

124 FERC ¶ 61,238
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. ER08-1272-000

ORDER ACCEPTING AND REJECTING TARIFF REVISIONS

(Issued September 12, 2008)

1. On July 15, 2008, New York Independent System Operator, Inc. (NYISO) filed proposed tariff sheets that revise Attachments S and X of its Open Access Transmission Tariff (OATT or Tariff) pursuant to section 205 of the Federal Power Act.¹ Attachments S and X of the OATT establish the procedures for the interconnection of large facilities to the New York State transmission system and the method for allocating associated costs.² The proposed tariff sheets revise certain large facility interconnection provisions. Additionally, NYISO requests that the Commission waive the 60-day prior notice requirement and permit the tariff revisions to go into effect on July 16, 2008. As discussed below, we grant the requested waiver and accept certain of the tariff sheets, effective July 16, 2008, as requested, subject to condition, and reject without prejudice one proposed revision.

I. Proposed Revisions

2. NYISO proposes revisions to the OATT to modify its large generator interconnection procedures, including revisions that modify *pro forma* language

¹ 16 U.S.C. § 824d (2006).

² NYISO, FERC Electric Tariff, Original Vol. No. 1, Attachments S (Rules to Allocate Responsibility for the Cost of New Interconnection Facilities) & X (Standard Large Facilities Interconnection Procedure); *see also N.Y. Indep. Sys. Operator, Inc.*, 97 FERC ¶ 61,118 (2001) (accepting Attachment S); *N.Y. Indep. Sys. Operator, Inc.*, 108 FERC ¶ 61,159 (2004) (accepting conditionally Attachment X).

developed by the Commission in Order No. 2003.³ NYISO states that the proposed revisions are fully justified under the independent entity variation discussed in Order No. 2003 because they have been approved by the NYISO stakeholders after an extensive and open process.⁴ The specific revisions that NYISO proposes are discussed below.

A. Scoping Meeting Costs

3. NYISO states that the large facility interconnection procedures found in Attachment X do not require a developer to pay for costs that NYISO or the relevant transmission owner incurs associated with scoping meetings held prior to the execution of interconnection study agreements. To recover such costs, NYISO proposes revising sections 3.1, 3.6, and 13.3; section 6.0 of the Interconnection Feasibility Study Agreement; and section 6.0 of the Interconnection System Reliability Impact Study Agreement—all located in Attachment X—to provide that the developer will be responsible for the costs incurred by NYISO and transmission owners on the developer's behalf in furtherance of interconnection studies. NYISO proposes that the developer will be responsible up to the total amount of its initial deposit (i.e., \$10,000), unless an interconnection study agreement has been executed and, accordingly, proposes to delete the reference in section 3.1 to the deposit as being “refundable”.

B. Increases in System Upgrade Facilities Costs

4. NYISO states that section IV.G.13.c of Attachment S establishes that, after a developer accepts its project cost allocation, the transmission owner is responsible for any increase in the cost of a System Upgrade Facility (SUF) required for the project to the extent that cost increase is due to factors within the control of the transmission owner. NYISO also states that if the increased amount was the result of circumstances not within the control of the transmission owner, however, the developer shall be responsible for the increased costs. The proposed revisions provide more examples of situations in which an increase in SUF costs is not the result of circumstances within the control of the

³ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

⁴ *See* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 26, 827.

transmission owner, including the increased costs of SUFs caused by a change in design or operating characteristics of the developer's own projects and for costs for items outside of the scope of the Class Year interconnection facilities study.⁵

C. Elective SUFs

5. NYISO states that section IV.G.4.a of Attachment S allows a developer or transmission owner to construct an SUF that is larger or more extensive than the minimum facilities required to reliably interconnect a proposed project. NYISO also states that elective SUFs that are unrelated to the proposed interconnection are more appropriately reviewed as separate projects. Accordingly, NYISO proposes to revise section IV.G.4.a to establish that elective SUFs must be reasonably related to the interconnection of the proposed project.

D. Allocation of Costs for Altered Facilities

6. NYISO maintains that sections 5.17.1 and 24.3 of the Standard Large Generator Interconnection Agreement (LGIA) in Attachment X do not explicitly describe when or under what circumstances a developer will be responsible for increased or additional costs associated with altering its facility or facility data after the LGIA has been executed. NYISO proposes to revise these sections to clarify that if a developer alters its facility or facility data after the LGIA has been executed and such alteration potentially affects the New York State transmission system, transmission owner attachment facilities, or SUFs, but does not require submission of a new interconnection request, then a study should be completed to identify any additional modifications to the facilities. The developer will be responsible for the costs of the study and any additional modifications. NYISO also proposes expanding the time period indicated in section 5.17.1 that NYISO currently has to identify additional modifications from 30 days to 60 days.

