

125 FERC ¶ 61,206
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellingshoff.

New York Independent System Operator, Inc.

Docket Nos. ER07-521-003
ER07-521-004

ORDER ON COMPLIANCE FILING IMPLEMENTING LONG-TERM
TRANSMISSION RIGHTS

(Issued November 20, 2008)

1. On May 16, 2008, as amended on May 23, 2008, the New York Independent System Operator, Inc. (NYISO) filed revisions to its Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff) to comply with the Commission's April 16, 2008 order accepting and directing modifications to NYISO's long-term firm transmission rights proposal (May 16 Compliance Filing).¹ The April 16, 2008 Order directed NYISO to revise its Long-Term Firm Transmission Rights Proposal, which was originally filed pursuant to the Final Rule on long-term firm transmission rights.²

¹ *New York Independent System Operator, Inc.*, 123 FERC ¶ 61,044 (2008) (April 16, 2008 Order). In this order, the Commission will refer to the NYISO February 5, 2007 compliance filing in Docket No. ER07-521-000, as amended and addressed in the April 16, 2008 Order, as NYISO's "Long-Term Firm Transmission Rights Proposal." The OATT and Services Tariff are referred to collectively as "tariff."

² *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226, *reh'g denied*, Order No. 681-A, 117 FERC ¶ 61,201 (2006).

2. The May 16 Compliance Filing adds terms providing for transmission congestion contracts (TCCs)³ featuring a five-year term at a fixed price.⁴ In addition, NYISO proposes other changes to accommodate the compliance changes or to address long-term firm transmission rights implementation issues. In this order, the Commission accepts the proposed revisions that comply with the April 16, 2008 Order and, as discussed below, directs NYISO to reinstate tariff provisions establishing 10-year Fixed Price TCCs that the Commission approved in the April 16, 2008 Order, but that NYISO proposes to delete from its tariff in the May 16 Compliance Filing. To provide market participants with an opportunity to obtain 10-year Fixed Price TCCs, we also direct NYISO to file provisions that provide an option to load serving entities that obtained the five-year Fixed Price TCCs to convert them into 10-Year Fixed Price TCCs.⁵ In addition, we reject without prejudice modifications to the OATT and Services Tariff that were not directed by the April 16, 2008 Order and are not needed to implement NYISO's Long-Term Firm Transmission Rights Proposal because they are beyond the scope of this compliance filing.

I. Background

3. On February 5, 2007, NYISO filed its Long-Term Firm Transmission Rights Proposal through which load serving entities operating in the New York Control Area may obtain long-term firm transmission rights. Under NYISO's Long-Term Firm Transmission Rights Proposal, 10-year long-term firm transmission rights would be available at a fixed price to load serving entities that have existing or expired transmission agreements. These 10-year Fixed Price TCCs would be priced by averaging previous auction prices and past congestion prices, as adjusted by a forward-looking

³ A TCC is a financial instrument that conveys a right to collect or an obligation to pay the difference in price for energy associated with a single megawatt of transmission between a point of injection and a point of withdrawal in the NYISO day-ahead market. *See New York Independent System Operator, Inc.*, 97 FERC ¶ 61,154, at 61,672 (2001). A TCC allows a transmission customer to hedge its congestion costs. A TCC does not establish any rights to, or the availability of, physical transmission service.

⁴ NYISO proposes to define "Fixed Price TCC" as "a series of TCCs, each with a duration of one year, renewable annually for a period of at least five years at a fixed price that is obtained through the conversion of expired or expiring ETAs [or Existing Transmission Agreements] in accordance with the OATT, Attachment M, section 2A."

⁵ A similar option is to be provided to load serving entities that declined the five-year Fixed Price TCCs because they desired 10-year Fixed Price TCCs.

inflation factor and an option premium. The Long-Term Firm Transmission Rights Proposal also provided load serving entities that have transmission agreements that have not yet expired with an annual right to obtain annual auction allocation rights, or AARs, for 10 years. A load serving entity could convert its auction allocation rights into one-year TCCs at the annual auction price.

4. In response to comments on NYISO's Long-Term Firm Transmission Rights Proposal, the Commission held a technical conference in September 2007, which resulted in comments and a request for settlement procedures.⁶ Although the parties failed to resolve their disagreements in the settlement discussions, the technical conference discussions resulted in "enhancements" to NYISO's Long-Term Firm Transmission Rights Proposal.⁷ The Post Tech Conference Filing proposed the following revisions: (1) a five-year Fixed Price TCC renewable upon its expiration for an additional five-year term; and (2) a method to allow load serving entities served by power contracts with the New York Power Authority that are supported by long-term grandfathered transmission agreements to extend their transmission rights to match their contract terms.

5. The Commission's April 16, 2008 Order accepted NYISO's Long-Term Firm Transmission Rights Proposal, as modified by the Post Tech Conference Filing, and ordered additional modifications. The order directed NYISO to: (i) implement the Post Tech Conference Filing proposals to offer a Fixed Price TCC featuring a renewable five-year term and to provide Fixed Price TCCs for the terms of long-term grandfathered transmission service agreements supporting New York Power Authority contracts;⁸ (ii) establish a minimum price of zero dollars for Fixed Price TCCs;⁹ (iii) adopt explicit reassignment provisions;¹⁰ and (iv) remove the inflation adjustment and option premium components of the Fixed Price TCC pricing formula.¹¹ In addition, the April 16, 2008

⁶ *New York Independent System Operator, Inc.*, 120 FERC ¶ 61,099 (2007) (order establishing technical conference); *New York Independent System Operator, Inc.*, 121 FERC ¶ 61,237 (2007) (order establishing settlement procedures).

⁷ See NYISO Initial Post Technical Conference Comments, Docket No. ER07-521-000, at 4-10 (Oct. 25, 2007) (Post Tech Conference Filing).

⁸ April 16, 2008 Order at P 62-64, 65.

⁹ *Id.* P 129.

¹⁰ *Id.* P 89.

¹¹ *Id.* P 128.

