

123 FERC ¶ 61,134
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 Nos. OA08-13-000
OA08-13-001

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued May 7, 2008)

1. On October 12, 2007, as amended on April 11, 2008, pursuant to section 206 of the Federal Power Act (FPA),¹ New York Independent System Operator, Inc. (NYISO) submitted its compliance filing as required by Order No. 890.² In this order, we accept NYISO's compliance filing, as modified, as in compliance with Order No. 890, as discussed below.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of Available Transfer Capability (ATC), open and coordinated planning of transmission systems, and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights, and reassignments of transmission capacity.

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have been approved as

¹ 16 U.S.C. § 824e (2000 & Supp. V 2005).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007) (Order No. 890).

independent system operators (ISO) or regional transmission organizations (RTO) were directed to submit, within 210 days from publication of Order No. 890 in the *Federal Register* (i.e., October 11, 2007), section 206 compliance filings that contain the non-rate terms and conditions set forth in Order No. 890 or that demonstrate that their existing tariff provisions are consistent with or superior to the revised provisions of the *pro forma* OATT. The Commission also aligned the compliance filing deadlines for ISOs and RTOs and their transmission-owning members and required public utility transmission owners whose transmission facilities are under the control of RTOs or ISOs to make any necessary tariff filings required to comply with Order No. 890 within 210 days after the publication of Order No. 890 in the *Federal Register* (i.e., October 11, 2007).³

II. Compliance Filing

4. NYISO states that it submits this filing in compliance with Paragraphs 157–58 of Order No. 890 and that it is, at the same time, proposing not to make tariff revisions that are only relevant to the “physical reservation” open access transmission regime established by Order No. 888.⁴ NYISO adds that its Commission-approved tariffs offer an alternative form of “financial reservation” based transmission service that continues to be, at a minimum, consistent with, and in many cases superior to, the *pro forma* OATT.

5. Additionally, NYISO states that it is exploring the possibility of making a future section 205 filing to simplify, clarify, and update its OATT to eliminate certain tariff provisions that this compliance filing proposes to revise. NYISO states that it also intends to make a section 205 filing to modify the *pro forma* OATT revisions establishing penalties for untimely processing of certain study requests. However, in the interim, NYISO proposes to adopt the *pro forma* tariff revisions for late study penalties but requests that the Commission temporarily waive the imposition of penalties until April 11, 2008.⁵

³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 157, 161.

⁴ *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).

⁵ On July 27, 2007, the Commission issued an order extending the compliance filing date until December 7, 2007 for transmission providers to submit an Attachment K
(continued...)

III. Notice of Filing and Responsive Pleadings

6. Notice of NYISO's filing was published in the *Federal Register*, 72 Fed. Reg. 60,010 (2007), with interventions and protests due on or before November 2, 2007. Beacon Power Corporation (Beacon Power) filed a motion to intervene and comments. New York Transmission Owners (NYTOs),⁶ individually and collectively filed a motion to intervene and protest. On November 19, 2007, NYISO filed an answer to the comments and protest. On December 4, 2007, Beacon Power filed an answer to NYISO's answer. On December 19, 2007, NYISO filed an answer to Beacon Power's answer. On April 11, 2008, NYISO filed an amendment to its filing, which was noticed on April 16, 2008 with interventions or protests due on or before April 21, 2008. Independent Power Producers of New York, Inc. filed a motion to intervene. On April 15, 2007, Beacon Power filed an answer regarding NYISO's filing in Docket No. ER04-230-034.

IV. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest and answer unless otherwise ordered by the decisional authority. We will accept NYISO's answers and Beacon Power's answers because they have provided information that assisted us in our decision-making process.

to their OATTs describing the regional and coordinated planning process consistent with Order No. 890. *See Preventing Undue Discrimination and Preference in Transmission Service*, 120 FERC ¶ 61,103, at P 2, 5 (2007) (*July 27 Order*). We note that NYISO has made this filing in Docket No. OA08-52-000, which is currently pending before the Commission. NYISO also made its Order No. 890-A compliance filing in Docket No. OA08-107-000, which is currently pending before the Commission.

⁶ The New York Transmission Owners consist of Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Long Island Power Authority; New York Power Authority; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation.

B. The NYISO's Filing

8. We accept NYISO's filing, as modified, to be effective October 11, 2007. We also direct NYISO to file, within 30 days of the date of this order, a further compliance filing as discussed below.

