

II. Background

As NERC indicated in its Petition,¹ the NYISO is the entity that originally requested the interpretations that are the subject of this proceeding. The NYISO made its request to confirm that the NERC MOD reliability standards developed in response to Order Nos. 890² and 693³ (“ATC MOD Standards”) are sufficiently flexible to accommodate the NYISO’s Commission-approved “financial reservation” transmission model. The NYISO has previously addressed this issue through its comments in the rulemakings that resulted in Order Nos. 890 and 729,⁴ in its Order No. 890 compliance proceeding, and through its participation in the NERC stakeholder process that developed the ATC MOD Standards. The issue will likely be addressed again when the NYISO makes its Order No. 729 compliance filing later this year. In the mean time, the interpretations that NERC has proposed in this proceeding have the potential to largely satisfy the NYISO’s concerns.⁵

A. The Nature of ATC Under the NYISO’s Financial Reservation System

In prior filings the NYISO has explained that its “financial reservation” model differs substantially from the “physical reservation” transmission model contemplated by the Order

¹ *Petition of the North American Electric Reliability Corporation for Approval of Interpretations to Reliability Standards MOD-001-1 -- Available Transmission System Capability and MOD-029-1 -- Rated System Path Methodology* (December 2, 2009) (“Petition”).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs., Regulations Preambles ¶ 31,241 at PP 158, 603 (2007) (Order No. 890); *order on reh’g*, Order No. 890-A, FERC Stats. & Regs., Regulations Preambles ¶ 31,261 (2007) (Order No. 890-A); *order on reh’g and clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009); *order on reh’g*, Order No. 890-D, 129 FERC ¶ 61,126 (2009) (“Order No. 890”).

³ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 FR 16416 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242, at P 1022 (2007), *order on reh’g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

⁴ *Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability for the Bulk-Power System*, 129 FERC ¶ 61,155 (2009) (“Order No. 729”).

⁵ No NERC stakeholder has ever raised a substantive objection to the NYISO’s proposed interpretations. Some have suggested that the NYISO’s concerns might have been better addressed via a request for waivers or regional variances. The NYISO considered these procedural alternatives, and discussed them informally with NERC staff. The NYISO ultimately concluded, with no objection from NERC, that proceeding with a request for interpretations would be the best approach.

No. 890 *pro forma* Open Access Transmission Tariff (“OATT”). Transmission service within the NYISO is scheduled “implicitly” when customers submit spot market energy schedules or arrange for bilateral transactions. There are no express reservations of physical transmission service within the NYISO and customers may schedule transactions between any two points so long as doing so is not inconsistent with a security-constrained economic dispatch. All desired uses of the transmission system are scheduled to the extent that customers are willing to pay congestion charges (which can be hedged using financial rights).

The NYISO has also previously described how its customers’ ability to schedule transactions is, with certain limited exceptions,⁶ not limited by a pre-defined amount of ATC as under the *pro forma* OATT. Instead, the entire capacity of the New York State Transmission System is made available for both firm and non-firm service prior to the start of each day-ahead market cycle. ATC is calculated and posted based on the transactions accepted in the day-ahead market. If a posted ATC value is zero that is an indication that an interface is congested and that additional non-firm transmission capacity would not be available in the real-time market absent redispatch. It may still be possible, however, for the NYISO to accept additional firm transactions in this situation for customers that are willing to pay congestion charges.

The information conveyed by NYISO ATC postings is different from that conveyed by such postings in physical reservation regimes. As the Commission has recognized, the NYISO’s ATC postings are really advisory “projections.”⁷ ATC within the NYISO represents the

⁶ These limited exceptions include “Pre-Scheduled Transaction Requests” across external interfaces which can be submitted in the Day-Ahead Market up to 18 months in advance of the Dispatch Day and “Advance Reservations” on controllable “Scheduled Lines” between the NYISO and certain neighboring entities. If a customer arranges for a Pre-Scheduled Transaction it would obtain a special priority reservation in the Day-Ahead Market that would necessitate a reduction in the ATC posted for the relevant external interface. For the most part, however, the Pre-Scheduled Transaction Request procedure has gone unused since its adoption and the NYISO is currently considering initiating a stakeholder process to eliminate it. Similarly, Scheduled Lines allow for Advanced Reservations on a basis more like a traditional physical reservation regime. With one exception, however, other RTOs/ISOs are responsible for administering the Scheduled Lines.