Order stated that NYISO could retain its proposal to offer auction allocation rights as a supplement to its Fixed Price TCC proposal, but that the auction allocation right proposal did not, on its own, comply with the Commission's guidelines.¹² Finally, the April 16, 2008 Order directed two subsequent compliance filings, the first to provide for long-term firm transmission rights for incremental expansions consistent with Order No. 681's Guideline (3),¹³ and the second to expand availability of long-term firm transmission rights to load serving entities using non-historical points of injection and withdrawal.¹⁴

6. As detailed below, the May 16 Compliance Filing includes revised tariff provisions that govern Fixed Price TCCs and that implement the proposals in the Post Tech Conference Filing. However, while NYISO adds terms for a five-year renewable Fixed Price TCC product, it reduces the initial terms of all Fixed Price TCCs from 10 years to five years (with an option to renew). NYISO also responds to the April 16, 2008 Order compliance directives to establish a minimum Fixed Price TCC price, to address the reassignment of Fixed Price TCCs, and to remove the inflation adjustment and option premium price components. Finally, NYISO proposes to eliminate the auction allocation right mechanism previously proposed in the Long-Term Firm Transmission Rights Proposal and also proposes ministerial changes to address implementation issues.

7. NYISO's May 23, 2008 errata (Errata) clarifies an inadvertent error in the May 16 Compliance Filing at footnote 15, and submits several corrected tariff sheets to eliminate administrative and editing errors.

8. NYISO requests a June 1, 2008 effective date for the proposed tariff revisions. NYISO states that this date is consistent with the Commission's finding that provisions relating to the Fixed Price TCC auction be effective June 1, 2008 to support the Fall 2008 centralized TCC auction, while the remaining provisions are to be effective December 1, 2008, to support the Spring 2009 auction.¹⁵

¹² *Id.* P 78.

¹³ *Id.* P 53. In Docket No. ER07-521-005, NYISO filed a compliance filing to provide incremental TCCs to entities funding transmission upgrades or expansions.

¹⁴ April 16, 2008 Order at P 82. This second compliance filing is to be made within two years of the April 16, 2008 Order.

¹⁵ *See id.* P 143.

II. Notices of Filings and Responsive Pleadings

9. Notices of the May 16 Compliance Filing and the Errata were published in the *Federal Register*, with interventions and protests due on or before June 6, 2008, and interventions and protests on the Errata due on or before June 13, 2008.¹⁶ The Municipal Electric Utilities Association of New York State (MEUA) and the New York Municipal Power Agency (NYMPA) filed motions to intervene and protests, along with requests for expedited action. New York Association of Public Power (New York Public Power) filed a protest along with a request for expedited action. The New York Transmission Owners filed comments. NYISO and New York Transmission Owners each filed an answer to the protests. NYISO filed a separate answer to the New York Transmission Owners' comments. NYMPA filed an answer to the NYISO and the New York Transmission Owners' answers.

10. Finally NYMPA and MEUA filed a motion to lodge a NYISO filing from Docket No. ER08-1281-000 proposing tariff revisions to address the scheduling of transactions with circuitous transmission paths that they argue result in loop flows and high congestion costs within the NYISO market.¹⁷ Subsequently, NYMPA and MEUA exchanged answers with NYISO and New York Transmission Owners concerning the motion to lodge.

III. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.¹⁸

¹⁶ 73 Fed. Reg. 31,085 (2008) (notice for May 16 Compliance Filing); 73 Fed. Reg. 33,078 (2008) (notice for Errata).

¹⁷ The NYISO "Exigent Circumstances Filing" that is the subject of the motion to lodge was addressed in a prior Commission order. *See New York Independent Transmission System Operator, Inc.*, 124 FERC ¶ 61,147, at P 20, 32 (2008).

¹⁸ 18 C.F.R. § 385.214 (2008). New York Public Power intervened Feb. 22, 2007 and New York Transmission Owners intervened Feb. 26, 2007 in Docket No. ER07-521-000.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to an answer or a protest unless otherwise permitted by the decisional authority.¹⁹ In this case, we find that the answers to the protests on the filing have assisted the Commission in its decision-making process. Therefore, we will accept them. The Commission's Rules of Practice and Procedure also prohibit answers to answers unless permitted by the decisional authority.²⁰ We will accept the NYMPA June 19 and July 31, 2008 answers to the extent they respond to new information provided in the answers to the protests. We are not persuaded to accept NYMPA and MEUA's August 19, 2008 answer to the NYISO's and the New York Transmission Owners' answers to the motion to lodge and, therefore, we reject it.

B. Revisions to Comply with the April 16, 2008 Order

1. Addition of Five-Year Fixed Price TCCs, Longer Term TCCs for Grandfathered Contracts, and Minimum Price

13. The April 16, 2008 Order directed NYISO to implement the Post Tech Conference Filing proposals to offer a Fixed Price TCC featuring a renewable five-year term, and to provide Fixed Price TCCs for the terms of long-term grandfathered transmission service taken to support New York Power Authority power contracts. In addition, the April 16, 2008 Order directed NYISO to establish a minimum price of zero for Fixed Price TCCs.

14. NYISO proposes to make Fixed Price TCCs available for an initial term of five years with an option to renew for an additional five years. NYISO states that this proposal is consistent with the April 16, 2008 Order's requirement that load serving entities be able to obtain Fixed Price TCCs with a duration of at least 10 years, as well as with Order Nos. 681 and 681-A. To implement its proposal, NYISO replaced a 10-year Fixed Price TCC with a five-year renewable Fixed Price TCC. In doing so, NYISO removed the provisions offering a single 10-year Fixed Price TCC. NYISO proposes to calculate a single price for the entire duration of a five-year Fixed Price TCC and to define Fixed Price TCCs as a series of one-year TCCs in order to facilitate voluntary reassignment of portions of Fixed Price TCCs, and to reduce credit requirements.²¹

¹⁹ 18 C.F.R. § 385.213(a)(2) (2008).

²⁰ *Id.*

²¹ *See* NYISO Errata at 1.

