

137 FERC ¶ 61,069  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket Nos. ER11-3881-000  
ER11-3881-001

ORDER CONDITIONALLY ACCEPTING TARIFF FILING IN PART,  
DENYING TARIFF FILING IN PART,  
AND REQUIRING COMPLIANCE FILING

(Issued October 20, 2011)

1. On June 24, 2011, the New York Independent System Operator, Inc. (NYISO) made a filing to (1) revise the definition of Available Transfer Capability (ATC) in its Open Access Transmission Tariff (OATT), and (2) update its OATT and Market Administration and Control Area Services Tariff (Services Tariff) to incorporate by reference North American Energy Standards Board (NAESB) business practice standards set forth in Order No. 676-E.<sup>1</sup> We conditionally accept those tariff sheets, subject to NYISO (1) submitting a modified ATC definition consistent with the definition of ATC promulgated by the North American Electric Reliability Corporation (NERC), and (2) providing justification for the continuation of certain waivers from the NAESB Wholesale Electric Quadrant (WEQ) that were previously granted by the Commission.

**I. Background**

2. In an order issued on September 16, 2010, the Commission approved NERC's interpretation of certain reliability standards, and noted that "the NYISO OATT's definition of 'ATC' . . . does not fully reflect the 'advisory' nature of most NYISO ATC calculation."<sup>2</sup> The Commission further noted that to the extent that NYISO's tariff did not reflect its actual mode of operation, NYISO was required to take steps to ensure that

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<sup>1</sup> *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-E, FERC Stats. & Regs. ¶ 31,299 (2009) (Order No. 676-E).

<sup>2</sup> *North American Electric Reliability Corporation*, 132 FERC ¶ 61,239, at P 20 (2010) (footnote omitted) (September 16 Order).

its tariff and its actual operations are in harmony, and was encouraged to do so expeditiously.<sup>3</sup>

## II. The Instant Filing

3. On June 24, 2011, NYISO submitted a proposed revision to its OATT to change its definition of ATC and to update its tariff to reflect Order No. 676-E.

### A. ATC Definition

4. NYISO states that this proposed revision will result in the NYISO OATT definition more accurately reflecting the function that ATC performs, and the way that ATC is calculated under NYISO's financial reservation-based transmission system.

5. NYISO describes its market design as being a financial reservation model that differs substantially from the physical reservation transmission model contemplated by Order Nos. 888,<sup>4</sup> 889,<sup>5</sup> and 890.<sup>6</sup> NYISO states that on its system, therefore, ATC performs an "advisory" function by signaling the presence of congestion, and does not determine a customer's ability to obtain transmission service. NYISO states that the

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<sup>3</sup> *Id.*

<sup>4</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>5</sup> *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

<sup>6</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 325, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

Commission's decision in *Central Hudson Gas & Electric Corp.*<sup>7</sup> "recognize[s] that ATC postings in New York are advisory projections based on calculations performed by the NYISO's day-ahead and real-time market software."<sup>8</sup>

6. NYISO states that the definition of ATC currently in NYISO's OATT is outdated because it reflects the *pro forma* OATT definition of ATC that is based upon a physical rather than a financial transmission service model. That definition states that "Available Transfer Capability" is:

A measure of the Transfer Capability remaining in the physical transmission network for further commercial activity over and above already committed uses. ATC is defined as the Total Transfer Capability, less Transmission Reliability Margin, less the sum of existing transmission commitments, (which includes retail customer service) less the Capacity Benefit Margin. . . .<sup>9</sup>

7. NYISO states that this definition has been in place since the Commission accepted NYISO's OATT in 1999, and does not have an analogue in the current Order No. 890 *pro forma* OATT, which does not include a definition of ATC. NYISO further states that this description of how ATC is calculated is not entirely consistent with the ATC calculation algorithms in Attachment C to NYISO's OATT that were accepted in a June 6, 2011 Order.<sup>10</sup> Thus, NYISO proposes to replace the existing definition of ATC in its OATT with the following definition:

An advisory projection of the transfer capability on Internal and External Interfaces and on Scheduled Lines calculated

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<sup>7</sup> In *Central Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,253 (1999) (*Central Hudson*) the Commission granted NYISO a waiver from certain requirements to post information regarding the availability of transmission service, on the basis that NYISO "provide[s] sufficient transmission-related information to meet the current needs of market participants," *id.* at 61,803.

<sup>8</sup> Transmittal, June 24, 2011 Filing in Docket No. ER11-3881-000 at 3 n.5.

<sup>9</sup> *Id.*, citing NYISO OATT, Section 1.1.