E. Non-Conforming LGIAs

7. NYISO proposes revising section 18.3.10 to provide that developers and transmission owners may self-insure if they have senior unsecured debt that is rated at investment grade or better by Standard & Poor's, rather than having to modify their

⁵ Section I.1.B of Attachment S of the OATT defines Class Year as “[t]he group of generation and merchant transmission projects included in any particular Annual Transmission Reliability Assessment, in accordance with the criteria specified for including such projects in the Assessment.”

Large Generator Interconnection Agreements (LGIA) and request that the Commission accept the non-conforming LGIAs. NYISO proposes this revision on the basis that the Commission previously has accepted this change.⁶

F. Headroom

8. NYISO states that Attachment S establishes the allocations of costs associated with SUFs, including system protection facilities, needed to interconnect developer projects. According to NYISO, each project in a Class Year is responsible for its pro-rata contribution to the total electrical impacts on the SUFs needed to interconnect the projects in the Class Year. NYISO also states that a new SUF paid for by a Class Year developer may have some “Headroom” (i.e., capacity in excess of the capacity actually needed and used by the developer’s project).⁷ NYISO explains that the developer who paid for this Headroom is repaid by any developer of a later project that interconnects within ten years and uses any of the Headroom. NYISO avers that SUF costs and “electrical capacity” of Headroom is measured in terms of discrete electric units, such as amperes or megawatts. NYISO states that because it is difficult to measure some SUFs, such as system protection facilities, in discrete electric units, these SUFs cannot receive a Headroom payment even though some of them have excess capacity that could be used for later projects.

9. Accordingly, NYISO states that it is proposing to revise sections I.1.B, IV.G.6.e, IV.G.7, and IV.G.14 of Attachment S to provide that, for those SUFs not readily measured in discrete electrical units, NYISO will allocate such SUF costs and measure Headroom and Headroom use on the basis of the number of projects needing or using SUFs not readily measured in discrete electrical units, which NYISO proposes to define as “functional capacity.” NYISO proposes to revise the definition of Headroom to provide that Headroom includes “functional” as well as “electrical” capacity in order to permit Headroom payments for the cost of SUFs not readily measured in discrete

⁶ Transmittal at 5 (citing *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER07-388-000 (Jan. 31, 2007) (unpublished letter order)).

⁷ Specifically, Attachment S currently defines “Headroom” as:

In the case of any System Upgrade Facility that has been paid for by a Developer, the electrical capacity of the System Upgrade Facility that is in excess of the electrical capacity actually used by the Developer’s generation or merchant transmission project.

electrical units. NYISO proposes these revisions be effective July 16, 2008, so it can be applied to developers in Class Year 2007.⁸ NYISO explains that the Class Year 2007 Interconnection Facilities study, which determines the final identification and cost allocation of SUFs for Class Year 2007 projects will be on the agenda for a vote at the July 17, 2008 NYISO Operating Committee meeting. NYISO states that it has provided stakeholder groups, including the Operating Committee, a supplement to the Class Year 2007 study report that specifies the functional Headroom responsibility of Class Year 2007 projects that will be required if the Commission accepts the proposed effective date. For this reason, NYISO states, NYISO requests an effective date of July 16, 2008, for the proposed revisions in this filing.

G. Procedures for Executing Interconnection Study Agreements

10. NYISO proposes to amend the following sections of the Standard Large Facility Interconnection Procedures in order to improve the circulation and execution of interconnection study agreements. Specifically, NYISO proposes to: (1) revise section 6.1 to establish that NYISO will provide the developer with an unexecuted version of the Interconnection Feasibility Study Agreement within 5 business days of NYISO's receipt of the developer's designation of the point of interconnection and that NYISO and the transmission owner will execute an Interconnection Feasibility Study Agreement within 30 days of its receipt by the developer; (2) revise section 7.2 to establish that NYISO and the transmission owner will execute an Interconnection System Reliability Impact Study Agreement within 30 days of its receipt by the developer; and (3) revise section 8.1 to establish that NYISO and the transmission owner will execute an Interconnection Facilities Study Agreement within 10 days of their receipt of an executed version of the agreement from the developer.

H. Posting Location of Interconnection Study Reports

11. NYISO proposes to revise section 3.4 of Attachment X to provide that NYISO should post interconnection study reports on a password-protected portion of its website, rather than the current requirement of posting reports on its OASIS (without such password protection).