15. To address the concerns of load serving entities served under long-term power supply contracts with the New York Power Authority, NYISO proposes to permit these load serving entities to obtain options for extended long term firm transmission rights for the duration of their underlying power supply contracts. These power contracts expire in 2025, and are supported by grandfathered transmission contracts that expire in 2013.²² Under NYISO's proposal, the load serving entities that rely on grandfathered service to support their New York Power Authority contracts will have an option to obtain Fixed Price TCCs with an initial duration of five years, and to obtain additional Fixed Price TCCs with a total duration of seven years, prior to the expiration of the initial five-year Fixed Price TCCs. NYISO believes that this enhancement is consistent with the Commission's directive in the April 16, 2008 Order that load serving entities served under the New York Power Authority power supply and grandfathered transmission service contracts be able to obtain Fixed Price TCCs matching the term of their power supply contracts.²³

16. Finally, NYISO specifies that the price of a Fixed Price TCC cannot be less than zero.²⁴

Protests

17. NYMPA objects to the NYISO proposal to reduce the duration of long-term Fixed Price TCCs from a single 10-year period to two five-year periods, stating that this change was not directed by the April 16, 2008 Order. NYMPA asserts that NYISO offers no rationale for splitting the 10-year period in half. NYMPA states that splitting the 10-year period in half will provide NYISO with an additional opportunity to raise the price of Fixed Price TCCs. NYMPA states that modifying the accepted proposal and subjecting load serving entities to a second price adjustment undermines the rationale for the 10-year single price proposal, i.e., "that the [load serving entity] would know the total amount owed for the Fixed Price TCC at the time it makes the election and that this amount will remain fixed over the 10-year period[.]"²⁵ NYMPA states that the

²² The NYISO tariff refers to grandfathered transmission agreements as existing transmission agreements, or "ETAs."

²³ April 16, 2008 Order at P 65.

²⁴ May 16 Compliance Filing, OATT, section 2A.2, proposed Sheet No. 565E; Services Tariff, section 2A.2, proposed Sheet No. 359.05.

²⁵ NYMPA protest at 13 (citing April 16, 2008 Order at P 21).

Commission should reject the removal of the 10-year TCC because NYISO has not explained why the change is necessary and the April 16, 2008 Order did not require the change. NYMPA also notes that the change was not vetted with stakeholders and unnecessarily adds to price uncertainty.

18. New York Public Power also notes that the Commission directed NYISO to offer load serving entities seeking to convert expired or expiring grandfathered transmission rights a choice between 10-year or five-year Fixed Price TCCs.²⁶ New York Public Power states that NYISO's proposal is contrary to the requirements of Order Nos. 681 and 681-A, and the April 16, 2008 Order, because load serving entities cannot choose a 10-year Fixed Price TCC.

Answers

19. NYISO defends its current proposal as consistent with the April 16, 2008 Order's requirement that load serving entities be able to obtain Fixed Price TCCs with a duration of at least 10 years. NYISO also states that its proposal is consistent with NYISO's Post Tech Conference Filing, in which it proposed five-year Fixed Price TCCs subject to renewal. NYISO states its proposal is also consistent with Order Nos. 681 and 681-A, Guideline (4), which NYISO quotes for the proposition that Independent System Operators and Regional Transmission Organizations "may propose rules specifying the length of terms and use of renewal rights to provide long-term coverage, but must be able to offer firm coverage for at least a 10-year period."²⁷ NYISO states that its proposal for a five-year Fixed Price TCC renewable for an additional five years for a total duration of 10 years (or seven and 12 years respectively, for load serving entities with rights associated with New York Power Authority contracts), is consistent with Commission policy approving longer term Fixed Price TCCs.²⁸ NYISO requests the Commission to accept its proposal. However, NYISO does not object to offering eligible load serving entities an option to obtain Fixed Price TCCs with a 10-year term (in addition to the five-year TCCs) if directed by the Commission.

²⁶ April 16, 2008 Order at P 62.

²⁷ NYISO June 12, 2008 answer at 10 & n.23 (citing Order No. 681 at P 256).

²⁸ *Id.* at 10 (interpreting technical conference discussions).

Commission Determination

20. The Commission accepts NYISO's proposal for the addition of a five-year Fixed Price TCC, renewable for an additional term, as consistent with the April 16, 2008 Order's directive to implement the proposals in the Post Tech Conference Filing. In addition, the Commission accepts NYISO's modifications to accommodate load serving entities with grandfathered transmission service agreements related to New York Power Authority contracts, and establish a minimum price of zero for Fixed Price TCCs. However, we direct NYISO to reinstate 10-year Fixed Price TCCs. The purpose of a compliance filing is to make the modifications directed by the Commission, and the Commission reviews compliance filings to ascertain whether the modifications are appropriate.²⁹ The April 16, 2008 Order was clear that NYISO was to offer a five-year Fixed Price TCC as an alternative for load serving entities that do not desire to commit to a full 10-year term. The Commission did not, however, direct NYISO to remove the 10-year Fixed Price TCC from its proposal, and NYISO's removal of the full 10-year Fixed Price TCC is inconsistent with the April 16, 2008 Order.³⁰ NYISO's proposal to remove the previously accepted 10-year TCC tariff provisions is rejected because it is inconsistent with the April 16, 2008 Order. The Commission directs NYISO to reinstate 10-year Fixed Price TCCs consistent with the proposal accepted in the April 16, 2008 Order, by filing revised tariff sheets including 10-year Fixed Price TCCs, within 30 days of the date of this order. We otherwise accept the provisions regarding the five-year Fixed Price TCC as in accordance with the proposal in the Post Tech Conference Filing.

