

132 FERC ¶ 61,028  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellenghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

New York Independent System Operator, Inc.  
New York Transmission Owners

Docket No. OA08-52-007

ORDER ON COMPLIANCE FILING

(Issued July 15, 2010)

1. On December 11, 2009, the New York Independent System Operator, Inc. (NYISO) filed revisions to Attachment Y of its Open Access Transmission Tariff (OATT) to comply with the Commission's October 15, 2009 Compliance Order.<sup>1</sup> In this order, the Commission accepts the revised tariff sheets for filing, effective December 14, 2009, subject to conditions.

**I. Summary of the October 15, 2009 Compliance Order's Directives**

2. In the October 15, 2009 Compliance Order, the Commission accepted NYISO's January 14, 2009 and May 19, 2009 filings, subject to a further compliance filing to address certain discrete issues.<sup>2</sup> The October 15, 2009 Compliance Order found that NYISO's planning process substantially met Order No. 890-A's comparability requirements. However, the Commission directed NYISO (1) to revise its Attachment Y to identify how it will evaluate and select from competing reliability needs solutions and resources such that all types of resources are considered on a comparable basis;<sup>3</sup> (2) to

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<sup>1</sup> *New York Independent System Operator, Inc.*, 129 FERC ¶ 61,044 (2009) (October 15, 2009 Compliance Order).

<sup>2</sup> On January 14, 2009, in Docket No. OA08-52-004, as supplemented on May 19, 2009, in Docket No. OA08-52-006, NYISO submitted clarifications and revisions to its transmission planning process, as required by the Commission's October 16, 2008 Order. *See New York Independent System Operator, Inc.*, 125 FERC ¶ 61,068 (2008) (October 16, 2008 Order), *order on reh'g*, 126 FERC ¶ 61,320 (2009), *order on reh'g*, 129 FERC ¶ 61,045 (2009).

<sup>3</sup> October 15, 2009 Compliance Order, 129 FERC ¶ 61,044 at P 35.

file revisions to sections 12.1 and 15.5(a) of Attachment Y to clarify that a summary of all comments of interested parties provided during the Electric System Planning Working Group (ESP Working Group) and Transmission Planning Advisory Subcommittee (Advisory Subcommittee) would be sent to the Business Issues Committee for discussion and action;<sup>4</sup> (3) to identify and incorporate into section 15.4.b of Attachment Y the relevant provisions in its manuals that detail the use of Transmission Congestion Contract (TCC) revenues to offset Locational Based Marginal Pricing (LBMP) load savings<sup>5</sup> in calculating the benefits of an economic project for purposes of cost allocation and recovery;<sup>6</sup> (4) to revise section 15.4.b of Attachment Y to provide details regarding how and what bilateral contract data will be used by NYISO to offset LBMP load savings calculations;<sup>7</sup> (5) to revise section 15.4.b(i) to refer to subsection (v) instead of subsection (iv);<sup>8</sup> (6) to incorporate into its tariff the megawatt impact methodology used in calculating the Installed Capacity (ICAP) metric and to file revised tariff sheets reflecting the new ICAP metric, once it completes the stakeholder process addressing that metric;<sup>9</sup> (7) to provide that beneficiaries voting against approval of a project must provide a detailed explanation of the substantive reasons underlying their decision;<sup>10</sup> and (8) to explicitly state in Attachment Y that NYISO will provide to the Commission a tally of the results of a vote on an economic project, the identified beneficiaries of the project, the results of the cost/benefit analysis, and, if vetoed, whether the developer has provided any formal indication to NYISO as to the future development of the project.

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<sup>4</sup> *Id.* P 22. These revisions clarify that the ESP Working Group and Advisory Subcommittee are not responsible for making decisions during the development of transmission plans but, instead, advise the Operating Committee, Business Issues Committee, and, in turn, the Management Committee.

<sup>5</sup> Under section 15.4.b(i) of Attachment Y, the load savings for a load zone equals the difference between the zonal LBMP load cost without the project and the LBMP load cost with the project, net of reductions in TCC revenues and net of reductions from bilateral contracts.

<sup>6</sup> *Id.* P 54.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* P 55.

<sup>9</sup> *Id.* P 81.

<sup>10</sup> *Id.* P 85.