1. Proposed Deviations from the Pro Forma OATT

9. The Commission required ISO and RTO transmission providers to submit FPA section 206 compliance filings, within 210 days after the publication of the Final Rule in the *Federal Register*, that contain the non-rate terms and conditions set forth in the Final Rule or that demonstrate that their existing tariff provisions are consistent with or superior to the revised provisions of the *pro forma* OATT.⁷

10. NYISO states that it is proposing not to make tariff revisions that are only relevant to the "physical reservation" open access transmission regime. NYISO states that its Commission-approved tariffs offer an alternative form of "financial reservation" based transmission service where ISOs/RTOs use locational marginal pricing to manage congestion and operate bid-based spot markets. NYISO contends that its tariffs continue to be, at a minimum, consistent with, and in many cases superior to, the *pro forma* OATT.

11. Accordingly, the point-to-point and network integration transmission service provisions of the *pro forma* OATT have already been substantially revised in NYISO's tariffs to reflect the fact that NYISO offers these services in a Locational Based Market Pricing (LBMP) context.⁸

12. Additionally, NYISO explains several deviations from the *pro forma* OATT adopted in Order No. 890 that are necessitated by NYISO's market design. Specifically, NYISO does not include *pro forma* Schedules 4 (Energy Imbalance Service) and 9 (Generator Imbalance Service) because as discussed below, these services are provided in the context of LBMP market mechanisms. Further, NYISO does not include any revisions regarding penalties for unreserved transmission use. NYISO proposes not to include *pro forma* revisions pertaining to conditional firm service or its planning dispatch requirements. In addition, NYISO proposes to not make changes to the following *pro forma* sections: section 2.2 regarding rollover rights for existing transmission service contracts, section 17.7 regarding extensions of commencement of transmission service, sections 13.2 and 14.2 regarding reservation priorities for transmission service, sections

⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 157.

⁸ See *Central Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,138 (1999).

30.2 and 30.3 regarding the evaluation of designation and undesignation of network resources via Open Access Same-time Information System, and part of section 28.4 regarding secondary network service. NYISO also proposes not to include definitions required by Order No. 890 that it states are not relevant to the NYISO system.

13. In Order No. 890, the Commission recognized that some of the changes adopted in Order No. 890 may not be as relevant to ISO and RTO transmission providers as they are to non-independent transmission providers. The Commission stated that revisions to the *pro forma* OATT are not intended to upset the market designs used by existing ISOs and RTOs, and that ISOs and RTOs may well have adopted practices that are already consistent with or superior to the reforms adopted in Order No. 890.⁹ We also note that no party objects to the aforementioned deviations. Therefore, we recognize that NYISO's proposed deviations from the *pro forma* OATT reflect the actual market design used by NYISO, and find these deviations to be consistent with or superior to the *pro forma* OATT, except as otherwise addressed below.

2. Transmission Service Requests, Late Study Penalties, and Clustering

a. NYISO's Filing

14. NYISO states that it does not receive requests for transmission service in the form that Order Nos. 888 and 890 contemplate. NYISO explains that it only receives transmission study requests when a customer directly asks it to investigate a specific transmission expansion. NYISO notes that only four System Impact Study requests have been submitted to NYISO since it commenced operations. Nevertheless, NYISO is proposing, subject to the request for temporary waiver, to incorporate the *pro forma* tariff language regarding the potential imposition of penalties associated with untimely transmission studies into sections 19.9 and 32.5 of its OATT. Further, NYISO explains that it made a minor change to the *pro forma* language to recognize that the NYISO OATT makes NYISO primarily responsible for System Impact Studies but also makes the affected NYTO primarily responsible for Facilities Studies.

15. NYISO contends that the *pro forma* tariff language establishes an inflexible sixty day deadline for completing studies and a presumption that it is inappropriate to take more time. NYISO is concerned that this requirement will cause NYISO to complete transmission studies with unreasonable haste because a significant portion of the sixty day period will be devoted to scoping and stakeholder review. NYISO explains that it could therefore be put in a position where it would have to choose between: (i) being subject to penalties for following reasonable study procedures and complying with

⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 158.