⁷ See *Central Hudson Gas & Electric Corp., et al.*, 88 FERC ¶ 61,253 at 61,803 (1999).

transmission capacity that is left over after all scheduled transactions have been accommodated. Stated differently, “ATC is used only as an instantaneous indication of the existence of uncongested transmission paths and not as a determinant as to whether additional requests for transmission service can be satisfied.”⁸

The different nature of ATC within the NYISO system was reflected in the NYISO’s Order No. 890 compliance filings, which revised Attachment C to the NYISO OATT to more accurately describe the NYISO’s existing ATC methodology. The actual usage of the NYISO’s transmission system is determined through the continuous security-constrained economic dispatching performed by the NYISO’s market software. The output of these market software systems is represented in the NYISO’s Attachment C calculation through a “Transmission Flow Utilization” variable.⁹

The different nature of ATC in the NYISO’s system is also reflected in a number of waivers from the Commission’s OASIS posting regulations,¹⁰ and from related North American Energy Standards Board (“NAESB”) standards,¹¹ that the NYISO has obtained since its inception in 1999.

More recently, the Commission granted a broader set of OASIS and NAESB waivers to the California Independent System Operator, Inc. (“CAISO”), which has a market design and

⁸ *Request for Limited OASIS Waivers*, Docket EL99-77-000 at 5-6 (July 9, 1999).

⁹ Specifically, the NYISO’s Commission-approved formula for calculating firm ATC is: $ATCFirm = TTC - Transmission\ Flow\ UtilizationFirm - (TRM)$. See NYISO OATT, Attachment C at Section 2.0.

¹⁰ See *Central Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,253 (1999) (“1999 Waiver Order”); *New York Independent System Operator, Inc.*, 94 FERC ¶ 61,215 at 61,794 (2001) (“2001 Waiver Order”).

¹¹ See *New York Independent System Operator, Inc.*, 127 FERC ¶ 61,005 at P 7 (2009) (granting the NYISO’s request for waiver of certain OASIS-related NAESB WEQ standards adopted in Order No. 676-C governing resales and transfers of traditional Point-to-Point transmission reservations); *New York Independent System Operator, Inc.*, 125 FERC ¶ 61,275 at P 15 (2008) (granting NYISO’s request for waiver of various WEQ OASIS standards which were modified by Order No. 676-C, and from which the NYISO had previously been granted waiver); *New York Independent System Operator, Inc.*, 117 FERC ¶ 61,197 at PP 15-17 (2006) (granting the NYISO’s request for waiver of certain WEQ OASIS standards).

transmission model very similar to the NYISO's.¹² The Commission has also completely exempted the Electric Reliability Council of Texas ("ERCOT") from compliance with the ATC MOD Standards essentially because it does not employ a traditional physical reservation regime.¹³

B. Accommodating Financial Reservation Models Within the Framework of the ATC MOD Standards

During the Order No. 890 rulemaking proceeding, the NYISO expressed concern that the NERC stakeholder process might produce rules that primarily reflected the needs of physical reservation regimes and were ill-suited to financial reservation systems.¹⁴ Most NERC stakeholders are familiar with physical reservation systems, not with financial reservation models, so it was reasonable to expect that their attention would focus on the former.¹⁵ The NYISO therefore requested that "the Commission expressly state its expectation that the NERC (and NAESB) processes will produce standards that fulfill Order No. 890's objectives of transparency and inter-regional consistency, yet that are sufficiently flexible to work for ISO/RTO regions."¹⁶ The Commission responded by clarifying that Order No. 890 required NERC "to develop a single set of ATC-related standards that will apply to all transmission providers, including RTOs and ISOs."¹⁷ It encouraged the NYISO "to participate in the standard development process to provide NERC an opportunity to address its concerns."¹⁸ Subsequently,

¹² See *California Independent System Operator, Corp.*, 126 FERC ¶ 61,260 (2009). On December 15, 2009, the NYISO filed a request in Docket No. ER10-424-000 to bring its waivers into line with those granted to the CAISO.

¹³ See Order No. 729 at P 298.

¹⁴ Order No. 890-A at P 59.

¹⁵ The NYISO's understanding is that this is true even with respect to a number of ISOs/RTOs, e.g., the PJM Interconnection, LLC and the Midwest Independent Transmission System Operator, which, unlike the NYISO and CAISO, employ physical reservation systems.