3. On December 11, 2009, NYISO submitted revisions to its tariff addressing the Commission's directives, with the exception of the details regarding LBMP load savings offsets based on TCC revenues and bilateral contracts (numbers (3) and (4) above).<sup>11</sup>

## **II. Procedural Matters**

4. Notice of NYISO's filing was published in the *Federal Register*, 74 Fed. Reg. 67,867 (2009), with protests, and interventions due on or before January 4, 2010. On January 4, 2010, Independent Power Producers of New York, Inc. (Independent Producers) filed comments with respect to the delineation between state agency jurisdiction and Commission jurisdiction. These comments are discussed in section E below.

## **III. Discussion**

### **A. Comparability of Resources**

5. In the October 15, 2009 Compliance Order, the Commission found that NYISO did not explain how it will analyze and select the preferred reliability solutions<sup>12</sup> from competing alternatives so as to make it clear that transmission, generation, and demand

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<sup>11</sup> On November 25, 2009, the Commission granted NYISO's November 3, 2009 Motion for Extension of Time to comply with the directives of P 54 until April 13, 2010. NYISO made its filing to comply with these directives in Docket No. OA08-52-008 on April 13, 2010, which will be acted upon later by separate order. In its Motion for Extension of Time at 3, n. 5, NYISO informed the Commission that it also expected to file the results of its stakeholder discussions regarding the revised installed capacity metric, as required by the October 15, 2009 Compliance Order at P 81, on April 13, 2010. NYISO included these results in its April 13, 2010 compliance filing in Docket No. OA08-52-008.

<sup>12</sup> Attachment Y concerns NYISO's procedures for evaluating proposed solutions to "Reliability Needs," which is defined in section 2 of Attachment Y (Definitions) as a condition identified by the NYISO in the Reliability Needs Assessment as a violation or potential violation of Reliability Criteria, which are electric power system planning and operating policies, standards, criteria, guidelines, procedures, and rules promulgated by the North American Electric Reliability Council, Northeast Power Coordinating Council, and the New York State Reliability Council.

resources are considered on a comparable basis.<sup>13</sup> In particular, the Commission stated that NYISO did not explain how it will decide among competing backstop,<sup>14</sup> gap,<sup>15</sup> and alternative regulated<sup>16</sup> solutions and among different resources. Accordingly, the Commission directed NYISO to revise its tariff to identify how it will evaluate and select from competing solutions and resources such that all types of resources are considered on a comparable basis.

6. In response to the Commission's directive, NYISO did not file tariff revisions that would comply with the foregoing directives but instead states that, while it reviews all regulated backstop solutions and gap solutions to determine that they will satisfy the identified Reliability Need, the Responsible Transmission Owner,<sup>17</sup> not NYISO, selects

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<sup>13</sup> October 15, 2009 Compliance Order, 129 FERC ¶ 61,044 at P 35, citing *California Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,283, at P 106 (2008); *E. Kentucky Power Coop. Inc.*, 125 FERC ¶ 61,077, at P 33-34 (2008).

<sup>14</sup> "Regulated backstop" solutions are described in section 7.1 of Attachment Y (Regulated Backstop Solutions) as a regulated solution or combination of solutions that shall serve as a backstop to meet a Reliability Need if requested by NYISO due to the lack of sufficient viable market-based solutions.

<sup>15</sup> "Gap" solutions are defined in section 2 of Attachment Y (Definitions) as a solution to a Reliability Need that is designed to be temporary and to strive to be compatible with permanent market-based proposals. Section 2 also provides that a permanent regulated solution, if appropriate, may proceed in parallel with a gap solution. Section 8.9.a further clarifies that, if NYISO determines that neither market-based proposals nor regulated proposals can satisfy the Reliability Needs in a timely manner, NYISO will set forth its determination that a gap solution is necessary and will request the Responsible Transmission Owner to seek a gap solution.

<sup>16</sup> "Alternate regulated" solutions are described in section 7.4.a of Attachment Y, which states that in the event that insufficient market-based solutions are proposed under section 7.3 of Attachment Y, NYISO will initiate a second step of the solicitation process by requesting alternative regulated responses, which may include reasonable alternatives that would effectively address the identified Reliability Need.