stakeholder process requirements; or (ii) completing studies in sixty days even when doing so could negatively affect their quality. Consequently, NYISO requests that the Commission accept the Order No. 890 transmission study tariff provisions on transmission study penalties, i.e., OATT sections 19.9(ii) - (iv) and 32.5, but temporarily waive their applicability. Specifically, NYISO requests that the Commission waive the penalty provisions until April 11, 2008, in order to allow NYISO to meet with its stakeholders and develop revisions to the *pro forma* penalty rules that would be filed under section 205. Under NYISO's request, the notification requirement of section 19.9(i) of its OATT would still take effect immediately, but a failure to complete twenty percent or more of transmission studies within sixty days would not count for penalty purposes under sections 19.9(ii)-(iv) of its OATT until the second quarter of 2008.¹⁰

16. NYISO requests leave to propose any necessary tariff revisions to clustering in the section 205 filing concerning Transmission Study penalties that it plans to file in the next six months. NYISO states that it has received few Transmission Study requests and has never had more than one pending at a time; therefore, it is unlikely to face situations where it would be necessary to cluster studies. In addition, according to NYISO, it has authority under section 19.2 of its OATT to address similar transmission service requests in a single study.

17. However, on April 11, 2008, NYISO filed an amendment to incorporate language addressing the clustering of transmission studies. NYISO proposes revisions to sections 19.10 and 32.6 of its OATT that provide for the clustering of System Impact Studies and Facilities Studies. NYISO states that the proposed tariff language permits an Eligible Customer to request that its System Impact Study or Facilities Study be clustered with those of one or more other Eligible Customers before it signs a study agreement. NYISO explains that the proposed language allows NYISO and any affected Transmission Owners to accommodate clustering requests if they are reasonable. NYISO states that the proposed tariff provisions would specify that a clustering request will not be deemed reasonable if: (i) it is not supported by all the other Eligible Customers that would be included in the cluster; (ii) operational or technical factors (such as geographic diversity or disparate impacts on the transmission system) require that the studies be performed separately; or (iii) the clustering of the studies is likely to cause the NYISO or any Transmission Owner to miss a deadline adopted in the NYISO OATT. NYISO states that the timeline for completing a clustered study begins when the study participants each have signed study agreements, or at any other date authorized under the NYISO OATT and the costs of the clustered study would be borne equally by each of the Eligible Customers in the cluster, unless they opt for a different method of allocating study costs.

¹⁰ NYISO Filing at 39.

18. NYISO claims that the proposed language is nearly identical to clustering language proposed by *PacifiCorp*¹¹ that the Commission conditionally approved in November 2007 but NYISO's language includes the following three minor differences: (i) as discussed above, NYISO's proposed language reflects the fact that NYISO performs System Impact Studies while Transmission Owners perform Facilities Studies; (ii) NYISO's proposed language does not expressly reference the *pro forma* 60-day deadline for completing transmission studies. The referenced tariff provisions currently incorporate the Order No. 890 *pro forma* deadlines but NYISO intends to propose tariff revisions in May 2008 that would modify them; and (iii) NYISO's proposed tariff revisions allocate the costs of clustered studies to each customer in equal shares, unless they agree on an alternative arrangement.

b. NYTO's Protest

19. The NYTOs protest NYISO's proposed revision to sections 19.9 and 32.5 of the *pro forma* OATT, which make the NYTOs responsible for potential penalties associated with untimely Facilities Studies. The NYTOs state that NYISO attempts to place a part of the burden of its responsibility for these potential penalties on the NYTOs by making them responsible for penalties associated with Facilities Studies. The NYTOs further state that allowing NYISO to transfer part of its responsibility as the Transmission Provider to the NYTOs would weaken the NYISO's accountability and undermine the stated goal of Order No. 890 to promote "an open, transparent, and coordinated transmission planning process."¹² According to the NYTOs, in the *Order on Small Generator Interconnection Procedures*, the Commission has rejected previous NYISO attempts to shift responsibilities to the NYTOs.¹³

c. NYISO's Answer

20. NYISO states that the NYTOs protest should be rejected because it would make NYISO accountable for actions of which it has no control. NYISO contends that the *pro forma* OATT does not specify whether ISOs/RTOs should be subject to penalties for untimely transmission studies when the responsibility for conducting such studies is divided among them. NYISO explains that its OATT is clear that NYISO will perform System Impact Studies and the NYTOs will perform Facilities Studies. NYISO states

¹¹ *PacifiCorp*, 121 FERC ¶ 61,223 (2007).

¹² NYTOs Protest at 4-5 *citing* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 3.