⁸ NYISO notes that on June 16, 2008, in Docket No. EL08-70-000, Canandaigua Power Partners, LLC (Canandaigua) filed a complaint asserting that the OATT currently permits Headroom payments for those SUFs not readily measured in terms of discrete electrical units, and Canandaigua requested that the Commission direct NYISO to require such payments. Transmittal at 7. While NYISO maintains that its OATT currently does not permit such payments, NYISO states that its proposed revisions, if granted with an effective date of July 16, 2008, would apply such Headroom payments to developers in Class Year 2007 and would render Canandaigua's complaint moot. *Id.*

I. Other Proposed Amendments

12. NYISO proposes other general, non-substantive amendments.

II. Notice and Responsive Pleadings

13. Notice of the filing was published in the *Federal Register*, 73 Fed. Reg. 43,739 (2008), with interventions and protests due on or before August 5, 2008. On July 21, 2008, Dynegy Power Marketing Inc.; Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.; the NRG Companies;⁹ and the New York Transmission Owners¹⁰ filed motions to intervene.

14. On August 5, 2008, Noble Wethersfield Windpark, LLC (Noble) and Independent Power Producers of New York, Inc. (IPPNY) filed motions to intervene and protests. On the same date, Sheldon Energy LLC (Sheldon) filed a motion to intervene and comments, and Canandaigua filed a motion to intervene and comments in support. On August 7, 2008, CPV Valley, LLC filed a motion to intervene out-of-time. On August 20, 2008, NYISO and the New York Transmission Owners filed answers to the protests.

III. Discussion**A. Procedural Matters**

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Further, pursuant to Rule 214(d), 18 C.F.R. § 385.214(d) (2008), the Commission will grant the late-filed motion to intervene of CPV Valley, LLC given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the

⁹ In this proceeding, the NRG Companies include: NRG Power Marketing LLC, Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Oswego Harbor Power LLC.

¹⁰ The New York Transmission Owners include: Central Hudson Gas & Electric Corp.; Consolidated Edison Co. of New York, Inc.; Long Island Power Authority; New York Power Authority; New York State Electric & Gas Corp.; Niagara Mohawk Power Corp. d/b/a National Grid; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corp.

decisional authority. We will accept NYISO's and the New York Transmission Owners' answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

17. NYISO proposes that its revisions be accepted under the independent entity variation standard of Order No. 2003.¹¹ The Commission intended that independent entities, including independent system operators (ISO) and regional transmission organizations (RTO), have greater flexibility to customize their interconnection procedures than non-independent entities. Under this standard, the Commission will review the proposed variations to ensure that they do not provide an unwarranted opportunity for undue discrimination or produce an interconnection process that is unjust and unreasonable.¹² Therefore, it remains incumbent on NYISO to justify its proposed changes in this regard.

18. Several of the changes proposed by NYISO under the independent entity variation standard of Order No. 2003 are clarifying and/or ministerial in nature and/or NYISO has supplied sufficient justification; therefore, we will accept the proposed revisions, with the exception of certain proposed modifications discussed specifically below.

1. Scoping Meeting Costs

a. Responsive Pleadings

19. IPPNY objects to tariff revisions that would convert the \$10,000 deposit associated with the scoping meeting into a payment. IPPNY contends that such a conversion will not improve or expedite the interconnection process, despite transmission owners' contention that it will reduce the backlog of requests by eliminating "less serious" projects. IPPNY states that the transmission owners eventually conceded that this issue is solely one of cost recovery and that it would not result in any changes to the manner in which they participate in the process. Moreover, IPPNY states that the transmission owners also conceded that the payment likely would not have any material effect on the size of the interconnection queue or the timing of completing the interconnection process. IPPNY contends, however, that the proposal likely will create

¹¹ See Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 26, 827 (discussing standard).

¹² *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025, at P 7 (2004), *order on reh'g*, 110 FERC ¶ 61,099 (2005).

one more impediment to developers seeking to construct new electric generating facilities in New York. According to IPPNY, this payment may create a potential barrier to some, otherwise viable projects.