<sup>17</sup> "Responsible Transmission Owner" is defined in section 2.0 of Attachment Y as the transmission owner(s) designated by the NYISO, pursuant to the NYISO Planning Process, to prepare a proposal for a regulated solution to a Reliability Need or to proceed with a regulated solution to a Reliability Need. Section 2.0 further provides that the Responsible Transmission Owner will normally be the transmission owner in whose transmission district the NYISO identifies a Reliability Need.

the specific regulated backstop solution to address a Reliability Need. NYISO further states that the regulated backstop solution may be a transmission, generation, or demand reduction project and that, under NYISO's tariff, transmission, generation, and demand response solutions are to be considered on a comparable basis.

7. NYISO states that, when it determines that it is necessary to trigger a regulated backstop solution, the Responsible Transmission Owner will proceed to obtain all governmental approvals necessary to implement the solution. NYISO adds that the proponent of an alternative regulated solution that has not been adopted by the Responsible Transmission Owners may make a filing with the New York Public Service Commission (NY Commission) requesting consideration of its proposed alternative. NYISO states that the NY Commission will evaluate each project according to its ability to satisfy the Reliability Need in a timely manner and by evaluating the project against a list of policy concerns.<sup>18</sup> NYISO states that the project(s) found to "best promote the public interest" are selected, and contemporaneously receive the necessary approvals and permits.<sup>19</sup>

8. To clarify this implementation process, NYISO proposes to revise section 9.4.a of Attachment Y to state that, if NYISO determines in the Comprehensive Reliability Plan that the implementation of a regulated solution is necessary, NYISO will ask the Responsible Transmission Owner to submit its proposal for a regulated backstop solution to the appropriate governmental agency(ies) and/or authority(ies) to begin the necessary approval process. NYISO also proposes to clarify that the appropriate governmental agency(ies) and/or authority(ies) with jurisdiction over implementation or siting will determine whether the regulated backstop solution or an alternative regulated solution will be implemented.<sup>20</sup> NYISO provides a similar revision for section 8.9.d to clarify the implementation of gap solutions.

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<sup>18</sup> NYISO clarifies that, with respect to state jurisdictional regulated backstop solutions to be implemented by the Long Island Power Authority and the New York Power Authority, the determination for implementation will be made by their respective Boards of Directors. *See* NYISO Transmittal Letter at 6.

<sup>19</sup> NYISO Transmittal Letter at 7, *citing Proceeding to Establish a Long-Range Electric Resource Plan and Infrastructure Planning Process*, "Policy Statement on Backstop Project Approval Process" Case No. 07-E-1507 at 12 (NY Commission, February 18, 2009).

<sup>20</sup> The Commission recognized that the NY Commission has siting authority and a statutory charge to maintain reliability in the NYISO region. *New York Independent System Operator, Inc.* 109 FERC ¶61,372, at P18 (2004).

### **Commission Determination**

9. While NYISO's tariff does not provide that it will actually choose among competing solutions (whether they be market-based,<sup>21</sup> regulated, or gap solutions) or resources, it does provide that NYISO will evaluate the competing proposals for their ability to meet the designated Reliability Need in a timely manner. In section 8.1 of Attachment Y, NYISO provides that, when evaluating proposed solutions to Reliability Needs, all resource types shall be considered on a comparable basis. In addition, section 9.0 of Attachment Y, "Comprehensive Reliability Plan," states that NYISO shall set forth its findings and recommendations in the draft Comprehensive Reliability Plan, including any determination that implementation of a regulated solution (which may be a Gap Solution) is necessary to ensure system reliability. The tariff also provides that while the Responsible Transmission Owners choose among regulated backstop solutions to meet a Reliability Need, ultimately the decision as to which regulated proposals will be implemented lies with the governmental authorities with jurisdiction over the implementation or siting.

10. Our acceptance does not relieve NYISO of its responsibility to ensure that its planning process complies with the comparability requirements of Order No. 890-A.<sup>22</sup> NYISO clarifies in the instant filing that under its reliability planning process, its role is to request regulated and market-based solutions for identified Reliability Needs, and to review all such proposed regulated and market-based solutions to determine whether they resolve the identified Reliability Need; however, NYISO does not decide among them. Instead, the Responsible Transmission Owner initially selects the regulated backstop solution and, if there are not sufficient viable market-based solutions to meet the Reliability Need, then the appropriate governmental agencies/authorities with jurisdiction over the implementation or siting determine whether qualified proposed alternative regulated solutions or a backstop solution will be implemented. We find that NYISO's role in both soliciting market-based and regulated solutions and in evaluating competing proposals for their ability to meet the designated Reliability Need in a timely manner

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<sup>21</sup> Section 8.3 expressly provides that NYISO will not select from among market-based solutions if there is more than one solution that will meet the same Reliability Need.