21. Although we are directing NYISO to reinstate the 10-year Fixed Price TCC, to protect load serving entities that obtained a five-year Fixed Price TCC under the assumption that it was the only product available, we direct NYISO to provide these market participants with the opportunity to convert their five-year Fixed Price TCCs into 10-year Fixed Price TCCs. Additionally, we direct NYISO to allow those load serving entities that did not obtain TCCs under the assumption that only a five-year Fixed Price

²⁹ *AES Huntington Beach, LLC.*, 111 FERC ¶ 61,079, at P 60 (2005) (citing *Pacific Gas and Electric Company*, 109 FERC ¶ 61,336, at P 5 (2004)); *Midwest Independent Transmission System Operator, Inc.*, 99 FERC ¶ 61,302, at 62,264 (2002); *ISO New England, Inc.*, 91 FERC ¶ 61,016, at 61,060 (2000); *Sierra Pacific Power Co.*, 80 FERC ¶ 61,376, at 62,271 (1997); *Delmarva Power & Light Co.*, 63 FERC ¶ 61,321, at 63,160 (1993).

³⁰ April 16, 2008 Order at P 62, 65 (approving NYISO proposal to offer load serving entities "a choice between a Fixed Price TCC with a 10-year or five-year duration").

TCC was available an opportunity to obtain 10-year Fixed Price TCCs. We direct NYISO to file tariff provisions to permit the exercise of these options within 30 days from the date of this order.

22. The Commission approves NYISO's proposal to provide long-term firm transmission rights for the duration of the contracts held by load serving entities that are served under grandfathered New York Power Authority transmission agreements. NYISO's Post Tech Conference Filing included a proposal to accommodate load serving entities taking service under New York Power Authority contracts with terms running through 2025. The proposal provides these load serving entities with the ability to obtain Fixed Price TCCs through the end of their contracts.³¹ Under the proposed revisions, a municipal system that has a grandfathered transmission service agreement that expires in 2013, and is tied to a long-term New York Power Authority contract that expires beyond that date, will be able upon expiration of the existing transmission agreement to obtain Fixed Price TCCs that match the remaining term of the New York Power Authority contract.³² This satisfies the concerns addressed in the April 16, 2008 Order and no party protested these modification; therefore, we will accept the proposed revisions.

23. Finally, we accept the proposal to establish a minimum price of zero for Fixed Price TCCs as consistent with the April 16, 2008 Order.³³

2. Reassignment of Fixed Price TCCs

24. The April 16, 2008 Order directed NYISO to adopt explicit reassignment provisions for Fixed Price TCCs when load shifts among load serving entities. NYISO's proposed tariff language permits a load serving entity that acquires load from the holder of a Fixed Price TCC to request reassignment of a proportionate quantity of Fixed Price TCCs to follow the transferred load.³⁴ Under this provision, the quantity of reassigned Fixed Price TCCs is rounded to the nearest whole number, i.e., fractional quantities

³¹ NYISO Post Tech Conference Filing at 7.

³² See May 16 Compliance Filing, OATT proposed Sheet Nos. 565A and 565A.00; Services Tariff proposed Sheet Nos. 359.00A and 359.00B.

³³ April 16, 2008 Order at P 129 (directing NYISO to incorporate a minimum price of zero for Fixed Price TCCs).

³⁴ See OATT proposed Sheet No. 565E.00; Services Tariff proposed Sheet No. 359.05A.

would not transfer. Additionally, if a Fixed Price TCC is reassigned, the assignee and not the original holder would be permitted to annually renew the Fixed Price TCC at the previously established price throughout the term of the TCC.

25. NYISO states that the proposed reassignment provision complies with the April 16, 2008 Order's directive by clarifying that a reasonable proportionate quantity of Fixed Price TCCs will be reassigned to follow migrating load, should the load serving entity that acquires the load desire to obtain the TCCs. NYISO states that the proposed requirement that reassignment occur only for whole megawatt quantities is necessary because NYISO does not award fractional TCCs. Also, NYISO defends the proposal to reassign Fixed Price TCCs in whole megawatt increments, stating that the proposal protects a load serving entity that loses load from losing a Fixed Price TCC for *de minimis* load transfers.³⁵

Commission Determination

26. In the April 16, 2008 Order, the Commission discussed the reassignment of TCCs for migrating load and stated that "the tariff provisions must allow the acquiring [load serving entity] to obtain, at its option, the Fixed Price TCCs (or their financial equivalent) associated with the load that it acquires."³⁶ Because NYISO's Long-Term Firm Transmission Rights Proposal did not include specific rules for the reassignment of Fixed Price TCCs, the April 16, 2008 Order directed NYISO to submit tariff provisions that explicitly incorporate reassignment provisions.³⁷ NYISO's May 16 Compliance Filing provides for reassignment of a proportionate quantity of Fixed Price TCCs, and we accept these provisions.

3. Other Fixed Price TCC Issues

a. Use of Historical Inflation Adjustment

27. The April 16, 2008 Order directed NYISO to remove the inflation adjustment and option premium components of the Fixed Price TCC pricing formula. In response, NYISO proposes to remove the forward-looking inflation adjustment and option

³⁵ May 16 Compliance Filing at 8.

³⁶ April 16, 2008 Order at P 89.

³⁷ *Id.*

premium adders from the Fixed Price TCC calculation.³⁸ However, NYISO retains the “historical” inflation component to account for inflation affecting prior auction prices used to determine the base price of a Fixed Price TCC. According to NYISO, the April 16, 2008 Order is ambiguous concerning the use of a historical inflation component. NYISO determined that it should retain this historical inflation component because it is a “historical pricing component,” which the Commission found acceptable, and not part of the prospective “inflation adjustment” that the Commission rejected.

Protests

28. NYMPA objects to NYISO’s proposal to retain part of the inflation adjustment. NYMPA states that the proposal is inconsistent with the Commission’s April 16, 2008 Order, which, according to NYMPA, found that the inflation adjustment and the option premium are not just and reasonable. New York Public Power echoed NYMPA’s protest, and added that the April 16, 2008 Order found that any inflation adjustment would not be just and reasonable because it would not be related to embedded costs and is not known and measurable. NYMPA states that the Commission’s language was not ambiguous and the Commission should direct NYISO to remove all inflation adjustments, both forward- and backward-looking, from congestion costs and TCC auction values that are used to calculate the Fixed Price TCC.