¹⁶ *Id.*

¹⁷ Order No. 890-A at P 60.

¹⁸ *Id.*

in response to another round of NYISO comments, Order No. 729 reiterated that the Commission expected the ATC MOD Standards to be sufficiently flexible to accommodate all transmission providers “even if there are physical differences in grid characteristics or variations in market design that create challenges.”¹⁹

The NYISO was an active participant in the stakeholder process that produced the ATC MOD Standards. As the NYISO had anticipated, the standards were drafted with physical reservation systems in mind. The NYISO was unsuccessful in its efforts to revise the standards to expressly address the distinctive characteristics of financial reservation systems. Nevertheless, it became clear that the NERC Standards Drafting Team (“SDT”) was open to the notion that the ATC MOD Standards were compatible with the NYISO’s continued use of a financial reservation model. The NYISO likewise believes that it can fully comply with the ATC MOD Standards without modifying the core elements of its financial transmission reservation model. The NYISO also concluded that it would be consistent with the Commission’s policy preferences expressed in Order Nos. 693, 729, and 890 for it to do everything possible to work within the framework of the ATC MOD Standards rather than seeking waivers, or an exemption, in the first instance.

At the same time, the NYISO remains concerned that an overly inflexible interpretation of the ATC MOD Standards could create unnecessary risks, or result in its being subjected to unnecessary regulatory requirements. The NYISO has a strong culture of compliance which dictates that it seek to clarify its status under the ATC MOD Standards rather than waiting for a future compliance audit to address it. Furthermore, it would be unreasonable to expect a future audit team to make complex policy determinations regarding the application of standards written with physical reservation systems in mind to a financial reservation model. Therefore, after

¹⁹ Order No. 729 at P 297.

consulting with NERC staff, the NYISO sought the interpretations that are the subject of this proceeding.

III. Motion to Intervene

The NYISO is the independent body responsible for providing open access transmission service, maintaining reliability, and administering competitive wholesale markets for electricity, capacity, and ancillary services in New York State. It is the entity that originally sought the interpretations that NERC has submitted to the Commission in this proceeding. The proposed interpretations would provide guidance that will help the NYISO ensure that it is in full compliance with the ATC MOD Standards. The NYISO therefore has a unique interest that cannot be adequately represented by any other entity and, therefore, should be permitted to intervene with all the rights of a party.

IV. Comments

A. The Commission Should Approve NERC's Proposed Interpretation of MOD-029-001

The ATC MOD Standards require all transmission service providers to adopt one of three ATC calculation methodologies. The NYISO has determined that the "Rated System Path Methodology" established under MOD-029-001 appeared to be the most readily compatible with its financial reservation model. The principal question was whether that methodology was sufficiently flexible to accommodate the NYISO's practice of using "Transmission Flow Utilization," *i.e.*, the output of its market software, in calculating ATC.

The NYISO believes that MOD-029-001 provides the necessary flexibility because it allows transmission service providers to account for capacity associated with "other services" when calculating their firm and non-firm "Existing Transmission Commitments" ("ETC"). The definition of "other services" that is included in the "OS_F" and "OS_{NF}" variables in the ETC

calculation formulae in R5 and R6 of MOD-029-001 appears on its face to be broad enough to encompass “Transmission Flow Utilization.”

After the SDT declined to revise the text of MOD-029-001 to expressly confirm the NYISO’s understanding, the NYISO followed NERC staff’s suggestion and sought a formal interpretation. As the Petition indicates, NERC’s SDT essentially agreed with the NYISO’s position, subject to a few caveats that the NYISO has no issue with.²⁰ The NERC stakeholders and the NERC Board of Trustees ratified the SDT’s interpretation.

The NYISO therefore urges the Commission to approve the proposed interpretation of MOD-029-001. Without the interpretation, the NYISO is concerned that there would still be a question as to whether it’s financial reservation model is compatible with MOD-029-001. In that case, the NYISO would likely have to take other actions, such as seeking formal waivers or an exemption from the ATC MOD Standards. The NYISO would prefer to simply document its compliance with MOD-029-001 notwithstanding the existence of “differences in grid characteristics or variations in market design that create challenges” Because Order No. 890’s reforms, including the standardization of ATC calculation methodologies, expressly did not require substantial changes to existing ISO/RTO systems, and given past rulings that the NYISO has met Order No. 890’s requirements, the NYISO does not believe that it should be required to change its financial reservation model in order to comply with the ATC MOD Standards.