<sup>10</sup> *New York Independent System Operator, Inc.*, Docket Nos. ER11-2048-003 and ER11-2048-004 (June 6, 2011) (delegated letter order) (June 6 Order).

using the methodology described in Attachment C to the OATT.<sup>11</sup>

8. NYISO states that the proposed revision will simplify the definition of ATC and ensure its present and future consistency with "the Commission-accepted language for calculation of ATC for different types of interfaces" as set forth in Attachment C to the NYISO OATT.<sup>12</sup> NYISO further states that adopting the updated definition will not result in any change to NYISO's existing ATC calculation procedures, and will eliminate inconsistencies and prevent the outdated tariff language from causing confusion. NYISO further asserts that acceptance of the update would be consistent with previous orders accepting tariff changes that eliminate "vestigial language that is inconsistent with the actual workings of the NYISO's financial reservation system."<sup>13</sup>

**B. Tariff Update to Reflect Order No. 676-E**

9. NYISO states that, in Order No. 676-E, the Commission amended its regulations to incorporate by reference Version 002.1 of certain NAESB WEQ business practice standards. NYISO states that none of the updated, revised or new NAESB WEQ business practice standards adopted by Order No. 676-E and applicable to NYISO require substantive tariff revisions for implementation. NYISO therefore requests that the Commission accept proposed modifications to its OATT and Services Tariff to incorporate by reference updated NAESB WEQ business practice standards that are (and that are not) applicable to NYISO, as set forth in Order No. 676-E and 18 C.F.R. § 38.2.

**C. Stakeholder Process and Effective Date**

10. NYISO states that its proposed revision to the NYISO OATT's definition of ATC was approved by its stakeholders.<sup>14</sup> In its June 24, 2011 Filing, NYISO requested an

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<sup>11</sup> Transmittal, June 24, 2011 Filing in Docket No. ER11-3881-000 at 5.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*, citing to *New York Independent System Operator, Inc.*, Docket No. ER09-984-000 (Jun. 5, 2009) (letter order accepting NYISO proposal to eliminate OATT provisions governing re-assignments of physical point-to-point capacity reservations which did not exist under NYISO's financial reservation transmission model).

<sup>14</sup> NYISO notes that its proposed revisions to update the OATT to incorporate by reference all applicable NAESB requirements are submitted in compliance with Order No. 676-E and thus did not require NYISO stakeholder approvals.

effective date for its proposed revision to the OATT's definition of ATC of August 23, 2011, sixty days after the date of that filing. On August 17, 2011, NYISO amended its requested effective date to October 24, 2011.

11. Consistent with Order No. 676-E, NYISO requests that its proposed tariff revisions to update the list of NAESB WEQ business practice standards that are incorporated into its tariffs by reference become effective as of April 1, 2011.

### **III. Discussion**

#### **A. Procedural Issues**

12. Notice of NYISO's June 24, 2011 Filing was published in the *Federal Register*, 76 Fed. Reg. 39081 (2011), with interventions, comments and protests due on or before July 15, 2011. The New York Transmission Owners (NYTOs) timely intervened. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the NYTOs' timely, unopposed motion to intervene serves to make the NYTOs a party to this proceeding.

13. Notice of NYISO's August 17, 2011 Amendment to its original filing was published in the *Federal Register*, 76 Fed. Reg. 53676 (2011), with interventions, comments and protests due on or before September 7, 2011. None was filed.

#### **B. Revised Definition of ATC**

14. The Commission conditionally accepts NYISO's proposal to revise the definition of ATC in its OATT, but will require NYISO to make a compliance filing within 45 days of the issuance of this order, containing a modified ATC definition, which reflects its operations and is consistent the definition of ATC promulgated by NERC.<sup>15</sup>

15. NYISO's ATC calculation procedures and its related definition have been addressed in several prior Commission orders. In its September 16 Order, the Commission found that although most of NYISO's internal interfaces were not subject to NERC ATC calculation and recalculation requirements, certain external interfaces were

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<sup>15</sup> NERC Glossary, [http://www.nerc.com/files/Glossary\\_12Feb08.pdf](http://www.nerc.com/files/Glossary_12Feb08.pdf), as approved in *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 Standards for the Bulk-Power System*, Order No. 729, 129 FERC ¶ 61,155 (2009) (Order No. 729), *order on clarification*, Order No. 729-A, 131 FERC ¶ 61,109 (2010), *reh'g pending*.

subject to such requirements. The September 16 Order also found that NYISO's OATT definition of ATC does not fully reflect the advisory nature of most NYISO ATC calculations and therefore we required NYISO to take steps to ensure that its tariff and its actual operations are in harmony. In the instant filing, NYISO proposes to define ATC as "[a]n advisory projection of the transfer capability on Internal and External Interfaces..." Although ATC may be advisory for most of NYISO's interfaces, NYISO has an obligation to calculate ATC as accurately as possible on certain external interfaces, consistent with relevant NERC standards, as noted in our September 16 Order.<sup>16</sup> ATC for these certain external interfaces must conform to the general definition of ATC used by NERC and most transmission providers. As explained in Order No. 890, transmission providers are required to coordinate the calculation of ATC with others and this requires a standard means of exchanging data.<sup>17</sup> As we stated in our September 16 Order, requiring NYISO to calculate and post ATC on its external paths benefits both reliability and competition.

16. The definition of ATC that NYISO proposes here could be interpreted to be inconsistent with what the Commission-approved definition of "ATC" means to NERC and to the majority of other transmission providers and may inhibit the exchange of ATC data.<sup>18</sup> This situation—where the same term would exist in two different sets of

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<sup>16</sup> This discrepancy between NYISO's existing definition and its actual operations was also noted in *New York Independent System Operator, Inc.*, 134 FERC ¶ 61,255 at P16 (March 31 Order).

<sup>17</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 310.

<sup>18</sup> *See id.*, FERC Stats. & Regs. ¶ 31,241 at P 2 n.3 ("The Commission used the term 'Available Transmission Capability' in Order No. 888 to describe the amount of additional capability available in the transmission network to accommodate additional requests for transmission services. To be consistent with the term generally accepted throughout the industry, the Commission revises the *pro forma* OATT to adopt the term 'Available Transfer Capability'). Additionally, in Order No. 729, the Commission approved six Modeling, Data, and Analysis (MOD) Reliability Standards developed by NERC, and as part of its application seeking Commission approval of those standards, NERC also requested the Commission to approve certain definitions, which NERC had used in the proposed MOD standards, and which NERC proposed would replace existing terms in the NERC Glossary of Terms. Those definitions included the definition of ATC that is currently in the NERC Glossary. *See* NERC compliance filing, North American Electric Reliability Corporation, Docket No. RM08-19-000, at 2-3 (filed August 29, 2008).

regulatory requirements with which NYISO must comply, but would not have the same meaning—would create the potential for ambiguity and confusion.<sup>19</sup>

17. Therefore we will require NYISO to replace its proposed revision to the definition of ATC with the following definition that is consistent with the definition used by NERC and will also enable NYISO to continue to use its financial model for its internal interfaces:

A measure of the transfer capability remaining in the physical transmission network for further commercial activity over and above already committed uses, calculated using the methodology described in Attachment C in the OATT.

18. We will require NYISO to file revised tariff sheets with us within 45 days of the date of this order.

### **C. NAESB WEQ Business Practice Standards**

19. NYISO requests that the Commission accept proposed modifications to its OATT and Services Tariff to incorporate by reference the list of updated NAESB WEQ business practice standards that is set forth in Order No. 676-E and 18 C.F.R. § 38.2, including both the standards that are applicable to NYISO, and those that it asserts are not.

20. The Commission denies this request. The posting and notification requirements contained in some of the NAESB WEQ business practice standards for which NYISO previously received waivers are based in part on the requirement to calculate ATC. When we granted waiver of such standards, NYISO was not required to calculate ATC on any of its facilities.<sup>20</sup> However, on March 31, 2011, the Commission required NYISO to calculate ATC on its external interfaces;<sup>21</sup> additionally, in the September 16 Order, we

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<sup>19</sup> In its June 6 Order, the Commission accepted proposed revisions to NYISO's Attachment C that clarified that NYISO would calculate ATC for its external interfaces according to Requirements R2 and R8 of the NERC MOD-001-1a reliability standard and how it would calculate ATC in coordination with other transmission providers.

<sup>20</sup> *New York Independent System Operator, Inc.*, 133 FERC ¶ 61,246 (2010) (December 22 Order).

<sup>21</sup> March 31 Order, 134 FERC ¶ 61,255 at P 17, footnote omitted ("the Commission has made clear that NYISO must comply with [NERC Reliability Standard] MOD-001-1 (now MOD-001-1a) Requirements R2 and R8 to calculate and recalculate ATC for those paths that fit within the NERC definition of ATC Paths").

stated that "to the extent needed for compliance with [NERC's Reliability Standard] MOD-001-1, NYISO should account for the impacts of its internal congestion on its external ATC Paths as accurately as possible [and] to the extent that NYISO would have to calculate internal flows in order to fulfill its obligation to calculate external flows, it would be required to do so."<sup>22</sup> Therefore, before we can make a determination about whether to accept NYISO's instant filing to comply with Order No. 676-E, we will require NYISO to include in its compliance filing the justification for any waivers it believes continue to be appropriate; and to identify any waivers that can no longer be justified and should be revoked, whether at NYISO's suggestion or otherwise.<sup>23</sup> If NYISO can no longer support some or any of the waivers previously granted by the December 22 Order, it must submit a revised version of section 2.17.1 as part of its compliance filing in order to meet its Order No. 676-E obligations.

The Commission orders:

(A) NYISO's filing is conditionally accepted, as discussed above.

(B) Within 45 days of the date of this order, NYISO is required to make a compliance filing as discussed above.

By the Commission. Commissioner Spitzer is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>22</sup> September 16 Order, 132 FERC ¶ 61,239 at P 26.

<sup>23</sup> The Commission can, and has, revoked prior waivers when conditions have changed. *See Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159 (2009) (Commission rejected Wolverine's request for continuation of waiver of Part 358 of the Commission's regulations because Wolverine no longer meets the requirements for waiver), *reh'g. denied, Black Hills Power, Inc.*, 135 FERC ¶ 61,058 (2011). The Commission frequently grants waivers of Commission and other requirements "subject to revocation should circumstances change," *Parnon Gathering, Inc.*, 129 FERC ¶ 61,273, at P 7 (2009).