¹³ *Id. citing N.Y. Indep. Sys. Operator, Inc.*, 118 FERC ¶ 61,130, at P 21 (2007) (*Order on Small Generator Interconnection Procedures*).

that it has simply applied the *pro forma* language to avoid ambiguity, just as it has in several other tariff provisions. Therefore, NYISO contends that it is unfair to make NYISO liable for a practice under which it has no control.

21. NYISO states that the NYTOs citation to the Commission's *Order on Small Generator Interconnection Procedures* is unavailing because the order did not address the question of the proper party on which to assess penalties for untimely studies.¹⁴

22. Finally, NYISO responds to the NYTOs argument that this failure to impose penalty liability on NYISO will undermine Order No. 890's transmission planning process goals. NYISO states that the revisions proposed by the instant compliance filing will have no impact on NYISO's transmission planning process because they pertain to an entirely separate study process and Order No. 890 was clear that its transmission planning principles do not apply outside of the transmission planning context.¹⁵

d. Commission Determination

23. We accept NYISO's proposed tariff language in sections 19.9 and 32.5, which includes penalties provisions for failure to meet transmission study deadlines. However, we deny NYISO's request for waiver that late study penalties not become applicable until April 11, 2008. We find that NYISO has not provided sufficient justification for its request for waiver.¹⁶

24. In support of the request for waiver, NYISO states that it submits transmission studies to its stakeholder Transmission Planning Advisory Subcommittee and its Operating Committee for review and approval prior to the studies being considered complete.¹⁷ Further, NYISO asserts that stakeholder reviews and time devoted to scoping issues will likely prevent NYISO from completing transmission studies within sixty days. Order No. 890 requires transmission providers to submit a notification filing with the Commission if the transmission provider processes more than 20 percent of non-affiliates' studies outside of the 60-day due diligence deadlines in the *pro forma* OATT

¹⁴ NYISO Answer at 4.

¹⁵ *Id.* at 5 *citing* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 84.

¹⁶ We note that NYISO requested clarification and/or rehearing of Order No. 890-A concerning its ability to make a section 205 filing to propose revisions to the *pro forma* penalty deadlines. The request for clarification and/or rehearing is currently pending before the Commission.

¹⁷ NYISO Filing at 38.

for two consecutive quarters.¹⁸ However, as NYISO itself points out, Order No. 890 states “the transmission provider may explain in its notification filing that it believes there are extenuating circumstances that prevented it from meeting the deadlines in the *pro forma* OATT.”¹⁹ NYISO states that it “will inevitably take time for the NYISO to develop an extenuating circumstances filing, and for the Commission to respond.... [T]he opportunity to seek relief from penalties after the fact will not ameliorate the pressure to complete Transmission studies within a 60-day period....”²⁰ We disagree. As noted above, NYISO states that it rarely receives requests for transmission studies. If NYISO cannot meet the 60-day requirement for completion of transmission studies, the notification filing is the appropriate forum to explain extenuating circumstances for waiver of late study penalties. However, NYISO must plan to perform full and complete transmission studies in the 60-day period. Accordingly, the proposed tariff language in sections 19.9 and 32.5 is effective October 11, 2007.

25. We disagree with the NYTOs that NYISO should be responsible for penalties related to Facilities Studies for transmission service requests. Although the *pro forma* language in Order No. 890 states that the Transmission Provider (i.e., NYISO) is responsible for penalties related to late studies, in the context of the NYISO system, the Commission-approved NYISO OATT clearly states that the NYTOs are responsible for conducting Facilities Studies.²¹ Therefore, we find that it would be unjust and unreasonable for NYISO to bear the penalty charges for studies that it is not conducting. We find that NYISO’s revisions properly clarify the responsibilities of the transmission studies and the applicability of penalties.

26. The NYTOs cite to the Commission’s order in NYISO’s Small Generator Interconnection proceeding and contend that the Commission found that an ISO/RTO should have control over the interconnection process and rejected a split of responsibilities between the NYTOs and NYISO.²² As explained below, the circumstances in the instant proceeding differ. In the Small Generator Interconnection Proceeding, NYISO and NYTOs proposed to split responsibilities for performing interconnection studies. Under those circumstances, the Commission rejected their

¹⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1319.

¹⁹ *Id.* P 1320.

²⁰ NYISO Filing at 39.

²¹ NYISO OATT sections 19.4 and 32.4.

