the NYISO also respectfully requests leave to submit it out-of-time.

³ *Cent. Hudson Gas & Elec. Corp., et al.*, 86 FERC ¶ 61,062 (1999).

OATT. The Commission therefore directed the NYISO to restore both of the *pro forma* transmission services to its OATT.

In a July 1999 Order,⁴ the Commission accepted a revised compliance filing that included separate Point-to-Point Transmission Service (“PTP”) and NITS. That compliance filing clearly explained that the NYISO version’s of PTP and NITS differed from their *pro forma* equivalents in that each had been significantly modified to reflect the NYISO’s use of a financial reservation transmission model. The resulting NYISO variations on the *pro forma* services were very similar to each other. Of particular importance here, each provided for transmission customers to obtain firm service in exactly the same way. Specifically:

In the LBMP congestion pricing model on which the revised ISO OATT is based, transmission customers receive firm service - network or point-to-point - by agreeing to pay congestion costs. Customers scheduling firm service under the OATT can obtain price certainty for their congestion costs through the purchase of TCCs (*i.e.*, rights to collect congestion rents) at a market price. The sale of long-term TCCs will allow Eligible Customers to obtain long-term firm transmission service at a fixed price, thus addressing a central directive of the January 27 Order.⁵

Similarly, a supporting affidavit explained that:

[F]irm service is provided if the customer is willing to pay for transmission congestion costs, in which case the service is not interrupted for economic reasons. This is true for both network and PTP service. . . . [A] fixed price can be secured by acquiring a TCC corresponding to the service desired by the customer in terms of MWs, point of injection, and zone of withdrawal. That is, customers interested in obtaining fixed-price firm service may purchase a TCC, which in effect converts a variable congestion charge to a fixed payment for congestion for the term and quantity of the TCC. . . .⁶

⁴ *Cent. Hudson Gas & Elec. Corp., et al.*, 88 FERC ¶ 61,138 (1999).

⁵ *Cent. Hudson Gas & Elec. Corp., et al.*, Docket Nos. ER97-1523-000, OA97-470-000, and ER97-4234-000, Compliance Filing at Filing Summary at 9 (filed April 30, 1999).

⁶ *Cent. Hudson Gas & Elec. Corp., et al.*, Docket Nos. ER97-1523-000, OA97-470-000, and ER97-4234-000, Compliance Filing at Appendix A - Affidavit of J. Stephen Henderson at 7 (filed April 30, 1999).

The NYISO has offered TCCs with a duration of one year, commensurate with the then effective *pro forma* OATT definition of “Long Term Firm Point to Point Transmission Service,”⁷ since its markets commenced in late 1999. Contrary to what NYAPP implies,⁸ the NYISO also complied with the Commission’s directive to offer TCCs with longer durations, although those products were eventually discontinued, largely due to then-limited customer interest.⁹ In more recent times, customers have once again expressed interest in longer term TCCs and the NYISO is preparing to offer them for auction once again.¹⁰ Moreover, in compliance with Order No. 681, the NYISO created a new product “Fixed Price TCCs” that are not purchased through auctions and that provide for long-term firm transmission service with a duration of at least five years.

In short, TCCs, including Fixed Price TCCs, are the instrument through which the cost of financial transmission reservations is fixed, and transmission service is “firmed up” in New York. This is true regardless of whether a customer chooses PTP service, as all NYISO customers have done to date, or NITS. Removing the unused NITS provisions would not reduce NYISO customers’ ability to obtain long-term firm

⁷ 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, FERC Stats. & Regs. ¶ 31,036 at 31, 931 (1996), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *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), *aff’d in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002) (“1.18 Long-Term Firm Point-to-Point Transmission Service: Firm Point-To-Point Transmission Service under the OATT with a term of one year or more.”).

⁸ NYAPP at 4.

⁹ Specifically, in the NYISO’s Spring 2000 Centralized TCC Auction, TCCs with a duration of two years were offered with an effective date of May 1, 2000. In the Autumn 2000 TCC Auction, five year and two year TCCs were offered with an Effective Date of November 1, 2000.