Answers

29. NYISO responded, requesting that the Commission reject the argument that NYISO should not be permitted to include historical congestion rents and auction prices that are adjusted for inflation, i.e., the historical inflation component, in the base price component of its Fixed Price TCC calculation. NYISO states that the reasonable interpretation of the April 16, 2008 Order is that it did not deny the use of a historical inflation component, but rather a prospective inflation adjustment. In addition, NYISO notes that the Commission expressly stated that NYISO should retain the “historical pricing components (i.e., recent auction values for one year TCCs and actual day-ahead congestion payouts) and other elements as proposed.”³⁹ NYISO argues that the only element requiring such clarification that the Commission could have referred to is the historical inflation component for the base price calculation. NYISO states that the protesters’ arguments misinterpret the Commission’s directive in the April 16, 2008

³⁸ See OATT proposed Sheet Nos. 565C-565E; Services Tariff proposed Sheet Nos. 359.03-359.05.

³⁹ April 16, 2008 Order at P 128.

Order. The New York Transmission Owners support the proposal, stating that NYMPA used a selective and misleading quotation to describe the content of the order. The New York Transmission Owners support the NYISO interpretation. NYISO states that the historical inflation component ensures that any Fixed Price TCC calculated based on historical prices is translated into present dollars, so that the buyer does not receive an unwarranted discount by paying for TCCs valued in past years' dollars. According to NYISO, this methodology is consistent with the Commission's finding that prices for these Fixed Price TCCs should reflect "market value."⁴⁰ NYISO concludes that the protesters' arguments concerning the inclusion of a historical inflation component in the Fixed Price TCC pricing mechanism are without merit and should be rejected.

Commission Determination

30. In the April 16, 2008 Order, the Commission rejected, as unjust and unreasonable, NYISO's proposed inflation adjustment and option premium to estimate the future price of the Fixed Price TCCs.⁴¹ Consequently, the Commission accepts NYISO's compliance filing removing the future price inflation adjustment and option premium mechanisms. We deny, however, protesters' claims that NYISO should also remove the historical inflation component from the price calculation methodology. As explained below, removing the historical component would be contrary to the directives in the April 16, 2008 Order and may result in an unjust and unreasonable rate for Fixed Price TCCs.

31. When the Commission directed NYISO to remove the inflation factor and option premium components from the calculation to determine the future price of the Fixed Price TCCs, the Commission expressly specified that NYISO was to retain the "historical pricing components."⁴² Therefore, contrary to protestors' assertions, the April 16, 2008 Order did not direct NYISO to remove or modify the historical inflation factor. The historical inflation adjustment is needed to make the various historical values that are used in the Fixed Price TCC price calculation comparable to one another. It does this by removing any differences in the historical values that are due solely to inflation, and restating the values at a level consistent with the current level of prices in the economy. Eliminating the historical inflation adjustment, on the other hand, would distort the price calculation and potentially misstate the value of the Fixed Price TCC. We further note

⁴⁰ *Id.* P 127.

⁴¹ *Id.* P 128.

⁴² *Id.*

that no party sought rehearing of the April 16, 2008 Order on this issue, which would have been the more appropriate time to raise this issue.

b. Choice of Inflation Adjustment Factor

Comments

32. The New York Transmission Owners note that the Fixed Price TCCs price calculation uses the Gross Domestic Product Implicit Price Deflator to make historical inflation adjustments pursuant to the pricing formula.⁴³ The New York Transmission Owners state that the use of this index is incompatible with NYISO's pricing methodology because the Gross Domestic Product Implicit Price Deflator is only published quarterly, while NYISO calculates monthly inflation adjustments in pricing Fixed Price TCCs.⁴⁴ Therefore, New York Transmission Owners request that the Commission direct NYISO to adopt a monthly inflation index.

Answers

33. In its July 9, 2008 answer, NYISO agrees with the New York Transmission Owners that the tariff should not reference the Gross Domestic Product Implicit Price Deflator, given the timing mismatch between its quarterly publication and NYISO's proposed monthly calculations.⁴⁵ NYISO states that the tariff should instead use an index of comparable quality that is published monthly and is thus fully compatible with the Fixed Price TCC pricing formula. NYISO proposes that the monthly Personal Consumption Expenditures Implicit Price Deflator would be an appropriate alternative index. NYISO states that, among other things, both the Personal Consumption Expenditures Implicit Price Deflator and the Gross Domestic Product Implicit Price Deflator are prepared and published by the Department of Commerce Bureau of Economic Analysis. NYISO requests that the Commission direct NYISO to revise its tariff to expressly authorize the use of the Personal Consumption Expenditures Implicit Price Deflator instead of the Gross Domestic Product Implicit Price Deflator.

⁴³ New York Transmission Owners comments at 3 (citing NYISO OATT, Attachment M, Sheet No. 565E; Services Tariff, Attachment B, Sheet No. 359.05).

⁴⁴ See OATT, Attachment M, Sheet No. 565D; Services Tariff, Attachment B, Sheet No. 359.04.

⁴⁵ NYISO July 9, 2008 answer at 2.

34. NYMPA counters that the Commission should reject the “*ad hoc*” proposal of the New York Transmission Owners, based on what NYMPA characterizes as the Commission’s rejection of the use of inflation adjustments.

Commission Determination

35. We agree with NYISO and the New York Transmission Owners that the historical inflation factor used to adjust historical prices to present value should be a monthly factor that is compatible with the monthly pricing methodology approved for the calculation of the Fixed Price TCCs.⁴⁶ Therefore, we direct NYISO to revise the tariff sheets to identify the published monthly inflation factor it will use and to file this revision within 30 days of the issuance of this order.

C. Proposal to Remove Offer of Auction Allocation Rights Proposal

36. The April 16, 2008 Order stated that NYISO could offer auction allocation rights as a supplement to its Fixed Price TCC proposal, but that the auction allocation rights proposal did not, on its own, comply with the Commission’s guidelines in Order Nos. 681 and 681-A.⁴⁷ In response, NYISO has proposed to delete the supplemental auction allocation rights proposal.

Commission Determination

37. We accept NYISO’s proposal to delete the auction allocation rights proposal, consistent with our determination in the April 16, 2008 Order.⁴⁸ Moreover, we note that no party has argued that it would be preferable for the NYISO tariff to retain this feature.

D. Tariff Revisions Intended to Address Implementation Issues

1. General Issues

38. NYISO states that, since it filed its Long-Term Firm Transmission Rights Proposal, it has identified tariff revisions to correct drafting errors or ambiguities that

⁴⁶ We note that we reject NYMPA’s suggestion because, as explained above, the Commission accepted the use of a historical inflation adjustment. *See supra* P 30-31.

⁴⁷ April 16, 2008 Order at P 78.

⁴⁸ *Id.*

could create confusion after Fixed Price TCCs are implemented.⁴⁹ To address implementation issues, NYISO proposes tariff revisions to (i) specify which version of Attachment L governs Fixed Price TCC conversions, (ii) permit load serving entities to rely on agents, (iii) clarify the eligibility date for grandfathered agreements, (iv) eliminate ambiguity in the Fixed Price TCC pricing formula, including revisions to accommodate multiple (seasonal) maximum loads,⁵⁰ and (v) update provisions for the commencement of Fixed Price TCC terms. In addition, NYISO proposes other modifications to (a) revise its credit policies, (b) terminate TCC rights on failure of payment, and (c) clarify the billing dates for Fixed Price TCCs. NYISO recognizes that the Commission does not favor the inclusion in compliance filings of tariff revisions that are not expressly required by a Commission order.⁵¹ Nevertheless, it submits the revisions, which, according to NYISO, are appropriate to provide NYISO with the flexibility to institute a long-term firm transmission rights mechanism that meets regional needs and complies with Order Nos. 681 and 681-A.

Protests

39. NYMPA states that NYISO proposes eleven separate additional tariff modifications, none of which were required by the April 16, 2008 Order.⁵² According to NYMPA, NYISO's proposal is inconsistent with Commission policy limiting compliance filings to the specific directives of the Commission's orders.⁵³ NYMPA and New York Public Power request that the Commission reject these changes without prejudice to

⁴⁹ NYISO May 16 Compliance Filing at 8-11.

⁵⁰ See OATT proposed Sheet No. 565D; Services Tariff proposed Sheet Nos. 359.03 and 359.04.

⁵¹ May 16 Compliance Filing at 9 (citing *Entergy Services, Inc.*, 117 FERC ¶ 61,055, at P 22 (2006)).

⁵² NYMPA protest at 11-18 (objecting to proposals to (i) remove 10-year Fixed Price TCC, (ii) address the applicability of Attachment L to Fixed Price TCC conversions, (iii) change credit provisions, (iv) terminate TCC rights on failure of payment, and (v) clarify the billing dates for Fixed Price TCCs). NYMPA otherwise fails to specify the proposals to which it objects.

⁵³ NYMPA protest at 11, n.23 (citing *American Electric Power Service Corp.*, 99 FERC ¶ 61,178 (2002); *PJM Interconnection, L.L.C.*, 101 FERC ¶ 61,135 (2002); *Sierra Pacific Power Co.*, 80 FERC ¶ 61,376 (1997)).

NYISO making a subsequent section 205 filing, consistent with the Commission's policies on compliance filings. NYMPA states that such a result also ensures that NYISO's stakeholder process will not be circumvented.

Answers

40. NYISO argues that the Commission should reject the protests because the proposed tariff revisions are necessary for eligible load serving entities to participate, and, therefore, benefit the protesters. NYISO notes that the protesters take issue with several matters, but have not objected to the inclusion of the concept of "Existing Transmission Agreement (or ETA) Agents," which allow non-transmission customer load serving entities to obtain Fixed Price TCCs under NYISO's tariff. NYISO acknowledges that this change is not addressed in the April 16, 2008 Order, but states that it was included to facilitate participation by entities similar to the protesters. NYISO states that the Commission previously accepted the inclusion of clarifying language or ministerial changes in compliance filings that were not technically required by the underlying compliance order.⁵⁴ NYISO asserts that, in this case, the proposed revisions are necessary to ensure that it can effectively implement its Long-Term Firm Transmission Rights Proposal. Therefore, NYISO urges that the revisions should be permitted. In addition, NYISO notes that the Long-Term Firm Transmission Rights Proposal was itself submitted in a compliance filing in response to Order Nos. 681 and 681-A. According to NYISO, Order Nos. 681 and 681-A gave Independent System Operators and Regional Transmission Organizations broad discretion to propose compliance tariff revisions that reflect both Commission policies and specific regional needs. NYISO states that it should therefore be accorded limited discretion to supplement its May 16 Compliance Filing with necessary clarifications to address potential implementation problems.

Commission Determination

41. The Commission will consider each proposed revision independently and evaluate which ones are necessary to implement the April 16, 2008 Order,⁵⁵ as discussed below. Several of the proposed revisions are appropriate because they are needed to implement the modifications directed in the April 16, 2008 Order. Therefore, we will accept these proposed changes to the OATT and Services Tariff as necessary to implement the NYISO Long-Term Firm Transmission Rights Proposal as modified by the April 16,

⁵⁴ NYISO June 12, 2008 answer at 11-12, n.26 (citing *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188, at P 9-10 (2004)).

⁵⁵ See *supra* note 29.

2008 Order. However, we reject the other modifications identified as non-conforming. We disagree with NYISO's characterization of these modifications as ministerial and necessary to effectuate the Long-Term Firm Transmission Rights Proposal. Because we find that the non-conforming changes are not needed to implement the Long-Term Firm Transmission Rights Proposal, they are outside the scope of the May 16, 2008 Compliance Filing proceeding.