²² NYTOs Protest at 5 citing *New York Independent System Operator, Inc.*, 118 FERC ¶ 61,130, at P 21 (2007).

proposal to split responsibilities. In addition, the proposal did not contain provisions for assessment of late study penalties. Here, the split of responsibilities for transmission service requests have already been approved and the NYTOs are clearly responsible for completing the Facilities Studies for transmission service requests. However, the *pro forma* language of Order No. 890 would assess penalties against NYISO, even though NYISO does not conduct the studies. Therefore, we find that NYISO's proposed revisions to the *pro forma* provisions properly assign late study penalties for Facilities Studies to the applicable NYTOs.

27. Regarding clustering, in Order No. 890, the Commission did not generally require transmission providers to study transmission requests in a cluster, although the Commission did encourage transmission providers to cluster studies when it is reasonable to do so. The Commission also explicitly required transmission providers to consider clustering studies if the customers involved request a cluster and the transmission provider can reasonably accommodate the request. As a result, the Commission directed transmission providers to include tariff language in their Order No. 890 compliance filings that describes how the transmission provider will process a request to cluster studies and how it will structure transmission customers' obligations when they have joined a cluster.²³

28. As noted above, NYISO did not provide clustering provisions in its October 11, 2007 compliance filing, and explained that it intended to submit such provisions in a subsequent filing. On April 11, 2008, NYISO filed an amendment to incorporate language addressing the clustering of studies. We accept NYISO's clustering provisions, as modified. Specifically, the proposed language in section 19.10 allows NYISO to decline to cluster studies if the NYISO or the Transmission Owner determines that granting a clustering request would likely cause it to miss any deadline set forth in the OATT. Consistent with *Idaho Power*, we find that when a transmission provider has a provision in its OATT allowing for the clustering of studies, it should not reject cluster requests solely on the basis that such clustered studies may require extended study timelines.²⁴ If NYISO or the affected Transmission Owner believes that a cluster study could prevent it from meeting the OATT requirements, NYISO or the affected Transmission Owner is free to raise this issue as an extenuating circumstance in a notification filing with the Commission, which will be reviewed on a case-by-case basis.²⁵ Therefore, we direct NYISO to file, within 30 days of the date of this order, a

²³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1370-71.

²⁴ *Idaho Power Company*, 122 FERC ¶ 61,243, at P 21 (2008) (*Idaho Power*).

²⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1343.

compliance filing removing the language allowing NYISO or the affected Transmission Owner to decline to cluster studies if it determines that granting a clustering request will cause it to miss any deadline set forth in the OATT.

3. Ancillary Services and Non Generational Resources

a. NYISO's Filing

29. NYISO proposes not to make any changes to the ancillary services provisions of its Market Services Tariff, or its OATT, to reflect the Order No. 890 *pro forma* revisions stating that non-generation resources that are “capable” of providing the services may do so. NYISO explains that revisions to its tariffs are unnecessary because they already allow non-generation resources to provide ancillary services to the extent practicable given NYISO’s specific circumstances, including technical considerations and applicable reliability rules. Additionally, NYISO states that it will soon make a section 205 filing to revise its tariffs to facilitate participation by demand side resources in its energy and ancillary services markets. NYISO asserts that revising the tariffs to include *pro forma* language stating only that non-generation resources “capable of providing” particular services would be eligible to provide them would inappropriately, and simplistically, disregard market design, software, and reliability issues and can legitimately prevent some resources from providing some services. NYISO explains that it would also ignore the fact that the Market Services Tariff ancillary services rate schedules include greater detail and complexity than their *pro forma* equivalents, especially with respect to those schedules that establish ancillary services markets.

b. Beacon Power's Protest

30. Beacon Power contends that NYISO has not included the *pro forma* revisions to Schedule 3 that allow non-generating Regulation Service providers to compete in the ancillary services market. Beacon Power states that it has developed a new non-generation, flywheel-based energy storage technology to provide ancillary regulation services and that commercial deployment of its technology is completely dependent on NYISO’s effective and timely implementation of the Order No. 890 provision that directs ISOs to open their regulation markets to non-generation technologies on a non-discriminatory basis. Beacon Power asserts that, contrary to Order No. 890, NYISO has submitted a version of Schedule 3 that only provides generators the authorization to provide Regulation Service and that, having failed to submit a Schedule 3 that allows non-generators to provide Regulation Service, NYISO’s tariff is discriminatory and should be rejected outright.²⁶

²⁶ Beacon Power Protest at 5-6.