¹⁰ The NYISO’s tariffs already authorize it to offer TCCs with a duration of up to five years for sale in auctions. Recently, the Commission accepted updated credit requirements for bidding on and holding TCCs with a duration of two years that will allow the NYISO to once again offer such instruments for sale. See *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER10-721-000 (March 23, 2010).

transmission service because the exact same “firming” mechanism will continue to be available to PTP customers. The NYISO’s proposal to remove the NITS provisions is therefore consistent with the Commission’s 1999 rulings and will not deprive NYISO transmission customers of any transmission features that they currently enjoy.

B. The NYISO’s Proposal to Eliminate the NITS Provisions Is Fully Justified Under Section 205 of the Federal Power Act (“FPA”)

NYAPP contends that the NYISO may not eliminate the NITS provisions from its OATT unless it first makes some kind of undefined additional evidentiary showing. Commission precedent, however, is not as restrictive as NYAPP claims. Indeed, the very case that NYAPP cites to support the proposition that the NYISO must provide additional “supporting arguments or documentation” involved a transmission provider that was permitted to eliminate the *pro forma* NITS provisions based on a brief explanation that they were “not applicable” to it.¹¹

NYAPP’s invented evidentiary requirement is also contradicted by more recent precedent permitting the NYISO to eliminate vestigial OATT provisions governing the re-assignment of firm PTP reservations without relying on extensive documentary evidence.¹² Those reassignment provisions were as much a core part of the *pro forma* OATT as the NITS provisions and they serve important policy objectives within the context of the *pro forma* OATT. Nevertheless, the Commission allowed the NYISO to eliminate those provisions based on its explanation that they were *pro forma* vestiges and

¹¹ See *Montana Alberta Tie, Ltd.*, 116 FERC ¶ 61,071 at P 57 (2006); *Montana Alberta Tie, Ltd.*, Docket Nos. ER05-764-000 and 002, Amendment to Filing at 6-7 (March 31, 2006).

¹² *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER09-984 (issued June 5, 2009).

were irrelevant under the NYISO model. The same is true with respect to the NITS provisions.

More fundamentally, NYAPP does not dispute the NYISO's point that NITS provisions in the NYISO OATT have never been used. It has not explained what advantage NITS provides over PTP service in the NYISO context that its members might be deprived of if NITS were removed.¹³ Nor does it deny that the current version of the NYISO OATT has been found to be just, reasonable, and consistent with or superior to the *pro forma* OATT even though the NYISO has been clear in multiple filings both that its NITS provisions were unused and redundant and that it would ultimately propose their removal.¹⁴ NYAPP's observation that the Commission's earlier orders did not expressly rule that the NYISO OATT would meet these requirements after the NITS provisions were removed is irrelevant. Such an observation is also not unsurprising considering that the question was not specifically presented to the Commission until this proceeding.

Now that the issue is properly before the Commission, there can be no reasoned basis for concluding that the NYISO OATT is consistent with or superior to the *pro forma* OATT only so long as it retains NITS provisions that experience has proven are superfluous. Such a ruling would elevate empty formalism above reasoned decision-making. It would also be at odds with the many Commission orders issued since 1999, including the ISO/RTO compliance proceedings under Order No. 890, that recognized

¹³ NYAPP's only attempt at a refutation comes in the form of meritless assertions that the elimination of the NITS provisions might somehow undercut the NYISO's compliance with Section 217(b)(4) of the Federal Power Act or the Commission's regulations thereunder. These claims are dispensed with in Section II.B below.

¹⁴ See *New York Independent System Operator, Inc.*, Docket No. OA08-13-000, Compliance Filing at 11 (filed October 11, 2007); *New York Independent System Operator, Inc.*, Docket No. OA08-107-000, Compliance Filing at 3 (filed April 15, 2008); and *New York Independent System Operator, Inc.*, Docket No. ER10-424, Request for Additional Waivers at 3 fn. 8 (filed December 15, 2009).

the numerous differences between the various ISO/RTO tariffs and the *pro forma* OATT. Over time, the Commission has grown more comfortable with ISO/RTO tariffs that depart markedly from the *pro forma* template. This includes the California Independent System Operator's tariff which entirely does away the PTP and NITS nomenclature. The NYISO's proposal to remove NITS is, in large part, an attempt to update and rationalize its tariff by eliminating vestigial language and is thus no different from other filings that the NYISO, and other ISOs/RTOs, have made.