2. Conforming Tariff Revisions

a. Attachment L – Existing Transmission Agreements

42. NYISO proposes to clarify its price terms for Fixed Price TCC conversions by specifying that the version of the OATT, Attachment L that is in effect at the time that a load serving entity obtains Fixed Price TCCs will govern future TCC conversions for the life of the Fixed Price TCC.⁵⁶ NYISO states that this clarification provides certainty to load serving entities that have converted their grandfathered rights to Fixed Price TCCs, ensuring that their TCCs cannot be inappropriately revised in the future.⁵⁷ Furthermore, the provision will simultaneously allow NYISO to implement any necessary prospective corrections to Attachment L that would then apply to subsequent Fixed Price TCC conversions.

Protests

43. NYMPA argues that NYISO's proposal to tie a load serving entity's right to convert to Fixed Price TCCs to a subsequent version of OATT, Attachment L in effect at a particular time should be vetted with NYISO stakeholders. NYMPA states that the proposal could substantially affect the future conversion rights of load serving entities.

Answers

44. NYISO responds that the proposed change to Attachment L is a purely ministerial change that would simply ensure that the most up-to-date version of Attachment L

⁵⁶ Attachment L of the NYISO OATT identifies the grandfathered transmission service agreements, or existing transmission agreements, and is periodically revised. *See* May 16 Compliance Filing at 11 (describing OATT proposed Sheet No. 565; Services Tariff proposed Sheet No. 359).

⁵⁷ "Grandfathered rights" refers to the rights provided by existing transmission agreements.

governs load serving entities' rights to Fixed Price TCCs.⁵⁸ NYISO states that it also wants to ensure that the rights of load serving entities with expired contracts to receive Fixed Price TCCs are certain, even though Attachment L still reflects that their contracts do not expire until 2013.

Commission Determination

45. The proposed revisions to Attachment L protect load serving entities with grandfathered service agreements and specify which version of Attachment L applies to load serving entities' Fixed Price TCCs. We find NYISO's proposed revisions reasonable and accept them. Since the revisions implement the Long-Term Firm Transmission Rights Proposal and accommodate the changes required by the April 16, 2008 Order, further stakeholder process is not necessary for NYISO to include them in its compliance filing.

b. Miscellaneous Tariff Revisions

i. ETA Agents

46. NYISO proposes to define "ETA [Existing Transmission Agreement] Agents" as entities that secure Fixed Price TCCs for load serving entities that are eligible to obtain Fixed Price TCCs but do not meet the OATT definition of Transmission Customer or the Services Tariff definition of Customer.⁵⁹ These ETA Agents are entities that are Transmission Customers or Customers under the NYISO tariff that agree to effectively stand in the shoes of otherwise-eligible load serving entities that do not meet these definitions. The ETA Agents would assume the rights and the obligations of these load serving entities with respect to Fixed Price TCCs. NYISO states that an ETA Agent would be appointed by a load serving entity, subject to NYISO approval.

47. NYISO proposes to revise its tariff to specify that all rights and obligations regarding Fixed Price TCCs applicable to load serving entities are equally applicable to ETA Agents, except where it would be inappropriate for an agent to have such rights and obligations, such as having the agent certify that it needs a Fixed Price TCC to serve its load, since an agent may not have its own load. NYISO also proposes to delete language in section 9.4a of Attachment M of the NYISO tariff requiring each load serving entity to sign a statement that it is financially willing and able to pay for the Fixed Price TCCs that

⁵⁸ NYISO June 12, 2008 answer at 12.

⁵⁹ See NYSIO OATT section 1.45; Services Tariff section 2.34.

it is obtaining. Such action is necessary, NYISO argues, because in many instances it will be the ETA Agent and not the load serving entity itself that is financially responsible for Fixed Price TCCs.

ii. Eligibility Date

48. NYISO also proposes to revise section 2A.1 of the NYISO tariff to clarify which Existing Transmission Agreements are eligible for Fixed Price TCC conversion, i.e., those that were in effect when NYISO began operating. NYISO determined that many Existing Transmission Agreements that were originally listed as being eligible actually had terminated. Therefore, NYISO proposes to revise the tariff to more accurately reflect which Existing Transmission Agreements may convert to Fixed Price TCCs.

iii. TCC Pricing Formula Clarifications

49. NYISO proposes to add language to section 2A.1 to clarify that, when a load serving entity has an Existing Transmission Agreement that lists more than one maximum megawatt quantity in Attachment L, for example due to different seasonal maximums, the load serving entity is eligible to request Fixed Price TCCs up to the highest quantity listed.⁶⁰

iv. Commencement of TCC Terms

50. NYISO proposes to make revisions affecting the timing of commencement of Fixed Price TCCs' terms in section 2A.1 because NYISO's implementation of its Long-Term Firm Transmission Rights Proposal has been delayed from what was contemplated when NYISO originally submitted its compliance filing in response to Order Nos. 681 and 681-A in February 2007.⁶¹

⁶⁰ See OATT Sheet No. 565B; Services Tariff Sheet No. 359.02. In addition, NYISO rewords the Fixed Price TCC pricing formula in section 2A.2. OATT Sheet No. 565D; Services Tariff Sheet Nos. 359.03 and 359.04.

⁶¹ See OATT proposed Sheet No. 565A.00; Services Agreement proposed Sheet No. 359.01 (updating dates to determine conversion eligibility and deadlines).

Commission Determination

51. We accept the proposed creation of ETA Agents and the other miscellaneous revisions discussed in this section as necessary to implement NYISO's long-term firm transmission rights tariff provisions.

3. Non-Conforming Tariff Modifications

52. NYISO proposes to revise Attachment W of the OATT and Attachment K of the Services Tariff to make limited changes to its creditworthiness requirements, which, it states, are necessitated both by the elimination of the auction allocation right provisions and by the inclusion of more detailed Fixed Price TCC rules. NYISO states that, consistent with the fact that Fixed Price TCCs are not obtained through auctions, the revision clarifies that TCC auction prices will not be a component in calculating the creditworthiness holding requirements associated with Fixed Price TCCs. Rather, NYISO proposes that the creditworthiness requirement associated with Fixed Price TCCs will be determined in accordance with the market-based valuation determined under section 2A.2 of its tariff, i.e., the actual prices of the Fixed Price TCCs.