31. Beacon Power explains that while NYISO has admitted that it will soon propose Demand Side Ancillary Service Programs (DSASPs), these are yet to be proposed and NYISO provides no indication as to whether they will include non-generation resources. Therefore, Beacon Power states that NYISO should either adopt the *pro forma* provisions or explain how its DSASPs will include non-generation resources.²⁷

c. NYISO's Answer

32. Responding to Beacon Power's comments, NYISO claims that Beacon Power has a fundamental misunderstanding of the NYISO OATT. NYISO states that under the NYISO OATT Beacon Power's facilities would be classified as generation and Beacon Power would be able to provide ancillary services under the same terms as any generator. Further, NYISO states that it is working with Beacon Power to develop the software modifications and metering arrangements necessary to accommodate Beacon Power's facility when it comes online. NYISO states that it would have been inaccurate to revise its OATT to suggest that such resources could sell into the markets when software and reliability issues would prevent them from doing so. NYISO further states that it will soon make a tariff filing to expand the opportunities for demand side resources in its ancillary services markets, including the regulation service market. NYISO claims that there is no tariff obstacle that will not allow Beacon Power to provide regulation service as a generator.²⁸

d. Beacon Power's Answer to NYISO's Answer

33. Responding to NYISO's answer, Beacon Power explains that obstacles still exist. Beacon Power has developed energy storage technology that operates as a generating resource half the time, and a non-generating resource the other half. Beacon Power further states that as a generator, it is required by NYISO's tariff to bid into the energy market and could be called on to provide either energy or operating reserves for a duration of longer than 15 minutes. Beacon Power states that its technology has a maximum energy output over a duration limited to 15 minutes and because it is unable to provide energy or reserves longer than 15 minutes, it is exposed to financial penalties. Consequently, according to Beacon Power, it would need to bid a significantly higher price for energy in order to avoid being called on to provide energy or reserves, a strategy which exposes it to significant financial risk. Beacon Power concludes that while it can enter NYISO's regulation market as a generator, NYISO's OATT does not reflect the intent of Order No. 890 to allow the provision of regulation services on a non-discriminatory basis. Until such time as NYISO files its DSASP, Beacon Power

²⁷ *Id.* at 6-7.

²⁸ NYISO Answer at 6.

contends that non-generating resources will be at a disadvantage and NYISO will be non-compliant with Order No. 890. Beacon Power asserts that deadlines should be imposed upon NYISO to file a DSASP.

e. NYISO's Answer to Beacon Power's Answer

34. NYISO states that Order No. 890 provided that non-generating resources should be eligible to participate in energy markets where appropriate.²⁹ Further, NYISO states that the Commission noted that Order No. 890 is not intended to upset market platforms. NYISO explains that it uses a single co-optimized economic dispatch encompassing all energy products, and completely granting Beacon Power's request, which would exempt it from being called upon to offer energy or operating reserves, would upset the NYISO market structure.

35. Additionally, NYISO contends that Beacon Power ignores a Commission conclusion that giving demand side resources special treatment to bid into the ancillary services market without being available to supply energy was not worth compromising the benefits of full co-optimization.³⁰ NYISO adds that the Commission noted that the NYISO's existing bidding procedures were sufficiently flexible to permit Demand Side Resources to structure their bids in a manner that would virtually eliminate the possibility that they might be selected to provide energy involuntarily.

f. Beacon Power's Answer to NYISO's Filing in Docket No. ER04-230-034

36. On March 24, 2008, as supplemented on March 25, 2008, NYISO filed in Docket No. ER04-230-034, revisions to its Market Services Tariff and OATT to allow certain demand side resources to offer operating reserves and Regulation Service into the NYISO's markets. Beacon Power asserts that NYISO's proposed revisions fail to provide for Regulation Services on a non-discriminatory basis and therefore do not comply with Order No. 890. Beacon Power states that NYISO should be directed to meet its commitment to ensure that software and market rules are in place for flywheel technologies to offer Regulation Services in 2008. Therefore, Beacon Power requests that the Commission require NYISO to work with Beacon Power and file a progress report within 60 days.

²⁹ NYISO Answer to Beacon Power's Answer at 3 citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 888.

³⁰ *Id.* at 6 citing *New York Independent System Operator, Inc.*, 116 FERC ¶ 61,043, at P 24 (2006).

g. Commission Determination

37. We find that the provisions in schedules 2 (Payments for Supplying Voltage Support Service) and 4 (Payments for Supplying Operating Reserves) of NYISO's Market Services Tariff pertaining to the ability of non-generation resources to participate in ancillary services are consistent with or superior to the requirements of *pro forma* OATT adopted in Order No. 890.³¹ These provisions clearly allow non-generation resources to participate in several ancillary services markets consistent with *pro forma* OATT schedules 2, 5, and 6.³²

38. However, Order No. 890 modified *pro forma* schedule 3 to permit regulation and frequency response service to be provided by generating units as well as other non-generation resources.³³ We find that NYISO will not fully comply with Order No. 890 until non-generation resources can provide this service. However, as noted above, NYISO filed in Docket No. ER04-230-034, revisions to its Market Services Tariff and OATT to allow certain demand side resources to offer operating reserves and Regulation Service into the NYISO's markets. Since the filing in Docket No. ER04-230-034 includes a proposed revised schedule 3 to NYISO's Market Services Tariff, we believe that Beacon Power's issues are more appropriately addressed in that proceeding. In addition, we decline to require NYISO to file a progress report within 60 days regarding its meetings with Beacon Power in the instant proceeding. Issues concerning meetings between Beacon Power and NYISO are more appropriately raised in Docket No. ER04-230-034, where they will be addressed. Therefore, we find that NYISO's compliance with *pro forma* schedule 3 to Order No. 890 is subject to the outcome of that proceeding in Docket No. ER04-230-034. Beacon Power's concerns regarding the proposed revised schedule 3 will be addressed in that proceeding.

³¹ We note that NYISO did not submit rate schedules equivalent to *pro forma* Schedule 4 (Energy Imbalance Service) or *pro forma* Schedule 9 (Generator Imbalance Service). In the NYISO system, energy imbalances and generator imbalances are addressed through LBMP market mechanisms. Therefore, these practices are consistent with or superior to the requirements of Order No. 890.

³² Schedule 4 of NYISO's Market Services Tariff includes provisions for both spinning and supplemental reserves consistent with the requirements of *pro forma* OATT schedules 5 and 6.

³³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 888.

4. Capacity Reassignment

a. NYISO's Filing

39. NYISO notes that Order No. 890 directs transmission providers to submit quarterly reports aggregating and summarizing information, using the Commission's Electric Quarterly Report (EQR) format for market-based rate sellers, regarding capacity reassignments under section 23.1. NYISO requests that the Commission either waive this requirement with respect to NYISO or clarify that a simple notice indicating that there have been no such reassignments in a given quarter would be sufficient. NYISO explains that a capacity reassignment under section 23.1 has never occurred in the NYISO system, and appears unlikely to occur in the future even though Order No. 890 eliminated the rate cap on capacity reassignments. NYISO submits that it would be needlessly burdensome for the NYISO to submit quarterly reports using the EQR procedures.

b. Commission Determination

40. We deny NYISO's request for waiver of the EQR requirements in general. However, we find that it is reasonable for NYISO to provide a notice indicating that there have been no such capacity reassignments in a given quarter, if no capacity reassignments have occurred in that quarter. Conversely, should a capacity reassignment occur in a given quarter, NYISO must submit all information regarding such capacity reassignment in accordance with the Commission's EQR procedures.

5. Methodology to Assess Available Transfer Capability

41. In Order No. 890, the Commission required a transmission provider to clearly identify which methodology it employs (e.g., contract path, network ATC, or network Available Flowgate Capacity (AFC)) to address ATC. The transmission provider also must describe in detail the specific mathematical algorithms used to calculate firm and non-firm ATC (and AFC, if applicable) for its scheduling, operating and planning horizons.³⁴ Further, the actual mathematical algorithms must be posted on the transmission provider's web site, with the link noted in the transmission provider's Attachment C.³⁵

42. We find that NYISO's revised Attachment C does not provide the identification of the methodology, and the link to NYISO's web site with the actual mathematical algorithms. Therefore, NYISO's filing fails to comply with Order No. 890. We direct

³⁴ *Id.* at *pro forma* OATT, Appendix. C; *see also id.* P 323.

³⁵ *Id.* P 325, 328.