²⁰ Specifically, the SDT took the position that “Transmission Flow Utilization” would not count as “other services” to the extent that it included other components explicitly defined under R5 or R6. The NYISO believes that “Transmission Flow Utilization” does not overlap with any of those other components.

B. The Commission Should Approve NERC’s Proposed Interpretation of MOD-001-1 with the Understanding that the NYISO May Take Future Steps to Clarify that it Need Not Calculate ATC for Those Interfaces and Time for Periods Which it is Not Possible to Schedule Transactions Under the NYISO’s Financial Reservation Model

R2 and R8 of the MOD-001-1 require all Transmission Service Providers to calculate and recalculate hourly, daily, and monthly ATC values for periods as far as twelve months into the future. They also require transmission service providers to recalculate hourly, daily, and monthly ATC values at certain defined intervals.

Unlike transmission service providers in physical reservation systems, the NYISO, with certain exceptions,²¹ does not allow transactions to be scheduled more than one day ahead. The NYISO therefore does not currently calculate ATC more than one-day ahead for most interfaces. If it did, the amount of ATC available for such periods would always be either a zero or a null value since it is impossible to schedule transactions for such periods. Conducting such calculations would serve no useful purpose and would surely not contribute to the reliability of the bulk power system.

After the SDT declined to revise the text of MOD-001-1 to account for the NYISO’s circumstances, the NYISO requested an interpretation. Once again it did so in consultation with NERC staff. The NYISO’s objective was to clarify that it would not be required to calculate (or recalculate) ATC for periods more than one day ahead to the extent that transactions may not be scheduled for such periods under its tariffs.

The SDT’s interpretation did not accept the entirety of the NYISO’s request but is not inconsistent with the NYISO’s view. The interpretation does not appear to preclude the NYISO from taking the position that the ATC MOD Standards do not require it to calculate ATC for future time periods to the extent that transactions may not be scheduled during those intervals

²¹ See *supra* n. 6 regarding “Prescheduled Transactions” across external interfaces and “Advanced Reservations” on Scheduled Lines.

across certain interfaces. The NYISO also believes that the proposed interpretation does not prejudice its ability to clarify the issue, either with NERC or the Commission, in the future.

The NYISO respectfully submits that the SDT's statement that it was "difficult to conclude" that the NYISO's ATC was "advisory" in nature is, with respect to many NYISO interfaces, at odds with the reality of the NYISO's system, prior Commission rulings, and the approved provisions of Attachment C to the NYISO OATT. In addition, the SDT placed too much emphasis on the NYISO OATT's definition of "ATC." That definition, which has been in place since 1999, closely tracks the *pro forma* OATT definition and does not fully reflect the "advisory" nature of most NYISO ATC calculations. Similarly, the SDT attached too much weight to the existence of the "Pre-Scheduled Transaction" provisions. As was noted above, those provisions haven't been little utilized and represent a limited exception to the NYISO's normal ATC calculation procedures.

The NYISO is planning to initiate a stakeholder process to address the SDT's primary concern by updating the definition of ATC in the NYISO OATT to accurately reflect its advisory nature. The NYISO may make similar tariff changes when it submits its Order No. 729 compliance filing in order to eliminate any possible ambiguity in this area. Finally, the NYISO will take any other steps that may be needed to clarify that it need only calculate ATC for future periods to the extent that it is possible to schedule transactions for such periods, *e.g.* to the extent that Pre-Scheduled Transactions continue to be allowed across external interfaces in the future.

The NYISO therefore supports NERC's proposed interpretation, with the expectation and understanding that the interpretation will not prevent it from taking future steps to clarify how R2 and R8 of MOD-001-1 apply to its financial reservation model.

V. Conclusion

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission: (i) accept its motion to intervene; (ii) accept NERC's proposed interpretation of MOD-029-001; and (iii) accept NERC's proposed interpretation of MOD-001-1 with the understanding that the interpretation does not preclude the NYISO from making future changes to its tariff to clarify the "advisory" nature of ATC under its financial reservation model.

Respectfully submitted,

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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 this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2010).

Dated at Washington, DC, this 8th day of January, 2010.

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