53. NYISO also proposes a termination provision under which a load serving entity would permanently surrender its Fixed Price TCCs for the remaining term of the TCC if it fails to make its annual Fixed Price TCC payment.⁶² NYISO states that this change will reduce the potential for disputes in the event that a Fixed Price TCC holder fails to make its required payments.⁶³

54. NYISO proposes to revise OATT, Attachment M, section 9.6 and Services Tariff, Attachment B, Part IV to expressly clarify that Fixed Price TCC holders will be billed at a different time than other TCC holders.

Protests

55. NYMPA states that NYISO has not provided sufficient information to permit evaluation of the effect on load serving entities of the changes to creditworthiness requirements and billing requirements. NYMPA also states that NYISO's proposed TCC surrender provision upon failure to make payment is unduly discriminatory compared to

⁶² See OATT proposed Sheet No. 565E.00; Services Tariff proposed Sheet No. 359.05.

⁶³ May 16 Compliance Filing at 11.

other types of transactions, for which market participants may cure defaults and make use of dispute resolution procedures.

56. NYISO responds that, unless current tariff provisions are changed, the credit collateral requirement for purchasers of Fixed Price TCCs would be zero.

Commission Determination

57. The Commission rejects these proposed non-conforming modifications. They were not ordered by the April 16, 2008 Order and are not needed to implement NYISO's proposal. They are outside the scope of this proceeding. This action is without prejudice to NYISO making a new filing under FPA section 205 that justifies each modification.⁶⁴

58. While we take no action on the creditworthiness proposal for the reasons discussed above, we recognize the importance of having appropriate creditworthiness provisions in place. Therefore, we direct that NYISO use its stakeholder process to develop creditworthiness provisions addressing financial risks associated with the implementation of long-term financial transmission rights and to file these provisions within 90 days of the date of this order.

E. Fixed Price TCC Pricing Issues

59. Protesters raise issues concerning the pricing of long-term firm transmission rights.⁶⁵ NYMPA states that the actual prices determined by NYISO for Fixed Price TCCs do not accurately reflect actual historical congestion costs because NYISO did not employ a screening mechanism to remove atypical and anomalously high congestion costs experienced in the winter of 2007/2008. NYMPA asks the Commission to direct NYISO to develop and incorporate into its tariff a screening device that would ensure that the calculated price for Fixed Price TCCs is based on historically accurate congestion costs that existed under typical operating conditions. According to NYMPA and MEUA,

⁶⁴ The Commission also notes certain apparent inconsistencies in NYISO's proposed tariff sheets. For example, OATT Sheet No. 564 does not reflect NYISO's proposed change regarding Existing Transmission Agreements in Attachment L, and proposed OATT Sheet No. 727 appears to improperly delete the phrase "in excess of its authorization."

⁶⁵ NYISO informed load serving entities of the purchase price of the Fixed Price TCCs available in June 2008. NYMPA protest, Exhibit A.

the Exigent Circumstances Filing,⁶⁶ that is the subject of NYMPA and MEUA's motion to lodge, provides further evidence that congestion costs were abnormally high between December 2007 and February 2008, justifying exclusion of these costs from the Fixed Price TCC calculation.

Commission Determination

60. Protests regarding price calculation are beyond the scope of this proceeding. The April 16, 2008 Order did not direct a change to the test period methodology for calculating the price of Fixed Price TCCs, and this is not the proper juncture in this proceeding to raise such a challenge.⁶⁷ Rather, the protests on pricing are an impermissible collateral attack on the April 16, 2008 Order accepting the pricing provisions.⁶⁸

61. Given that we reject the challenges to the pricing methodology that NYMPA and MEUA attempt to support through the motion to lodge, we also reject the motion to lodge. NYMPA and MEUA state that the motion to lodge is intended to provide additional evidence that the congestion costs occurring in December 2007 through February 2008 were anomalous and should be excluded from the test year used in the Fixed Price TCC price calculation. Because the pricing of the Fixed Price TCCs is outside the scope of the compliance filing, we reject the motion to lodge evidence on pricing.

The Commission orders:

(A) Tariff revisions that comply with the directives in the April 16, 2008 Order and/or are necessary to implement long-term firm transmission rights in NYISO are accepted, effective June 1, 2008, as discussed in the body of this order.

⁶⁶ In the Exigent Circumstances Filing, NYISO requested emergency revisions to its OATT and Services Tariff to prevent the scheduling of transactions between NYISO and PJM through Ontario that, according to the filing, creates loop flows that raise real-time congestion costs within NYISO.

⁶⁷ See *Acadia Power Partners, LLC*, 106 FERC ¶ 61,215 (2004) (collateral attacks on Commission orders may not be made through protests to compliance filings).

⁶⁸ April 16, 2008 Order at P 124. *Accord, California Independent System Operator, Corp.*, 120 FERC ¶ 61,023, at P 155-58 (2007), *reh'g denied*, 124 FERC ¶ 61,094, at P 28 (2008).

(B) Non-conforming tariff revisions discussed in the body of this order are rejected, subject to the compliance filing discussed below, without prejudice to NYISO refiling the revisions under section 205 of the FPA, as discussed in the body of this order.

(C) NYISO is directed to make a compliance filing to reinstate the 10-year Fixed Price TCC provisions in its OATT, identify the published monthly inflation factor it will use, and delete provisions not approved, each as discussed in the body of this order, within 30 days from the date of this order. In addition, NYISO is directed to make a compliance filing to provide market participants that acquired five-year Fixed Price TCCs the opportunity to convert their TCCs to 10-year Fixed Price TCCs and to provide market participants that declined to obtain five-year Fixed Price TCCs because they desired a 10-year product an opportunity to obtain 10-year Fixed Price TCCs, as discussed in the body of this order, within 30 days from the date of this order.

(D) NYISO is directed to make a compliance filing consisting of revisions to its credit procedures to address financial risks associated with the long-term financial transmission rights order, as discussed in the body of this order, within 90 days from the date of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.