Finally, NYAPP complains that it is unclear precisely which North American Electric Standard Board ("NAESB") initiatives served as the immediate impetus for the NYISO's proposal to remove the NITS provisions. Information about them is available on NAESB's web site at http://www.naesb.org/weq/weq_oasis.asp. NAESB's efforts are in compliance with a mandate for the industry to develop new online functionality to enhance the implementation of NITS that the Commission established in Order No. 890.¹⁵ Furthermore, for so long as the NITS provisions remain in the OATT the NYISO will have to monitor and maintain exemptions that it has previously obtained from other NAESB requirements, and the Commission's own OASIS posting regulations, in connection with NITS. The NYISO would also have to continue to track NITS-related policy developments at NAESB, the North American Electric Reliability Corporation, and the Commission in order to maintain its compliance with them. It is not tenable for NYAPP to insist that that the NYISO must provide additional evidence to support the

¹⁵ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at PP 1541-1542, *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 (2009).

proposition that these compliance obligations are significant or that the NYISO might not reasonably propose to resolve them once and for all by removing the NITS provisions.

C. Removing the NITS Provisions from the NYISO OATT Will Not Affect the NYISO's Compliance with the Commission's LTTR Requirements

NYAPP makes an inaccurate, unsupported, and unexplained, claim that the elimination of the NITS provisions somehow “could hinder the NYISO’s obligation to expand long-term transmission rights to load-serving entities using non-historical points of injection and withdrawal.”¹⁶ It goes so far as to call on the Commission to reject the NYISO’s proposed tariff revisions “until such time as the NYISO provides long-term firm transmission service for new (‘non-historic’) resources and loads, in accordance with Section 217(b)(4) of the Federal Power Act.”

In reality there is no connection between the proposed removal of the NITS provisions, LTTRs or FPA Section 217(b)(4). As NYAPP acknowledges,¹⁷ the NYISO will soon make a separate filing to address one last LTTR compliance issue. Like all of the NYISO’s previously accepted LTTR submissions, the compliance filing will not tie eligibility to obtain LTTRs, or anything else, to a customer electing to take NITS.¹⁸ A Commission decision to accept or reject the elimination of NITS will therefore have no impact on LTTRs in New York, now or in the future. Similarly, the NYISO’s compliance with FPA Section 217(b)(4) has been achieved to date through its compliance

¹⁶ NYAPP at 2.

¹⁷ NYAPP at 5.

¹⁸ Unlike, for example, the original version of the PJM Interconnection, LLC’s OATT, the NYISO tariffs have never provided NITS customers with a priority right to receive financial congestion hedging rights.

with Orders Nos. 681 and 890, *et al.*,¹⁹ not through the retention of unused NITS provisions.

NYAPP has not explained the supposed connection between NITS and LTTRs in New York and cannot do so because there is none. In order to eliminate any possible confusion the NYISO reiterates that a Commission order approving the removal of NITS will have no impact on its upcoming LTTR compliance filing which is not dependent on the NITS provisions in any way.

Finally, NYAPP has mischaracterized the status of the NYISO's compliance with respect to the Commission's LTTR requirements. Contrary to NYAPP's depiction of the NYISO's May 2007 filing in response to Order No. 681 as a "purported" compliance filing,²⁰ the truth is that the filing was accepted by the Commission in 2008, subject to the NYISO making certain "modifications."²¹ Most of those modifications have long since been fully implemented while the one that remains outstanding will be addressed in an upcoming NYISO filing. There is thus nothing "purported" about the NYISO's compliance with the LTTR requirements.

¹⁹ *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226, *order on reh'g*, Order No. 681-A, 117 FERC ¶ 61,201 (2006); *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 (2009).

²⁰ NYAPP at 2.

²¹ See *New York Independent System Operator, Inc., Order Accepting Long-Term Transmission Rights Proposal Subject to Modification*, 123 FERC ¶ 61,044 (2008). NYAPP was an active participant in the compliance proceeding and did not seek rehearing of the Commission's order accepting the NYISO's compliance filing.

III. Conclusion

For the reasons set forth above, the Commission should reject NYAPP's protest and accept the NYISO's proposal to eliminate the unused NITS provisions of its OATT with no modifications.

Respectfully submitted,

/s/ Ted J. Murphy _____
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April 13, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Washington, D.C., this 13th day of April, 2010.

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