20. The New York Transmission Owners, in response, state that the NYISO Tariff does not contain any provision that permits the transmission owners to recover the costs of preparation and data gathering for the initial scoping meetings. To refund the entire deposit creates no disincentive for a developer from consuming the time and resources of NYISO and the transmission owners. The New York Transmission Owners also state that developers are able to talk or meet with the transmission owners or NYISO prior to submitting an interconnection request.¹³

b. Commission Determination

21. Under the current Tariff, upon an initial interconnection request, the interconnection customer must provide NYISO with a fully refundable \$10,000 deposit. The deposit is refundable if the interconnection customer does not enter into an interconnection study agreement. NYISO proposes to revise the Tariff to permit it to deduct from the deposit those costs incurred by NYISO and the applicable transmission owner for initial scoping meetings if the customer does not enter into an interconnection study agreement. This change is more than ministerial or clarifying in nature; it involves a change in costs to the interconnection customer and conflicts with Order No. 2003. In Order No. 2003, the Commission stated that if an interconnection request is withdrawn before the execution of an interconnection feasibility study agreement, e.g., as a result of discussion at the scoping meeting, the transmission provider is to refund the deposit.¹⁴ NYISO has not provided sufficient reason for the proposed variance from the Commission's directive in Order No. 2003. In their answer, the New York Transmission Owners allude to time and resources expended regarding these meetings. However, given the NYISO's paucity of argument and lack of specificity regarding the need for this variance, there is no basis on this record upon which we may conclude that NYISO's proposal is just and reasonable. We do not want to inhibit developers with potential projects from bringing them into the interconnection queue, and we are not convinced that NYISO's proposed variance, which is in direct conflict with Order No 2003, would not have this result. Further, NYISO has not shown how the current process is unduly burdensome. Accordingly, we reject this revision without prejudice to NYISO making a new filing that justifies the proposed revision.

¹³ New York Transmission Owners Answer at 5.

¹⁴ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 91.

2. Elective SUFs

a. Responsive Pleadings

22. NYISO proposes to revise section IV.G.4.a of Attachment S, which concerns responsibility for the cost of SUFs that are larger or more extensive than the minimum required to reliably interconnect the proposed project, by adding a further limitation: “and are reasonably related to the interconnection of the proposed project.” Sheldon asserts that NYISO’s proposed revision to section IV.G.4.a could be read to allocate the costs for certain elective SUFs that benefit the whole transmission system to the entity constructing those SUFs, even though such SUFs may be more appropriately characterized as “modernization upgrades” relating to a pre-existing system condition. Accordingly, Sheldon asks that the Commission clarify that the excess costs associated with elective SUFs that are modernization upgrades that benefit the transmission system should not be assigned to the entity constructing those SUFs, but instead should be charged to the users of the transmission system.

23. In their answers, NYISO and the New York Transmission Owners state that the intent of this revision is to ensure that an SUF in excess of what is minimally necessary for the interconnection is “reasonably related” to the developers proposed project. That is, the interconnection request must cause the need for the SUF. NYISO states that this revision does not permit NYISO to impose these SUF costs on the developer.

b. Commission Determination

24. We accept the proposed revision to section IV.G.4.a of Attachment S. NYISO and the New York Transmission Owners have clarified in their answers that it is not the intent of this revision to permit the construction of elective SUFs that are not related to the interconnection project to be constructed. Rather, the intent of the proposed revision is to clarify this section of the Tariff to ensure that such upgrades are “reasonably related” to the interconnection project, whether elected by the interconnection customer or the transmission owner, and must cause the need for the SUF. As so clarified, “modernization upgrades” relative to pre-existing conditions raised by Sheldon would not be assigned to the entity constructing those SUFs, but rather to the system. Accordingly, as so clarified, the proposed revisions are just and reasonable and the concerns of Sheldon are unfounded.

3. Headroom Issues

a. NYISO’s Proposed Revisions

25. As currently applied by NYISO, all SUF costs, including costs of system protection facilities whose capacity is not readily measurable in terms of watts or amperes, are allocated among interconnection project developers in a given Class Year.

However, NYISO does not permit such system protection costs to be recovered from developers in subsequent Class Years under the Headroom provisions of the Tariff. Among other things, NYISO proposes to revise the definition of “Headroom” to include the “functional capacity” of SUFs so as to include the capacity of system protection SUFs as follows:

In the case of any System Upgrade Facility that has been paid for by a Developer, the functional or electrical capacity of the System Upgrade Facility that is in excess of the functional or electrical capacity actually used by the Developer’s generation or merchant transmission project.¹⁵

26. Accordingly, NYISO proposes to revise the Tariff to distinguish between the capacity of those SUFs “not readily measured in amperes or other discrete electrical units, such as a System Upgrade Facility dedicated to system protection” (to be defined as “functional capacity”) from capacity “readily measured in amperes or other discrete electrical units” (currently defined as “electrical capacity”).¹⁶ NYISO proposes to change the Tariff to provide for the allocation of the cost of such SUF “functional capacity” by the number of projects in a Class Year that add such capacity, both for the purpose of the initial allocation of SUF costs among project developers in that Class Year and for the subsequent allocation of the cost of un-used capacity, i.e., “Headroom,” to future developers in subsequent Class Years who use that Headroom.

b. Responsive Pleadings

27. