127 FERC ¶ 61,147
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

New York Independent System Operator, Inc. Docket No. ER08-1281-002

ORDER DENYING CLARIFICATION AND,
IN THE ALTERNATIVE, REHEARING

(Issued May 21, 2009)

1. On February 26, 2009, the New York Municipal Power Agency and Municipal Electric Utilities Association of New York (New York Municipals) jointly filed a request for clarification or, in the alternative, rehearing of the Commission's January 28, 2009 order in the above-captioned docket.[1] On March 13, 2009, the Neighboring States[2] filed in support of the New York Municipals' request. The January 28, 2009 Order granted in part requests for clarification or rehearing of an August 21, 2008 order accepting tariff sheets filed by New York Independent System Operator, Inc. (NYISO). Those tariff sheets, as an interim measure, precluded the scheduling of flows over certain transmission paths to help control market distortions and congestion and uplift costs on the NYISO system.[3] As discussed below, the Commission denies the request for clarification and, in the alternative, rehearing.

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[1] *New York Independent System Operator, Inc.*, 126 FERC ¶ 61,068 (2009) (January 28, 2009 Order).

[2] Neighboring States comprise Allegheny Electric Cooperative, Inc. (for Pennsylvania), the City of Cleveland (for Ohio), the Connecticut Municipal Electric Energy Cooperative (for Connecticut), the Massachusetts Municipal Wholesale Electric Company (for Massachusetts), the Pascoag Utility District (for Rhode Island), the Public Power Association of New Jersey (for New Jersey) and the Vermont Department of Public Service (for Vermont).

[3] *New York Independent System Operator, Inc.*, 124 FERC ¶ 61,174 (2008) (August 21, 2008 Order).

Background

2. On August 21, 2008, the Commission accepted tariff sheets filed by NYISO that, as an interim measure precluded the scheduling of flows over eight different transmission paths for which there are more direct routing options.[4]

3. In its transmittal letter to the filing, NYISO asserted that, since January 2008, an increasing number of transactions have been scheduled by market participants around Lake Erie so that the transactions would supposedly exit NYISO, be wheeled through the Independent Electricity System Operator of Ontario and the Midwest Independent Transmission System Operator, and sink in PJM Interconnection, L.L.C. (PJM). However, NYISO stated that, in fact, approximately 80 percent of the scheduled power actually flowed over the common border between NYISO and PJM. NYISO noted that several market participants were scheduling transactions in these circuitous routes around Lake Erie to take advantage of differences in the way regional transmission organizations (RTOs) price transactions that exit their systems. NYISO stated that, for a variety of reasons, this type of scheduling caused market distortions, congestion, and increased uplift costs. NYISO maintained that its proposed tariff changes would not eliminate all loop-flow issues, but that they would reduce unscheduled power flows. In its August 21, 2008 Order, the Commission also stated that its:

> Office of Enforcement began a non-public investigation under Part 1b of the Commission's regulations in May of this year into the scheduling of flows over the circuitous paths such as those that are addressed in the instant order. The Commission will determine what further action may be appropriate with respect to the above described claims after it considers the results of the staff investigation. We also will not require NYISO to file reports beyond those directed above, as such issues are more appropriately addressed in the investigation.[5]

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[4] *Id*. NYISO filed the tariff sheet pursuant to the exigent circumstances provision of the NYISO Independent System Operator Agreement, which empowers the NYISO Board to direct NYISO to submit a Federal Power Act section 205 filing without the concurrence of the NYISO's Management Committee in certain specified exigent circumstances, which filing must expire no later than 120 days after it is filed with the Commission unless the Management Committee files a concurrence within the 120 day period. NYISO filed tariff sheets pursuant to this provision on July 21, 2008. On August 21, 2008, the Commission issued an order which accepted the tariff sheets to be effective for a locked-in 120 period, i.e., from July 22, 2008 through November 18, 2008.

[5] *Id.* P 32.

4. On October 31, 2008, in Docket No. ER09-198-000, NYISO filed tariff sheets to preclude the scheduling of flows over the same eight circuitous transmission paths as the exigent circumstances filing. In its transmittal letter to that filing, NYISO stated that the proposed tariff sheets contained the same language as that accepted by the Commission for the locked-in period in its August 21, 2008 Order. NYISO proposed that the tariff sheets take effect on November 19, 2008, when the locked-in period ended. On November 17, 2008, the Commission accepted the tariff sheets, to be effective as requested on November 19, 2008.[6] Therefore, the exigent circumstances tariff sheets filed in Docket No. ER08-1281-000 and accepted by the Commission's August 21, 2008 Order are no longer in effect and have been replaced by the tariff sheets submitted, and accepted, in Docket No. ER09-198-000.

5. On September 4, 2008 in Docket No. ER08-1281-001, the New York Municipals requested clarification of the August 21, 2008 Order. They sought clarification of a single sentence in the August 21, 2008 Order which stated that the Commission "will not require NYISO to file reports beyond those directed [in the August 21, 2008 Order], as such issues are more appropriately addressed in the investigation."[7] The New York Municipals requested clarification that this sentence was limited only to the specific reverse flow problem identified in the exigent circumstances filing.

6. In the alternative, the New York Municipals requested rehearing of the August 21, 2008 Order on the ground that the Commission erred by not directing NYISO to provide a report and take the corrective actions outlined in the protest of the New York Municipals to address all causes of unreasonably high congestion costs and uplift charges, which include, but are not limited to, the reverse loop flow scheduling practices addressed in the exigent circumstances filing.

7. On January 28, 2009, the Commission granted the clarification requested by the New York Municipals, agreeing that its statement in the August 21, 2008 Order that NYISO would not be required to make additional reports was limited to any reports required in Docket No. ER08-1281-000 and that it did not address reports required in other proceedings.[8]

8. In addition, the Commission stated that, in the Docket No. ER09-198-000 proceeding on NYISO's filing to extend the scheduling limitations, the New York

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[6] *New York Independent System Operator, Inc.*, 125 FERC ¶ 61,184, at P 15 and 18 (2008) (November 17, 2008 Order).

[7] Citing August 21, 2008 Order, 124 FERC ¶ 61,174 at P 32.

[8] January 28, 2009 Order, 126 FERC ¶ 61,068 at P 10.

Municipals had requested that NYISO be required to adopt a monitoring plan to ensure that future problems that unreasonably increase consumers' costs or affect system reliability were quickly identified and remedied. The Commission also noted that in that the same proceeding, NYISO's Independent Market Monitor and PJM requested that the Commission require NYISO to work with PJM and others to develop a congestion management process between PJM and NYISO. The Commission pointed out that, in the November 17, 2008 Order in Docket No. ER09-198-000, the Commission stated that it understood the need for a long-term comprehensive solution to these issues and directed NYISO to work with its market participants and others to address such matters on a comprehensive basis. In particular, to satisfy concerns set forth by the New York Municipals that the Commission may have relieved NYISO of all obligations to file reports, the Commission noted that the November 17, 2008 Order had required NYISO to file a report on the status of its progress in developing solutions to the loop flow problem, including an inter-RTO congestion management process, within 90 days.[9]

Request for Clarification or Rehearing

9. The New York Municipals did not seek rehearing of the November 17, 2008 Order accepting NYISO's filing to extend the scheduling limitations. However, on February 26, 2009, the New York Municipals requested clarification or, in the alternative, rehearing of the January 28, 2009 Order in the exigent circumstances proceeding. They assert that the issue that needs to be addressed is the detection, reporting, and mitigation of current and future market manipulation, rather than the prevention of market manipulation. The New York Municipals argue that future transactions devised to arbitrage differences in market rules between ISOs/RTOs and to exploit flaws within a single market's design are inevitable. They also assert that NYISO will occasionally make mistakes that affect the accuracy of energy prices and shift costs to uplift. The New York Municipals argue that NYISO does not have a formal method in place to detect, investigate, and immediately mitigate or eliminate the adverse effects of abnormal system flows, abnormally high congestion costs, and abnormal increases in NYISO charges, and if it did, then its ability to minimize the economic harm from these activities and quickly prohibit the behavior or correct the error causing the harm would be improved.[10] The Neighboring States agree with the New York Municipals on the need for a formal monitoring plan.

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[9] November 17, 2008 Order, 125 FERC ¶ 61,184, at P 20 (2008).

[10] The New York Municipals state that by a formal method they mean either a revision to NYISO's Tariff or ISO Procedures that establishes a monitoring plan that: (1) requires routine tracking, trending and evaluation of NYISO charges, flows, and congestion costs; (2) requires routine reporting to stakeholders; (3) has sufficient transparency and granularity to identify each individual component of the uplift charges

(continued …)

10. The New York Municipals argue that the clarification previously granted in the January 28, 2009 Order does not address their current concerns because such clarification "is not targeted at improving the detection and mitigation of all circumstances." The New York Municipals argue that the January 28, 2009 Order dismissed the New York Municipals' concerns because the Commission had directed NYISO to develop "solutions to the loop flow problem, including an inter-RTO congestion management process." They assert that while this may prevent recurrence of the types of transactions that necessitated the exigent circumstance filing, it will do nothing to improve the NYISO's ability to quickly detect and respond to problems.[11]

11. The New York Municipals argue that all NYISO market participants would benefit from a formal monitoring plan that would minimize unnecessary costs to customers. The New York Municipals contend that it is the delay between the occurrence of an error or illicit activity and its remedy that they seek to eliminate by their request. To the extent the Commission does not grant clarification that such a monitoring and detection method must be implemented, the New York Municipals request rehearing of the January 28, 2009 Order.

12. The New York Municipals assert that the Commission erred by not directing the NYISO to report on facilitating the early detection and elimination or mitigation of all causes of unreasonably high congestion costs and uplift charges, which include but may not be limited to the reverse loop flow scheduling practices described in the exigent circumstances filing. Further, they argue that the Commission erred by dismissing the New York Municipals' request for rehearing by relying on an inter-RTO/ISO congestion management directive that will in no way facilitate NYISO's detection of abnormal changes to charges, congestion costs, and system flows.

Discussion

13. The Commission denies New York Municipals' request for clarification and, in the alternative, rehearing of the January 28, 2009 Order in this docket, the exigent circumstances proceeding. In accepting NYISO's August 21, 2008 filing in this docket, the Commission permitted NYISO to place the interim tariff sheets in effect for a locked-in period and designed to accommodate an exigent circumstances filing by the NYISO Board. In the January 28, 2009 Order, the Commission also granted the clarification requested by the New York Municipals and clarified that, while NYISO would not be

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and determine the specific causes of any cost increases; and (4) provides specific criteria that the NYISO will use to trigger evaluation, investigation, and immediate correction of unexplained and unanticipated increases in charges, flows, or congestion costs.

[11] New York Municipals' Request at 4.

required to make additional reports in the exigent circumstances proceeding, the Commission had not excused NYISO from filing required reports such as the filing required in the November 17, 2008 Order in Docket No. ER09-198-000 addressing NYISO's progress in developing solutions to the loop flow problem. Because the Commission granted the New York Municipals' clarification request, it did not address their alternative request for rehearing that the scope of the proceeding should be broadened to require NYISO to take corrective actions to address all causes of high congestion costs and Schedule 1 charges.

14. The New York Municipals' current request that the Commission compel NYISO to adopt a "formal" monitoring plan to detect all causes of unreasonably high congestion costs is beyond the scope of this proceeding, which is limited to adopting a temporary solution to a specific problem. The New York Municipals argue that the "January 28, [2009] [O]rder dismisses [the New York Municipals'] concerns by relying upon Commission direction to NYISO to develop 'solutions to the loop flow problem, including an inter-RTO congestion management process.'"[12] On the contrary, the January 28, 2009 Order clarified that the Commission's statement about not requiring further reports was limited to the exigent circumstances proceeding, precisely what the New York Municipals requested.[13] Therefore, having granted the requested clarification, the Commission did not need to address the New York Municipals' alternative request for rehearing.

15. The New York Municipals acknowledge that, in its January 28, 2009 Order, the Commission acted upon the exigent circumstances filing before it and also concede that the Commission directive in Docket No. ER09-198-000 that NYISO develop solutions to the loop flow problem, including an inter-RTO congestion management process, may prevent recurrence of the types of transactions that necessitated the exigent circumstance filing. The Commission finds no merit to New York Municipals' argument that its January 28, 2009 Order should have gone further and directed NYISO first to put in place a formal, documented method to monitor changes in system flows, congestion costs, and

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[12] New York Municipals' Request at 4, citing January 28, 2009 Order, 126 FERC ¶ 61,068 at P 4.

[13] The January 28, 2009 Order states:

> First, in response to the New York Municipals' request, the Commission clarifies that its statement in the August 21, 2008 Order that NYISO would not be required to make additional reports was limited to any reports the Commission might require in the Docket No. ER08-1281-000 exigent circumstances proceeding, and was not intended to excuse NYISO from filing other reports that NYISO is otherwise required to file. *Id*. P 10.

other NYISO charges unrelated to the loop flow problem at issue in the exigent circumstances proceeding.

16. Moreover, the Commission finds that the New York Municipals' request in the instant docket is an out-of-time request for rehearing of the Commission requirement in Docket No. ER09-198-000, that NYISO, within 90 days of the date of the November 17, 2008 Order, file a status report on its progress in developing solutions to the loop flow problem, including an inter-RTO congestion management process. The New York Municipals argue in the instant case that such a directive is insufficient for a variety of reasons. However, the Commission notes that the New York Municipals failed to file for rehearing of the November 17, 2008 Order requiring such action and their request here is an impermissible collateral attack on that order. To the extent that the New York Municipals seek modifications to the NYISO tariff, they should address those concerns in the stakeholder process and, if necessary, in a complaint to the Commission. Accordingly, the Commission denies the request for clarification and, in the alternative, the request for rehearing filed by the New York Municipals in the instant docket.

The Commission orders:

The request for clarification and, in the alternative, rehearing filed by the New York Municipals, are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.