<sup>22</sup> In Order No. 890-A, the Commission clarified that the comparability principle requires each transmission provider to identify, as part of its Attachment K planning process, how it will treat resources on a comparable basis and, therefore, how it will determine comparability for purposes of transmission planning. *See Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, at P 216 (2007).

affords comparable treatment to all types of competing solutions and resources, and is therefore compliant with Order No. 890-A's requirements.

11. However, we note that sections 7.1.a (Regulated Backstop Solutions) and 7.3 (Qualifications for a Valid Market-Based Response), respectively, state that the qualifications and criteria for regulated backstop and market-based solutions are in NYISO's Comprehensive Reliability Planning Process Manual (CRPP Manual), and while the tariff is otherwise silent regarding qualifications and criteria for alternative regulated solutions, the CRPP Manual also contains qualifications and criteria for alternative regulated solutions (e.g. section 2.3 of the CRPP Manual, "Criteria for Evaluating the Viability of Proposed Alternative Regulated Solutions"). In a filing to be made within 30 days of the date of this order, NYISO is directed to include those CRPP Manual qualifications and criteria in sections 7.1.a, 7.3, and 7.4 of Attachment Y.

12. We also note that NYISO has inadvertently deleted the word "insufficient" in the first sentence of proposed section 7.4.a of Attachment Y, as deletion of this word is inconsistent with NYISO's original proposal that we approved in our October 16, 2008 Order. Accordingly, we will require NYISO to insert "insufficient" into the first sentence of section 7.4.a of Attachment Y in its 30-day compliance filing.

13. Further, although regulated solutions may include generation, transmission, and demand response resources, the title of section 8.7 of Attachment Y, "Process for Consideration of Regulated Backstop Transmission Solution and Alternative Regulated Transmission Solutions," inappropriately purports to limit the process for consideration of regulated solutions to transmission solutions. Accordingly, we direct NYISO to remove "Transmission" from the title of section 8.7 in its 30-day compliance filing.

14. Finally, it appears that NYISO's references to sections 8.8.a and 8.8.b in section 8.9.c of Attachment Y are typographical errors, as these referenced sections do not currently exist in Attachment Y. Accordingly, we direct NYISO to replace these references with references to sections 8.9.a and 8.9.b, respectively, in its 30-day compliance filing.

#### **B. Megawatt Impact Methodology**

15. In the October 15, 2009 Compliance Order, the Commission directed NYISO to incorporate into the tariff the proposed megawatt impact methodology that NYISO will utilize as its installed capacity metric for the initial planning cycle, as this methodology was not explained in Attachment Y of the NYISO OATT.

16. In its December 11, 2009 filing, NYISO proposes to include a new section 11.3.e(vi)(A) to describe the megawatt impact methodology, as follows:<sup>23</sup>

For the initial [Congestion Assessment and Resource Integration Study] study cycle, the ICAP metric will be based on a megawatt impact methodology that: (1) determines the base system loss of load expectation (“LOLE”) for the applicable horizon year; (2) adds the proposed economic project; and (3) calculates the LOLE for the system with the addition of the proposed economic project. If the system LOLE is lower than that of the base system, the NYISO will reduce generation in all New York Control Area (“NYCA”) zones proportionally (i.e., based on proportion of zonal capacity to total NYCA capacity) until the base system LOLE is achieved. That amount of reduced generation is the NYCA megawatt impact.

We accept NYISO’s revised section 11.3.e(vi)(A) as compliant with the October 15, 2009 Compliance Order.

**C. Beneficiaries’ and NYISO’s Reporting Obligations**

17. In the October 15, 2009 Compliance Order, the Commission directed NYISO to revise its reporting requirements in section 15.6.e of Attachment Y to provide that beneficiaries voting against approval of a project must provide a detailed explanation of the substantive reasons underlying their decision, including the use of additional benefit metrics identified in the tariffs or other metrics or factors, the actual quantification of such benefit metrics or factors, a quantification and explanation of the net benefit or net cost of the project to the beneficiary, and data supporting the metrics and other factors.<sup>24</sup> In addition, the Commission directed NYISO to revise section 15.6.e to state that it will also report the results of the vote to the Commission, including: a tally of the votes, the identified beneficiaries, the results of the cost/benefit analysis, and, if vetoed, whether the

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<sup>23</sup> In its December 11, 2009, compliance filing, NYISO also revises section 15.4.b(i) to correct a typographical error, pursuant to the Commission’s October 15, 2009 Order. *See* October 15, 2009 Order, 129 FERC ¶ 61,044 at P 55. We accept NYISO’s revisions to section 15.4.b(i) of Attachment Y.

<sup>24</sup> October 15, 2009 Compliance Order, 129 FERC ¶ 61,044 at P 85.



developer has provided any formal indication to NYISO as to the future development of the project.<sup>25</sup>

18. NYISO proposes to revise section 15.6.e of Attachment Y to comply with the Commission's directives. We accept NYISO's proposed revisions as compliant with the October 15, 2009 Compliance Order.<sup>26</sup>

**D. Coordination**

19. In the October 15, 2009 Order, the Commission accepted NYISO's amendments to clarify the process for reaching decisions in the development of its transmission plans, subject to NYISO revising sections 12.1 and 15.5(a) of Attachment Y to provide consistency with revised sections 6.1 and 9.1<sup>27</sup> of Attachment Y.<sup>28</sup> Sections 6.1 and 9.1 provide that the roles of the Advisory Subcommittee and the ESP Working Group are limited to reviewing and commenting on drafts and analyses during the development of transmission plans and, subsequently, forwarding a summary of all comments to the Operating Committee, Business Issues Committee, and, in turn, the Management Committee.

20. In its December 11, 2009 filing, NYISO proposes to revise sections 12.1 and 15.5(a) to state that the Advisory Subcommittee and ESP Working Group will forward a revised draft Congestion Study and cost/benefit analysis, respectively, to the Business Issues and Management Committees for discussion and action.<sup>29</sup> We accept NYISO's proposed revisions as complying with the directives of the October 15, 2009 Order.

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<sup>25</sup> *Id.* P 86.

<sup>26</sup> We also agree with NYISO that its role in reporting this information is solely limited to gathering the information and passing it on to the Commission.

<sup>27</sup> NYISO's sections 12.1, 15.5(a), 6.1, and 9.1 of Attachment Y set forth, respectively, the Collaborative Governance Process of: NYISO's Congestion Assessment and Resource Integration Study (Congestion Study) review process; cost/benefit analysis and beneficiary determination process; Reliability Needs Assessment review process; and Comprehensive Reliability Plan review process.

<sup>28</sup> October 15, 2009 Compliance Order, 129 FERC ¶ 61,044 at P 22.

<sup>29</sup> For consistency, NYISO also proposes to revise sections 6.1 and 9.1 to provide that the Advisory Subcommittee and ESP Working Group will only forward revisions, not a summary of comments. NYISO states that, since the documents on which the Business Issues Committee and Operating Committee act upon reflect stakeholder

(continued...)

**E. Commission Jurisdiction**

21. In its comments, the Independent Producers state that they agree with NYISO's proposed tariff language in sections 8.9.d and 9.4.a of Attachment Y regarding the fact that state agencies, not NYISO, approve projects that have been proposed to meet the reliability needs of retail customers. However, Independent Producers request that the Commission distinguish state and Commission jurisdiction in that state agencies do not have jurisdiction to determine rates, either market- or cost-based, for wholesale transactions, even when the state agency has selected a regulated backstop or gap solution under Attachment Y of NYISO's OATT. To the extent necessary, we clarify that sections 205 and 206 of the Federal Power Act give the Commission exclusive authority over the rates, terms, and conditions of electric energy transmission and sales at wholesale in interstate commerce.<sup>30</sup>

**The Commission orders:**

(A) NYISO's December 11, 2009 compliance filing is hereby conditionally accepted effective December 14, 2009, as discussed in the body of this order.

(B) NYISO is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner LaFleur voting present. ( S

E A L )

Kimberly D. Bose,  
Secretary.

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comments received at each step of the process, providing a summary of comments received during those processes would be unnecessary and would lead to confusion on what was actually agreed to.

<sup>30</sup> 16 U.S.C. §§ 824d; 824e (2006).