NYISO to file, within 30 days of issuance of this order, a further compliance filing that revises its Attachment C to provide the identification of the methodology, and the link to NYISO's web site with the actual mathematical algorithms, as required in Order No. 890.

a. Process Flow Diagram

43. In Order No. 890, the Commission required a transmission provider to include a process flow diagram in its Attachment C that illustrates the various steps through which ATC/AFC is calculated.³⁶

44. We find that NYISO's revised Attachment C does not provide a process flow diagram that illustrates the various steps through which ATC is calculated. Instead, NYISO provides the high level ATC calculation concept as a process flow diagram. Therefore, NYISO's filing fails to comply with Order No. 890. We direct NYISO to file, within 30 days of issuance of this order, a further compliance filing that revises its Attachment C to provide the process flow diagram that illustrates the various steps through which ATC/AFC is calculated, as required in Order No. 890.

b. Transmission Reserve Margin (TRM)

45. In Order No. 890, the Commission required a transmission provider to explain: (i) its definition of TRM; (ii) its TRM calculation methodology (e.g., its assumption on load forecast errors, forecast errors in system topology or distribution factors and loop flow sources) for both the operating and planning horizons; (iii) the databases used in its TRM assessments; and (iv) the conditions under which the transmission provider uses TRM. If the transmission provider does not use TRM, it must so state.³⁷

46. We have reviewed NYISO's filing and find that NYISO's revised Attachment C does not present a detailed explanation of its TRM calculation methodology. NYISO fails to provide a list of assumptions and databases used to calculate TRM. Therefore, NYISO's filing fails to comply with Order No. 890. We direct NYISO to file, within 30 days of issuance of this order, a further compliance filing that revises its Attachment C to provide a detailed explanation of its TRM calculation methodology and list of assumptions and databases used to calculate TRM.

6. Attachment J - Procedures for Addressing Parallel Flows

47. The *pro forma* OATT adopted in Order No. 890 includes a blank Attachment J entitled "Procedures for Addressing Parallel Flows" that is to be "filed by the

³⁶ *Id.* at *pro forma* OATT, Appendix. C; *see also id.* P 323.

³⁷ *Id.*

Transmission Provider.” The Commission, in the NERC Transmission Loading Relief Order,³⁸ amended the *pro forma* OATT to incorporate NERC’s Transmission Loading Relief (TLR) procedures. The Commission also required that every transmission-operating public utility adopting NERC’s TLR procedures file with the Commission a notice that its tariff shall be considered so modified to reflect the use of such procedures. That order addressed the NERC TLR procedures for public utilities in the Eastern Interconnection. Later, in Order No. 693, the Commission approved, as mandatory and enforceable, the IRO-006-3 Reliability Coordination--Transmission Loading Relief Reliability Standard, which includes the NERC TLR procedures and, by reference, the equivalent Interconnection-wide congestion management methods used in the WECC (WSCC Unscheduled Flow Mitigation Plan) and ERCOT (section 7 of the ERCOT Protocols) regions.³⁹ As a result, all transmission providers must complete Attachment J by incorporating the NERC TLR procedures, WSCC Unscheduled Flow Mitigation Plan, or ERCOT protocol and must provide a link to the applicable procedures.

48. NYISO has not filed any procedures in Attachment J. NYISO is directed to file, within 30 days of the date of this order, a further compliance filing with a completed Attachment J as shown below:

The North American Electric Reliability Corporation’s (“NERC”)'s TLR Procedures originally filed March 18, 1998, which are now the mandatory Reliability Standards that address TLR, and any amendments thereto, on file and accepted by the Commission, are hereby incorporated and made part of this tariff. See <http://www.nerc.com> for the current version of the NERC's TLR Procedures.

49. Accordingly, we will accept NYISO’s compliance filing, as modified, to be effective October 11, 2007. We also direct NYISO to file, within 30 days of the date of this order, a further compliance filing as required above.

The Commission orders:

(A) NYISO’s compliance filing is hereby accepted, as modified, effective October 11, 2007, as discussed in the body of this order.

³⁸ *North American Electric Reliability Council*, 85 FERC ¶ 61,353, at 62,362 and Ordering Paragraph (B) (1998) (NERC Transmission Loading Relief Order).

³⁹ See *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 Fed. Reg., 16,416 (April 4, 2007), FERC Stats. & Regs. ¶ 31,242 (2007) at P 961-65, *order on reh’g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

(B) NYISO is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.