

121 FERC ¶ 61,237
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket No. ER07-521-000

INTERIM ORDER REGARDING SETTLEMENT PROCEDURES

(Issued December 6, 2007)

1. In this proceeding, the Commission is considering revisions by New York Independent System Operator, Inc. (NYISO) to its Open Access Transmission Tariff (OATT) and Market Administration and Services Tariff (Tariff) to comply with the Commission's Final Rule on Long-Term Firm Transmission Rights (LTTRs) in Organized Electricity Markets.¹ As discussed below, the Commission grants parties further opportunity to pursue settlement on remaining issues. To facilitate the settlement process, the Commission directs the appointment of a settlement judge, and requires NYISO to submit to the Commission within sixty (60) days from the date of issuance of this order any alternative proposal developed through this process.

A. Background and Procedure

2. On February 5, 2007, NYISO submitted its compliance filing in response to the LTTR Rule, and requested an effective date for its tariff modifications of December 1, 2007.² On July 27, 2007, the Commission issued an order requiring NYISO to respond to questions raised by its filing and establishing a technical conference to allow NYISO to discuss its proposal with staff and interested parties.³ On September 10, 2007, the Commission convened a technical conference to evaluate NYISO's LTTR proposal, specifically addressing whether NYISO's proposal complied with guidelines (5) and

¹ *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226 (August 1, 2006), *order on reh'g and clarification*, Order No. 681-A, 117 FERC ¶ 61,201 (November 16, 2006) (together, LTTR Rule).

² NYISO LTTR Compliance Filing, Docket No. ER07-521-000 (Feb. 5, 2007).

³ *New York Independent System Operator, Inc.*, 120 FERC ¶ 61,099 (2007).

(7) of the LTTR Rule.⁴ On September 12, 2007, NYISO requested extension of the deadline for filing initial comments on the issues raised at the technical conference,⁵ which the Commission granted.⁶ NYISO, in its request for extension of time, also reiterated its statement at the technical conference that, consistent with its modified LTTR implementation timetable, it no longer expects Commission action on its compliance filing by December 1, 2007.⁷ Initial comments on the September 10, 2007 technical conference were due October 25, 2007, with reply comments due November 9, 2007.⁸

B. Requests for Settlement Judge or a Second Technical Conference

3. Post-technical conference comments and reply comments were filed by NYISO, the New York Transmission Owners (NYTOs), and the New York Association of Public Power (NYAPP). Coral Power, L.L.C. (Coral) filed post-technical conference comments.

4. In addition to providing substantive comments, all commenters support some form of additional process prior to the Commission taking final action on the NYISO filing. NYAPP requests expedited appointment of a settlement judge to assist all interested parties in achieving a settlement agreement that may be approved by the Commission as fair, reasonable, and in the public interest. NYAPP states that NYAPP, the NYISO, and representatives of the NYTOs have held private settlement discussions that have substantially narrowed the issues.

5. In reply to NYAPP's request for appointment of a settlement judge on an expedited basis, the NYTOs state that they oppose the appointment of a settlement judge and instead propose that the Commission convene a second technical conference.

⁴ See 18 C.F.R. § 42.1(d)(5) and (d)(7) (2007). Guideline (5) requires that LTTR meet the reasonable needs of load serving entities and guideline (7) requires price certainty for LTTR holders. See Order No. 681-A, 117 FERC ¶ 61,201 at P 54; Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 388.

⁵ Request of the New York Independent System Operator, Inc. for Extension of Time to File Comments and for Expedited Action, Docket No. ER07-521-000 at 2 (Sept. 12, 2007).

⁶ Notice Granting the New York Independent System Operator Inc.'s Request for Extension of Time, Docket No. ER07-521-000 (Oct. 5, 2007).

⁷ Request of the New York Independent System Operator, Inc. for Extension of Time to File Comments and for Expedited Action, Docket No. ER07-521-000, at 2 (Sept. 12, 2007).

⁸ *Id.*

Similarly, Coral requests that the Commission hold a conference to discuss whether the involvement of a settlement judge to mediate the parties' dispute or facilitate the settlement discussions would be beneficial and productive. NYAPP states that it opposes a second technical conference unless the Commission concludes that one is necessary to complete the record.

6. NYISO requests that the Commission make a final effort to assist the parties. While it does not have a strong preference between NYAPP's settlement judge proposal and the NYTOs' request for a second technical conference, NYISO requests that the Commission choose the approach that it believes to be the most efficient. Meanwhile, consistent with its representation at the technical conference, NYISO states in its comments that it can no longer implement the LTTR proposal in the Spring of 2008 as originally proposed, and now proposes implementation in the Fall of 2008.⁹

Commission Determination

7. Having considered parties' comments and the late stage of this proceeding, we find that it would be beneficial for the parties to participate in settlement judge procedures in accordance with Rule 603, 18 C.F.R. § 385.603 (2007), of the Commission's Rules of Practice and Procedure. At the outset we note that, while parties do not agree on which procedural vehicle to use, there is consensus that some further process could help them reach agreement on the preferred LTTR design for NYISO. Consequently, even though the Commission is prepared to act on NYISO's filing, we will accommodate parties' requests in the hope that they may agree on an LTTR design for NYISO that complies with the LTTR Rule. While the September technical conference helped clarify and narrow the issues in this proceeding, we conclude that rather than holding a further conference, referring this case to a settlement judge would best assist the parties in achieving a settlement. If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding, as described in Ordering Paragraph (B). Additionally, to aid the appointed settlement judge in expediting settlement discussions in this proceeding, we will make available a member of Commission staff. This staff member is designated a non-decisional employee, for purposes of this proceeding, under the Commission's Rules of Practice and Procedure.¹⁰

⁹ Initial Post-Technical Conference Comments of the New York Independent System Operator at 4, Docket No. ER07-521-000 (October 25, 2007); Tr. at 173:9-18.

¹⁰ 18 C.F.R. § 385.2201 (c) (3) (2007).

8. NYISO's original filing proposed to implement LTTRs in the Spring of 2008.¹¹ NYISO now states that it will not be able to implement LTTRs until the Fall of 2008. We encourage parties to work diligently to resolve any remaining issues and to present a settlement compliant with the LTTR Rule to the Commission within sixty (60) days of the date of issuance of this order. We expect that the agreed upon design would accommodate LTTR implementation during the Fall of 2008. In order to achieve this goal, we direct NYISO to inform the Commission within fourteen (14) days of the date of this order of the revised effective date that enables the LTTR proposal to be implemented during the Fall of 2008 and also of the revised date when NYISO is requesting Commission action in order to support the new effective date.

The Commission orders:

(A) The request for settlement judge procedures is hereby granted, as discussed in the body of this order.

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2007), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding, within five (5) days of the date of this order, to guide the process of developing a final LTTR proposal, as discussed in the body of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone at (202) 502-8500 within five (5) days of the date of this order.

(C) Within thirty (30) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the discussions.

(D) Any alternatives developed in the settlement judge process must be submitted to the Commission within sixty (60) days from the date of this order.

¹¹ Compliance Filing of the New York Independent System Operator, Docket No. ER07-521-000, at 41 (Feb. 5, 2007).

(E) Within fourteen (14) days of the date of this order, NYISO shall inform the Commission of the revised proposed effective date and the date NYISO requests Commission action, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.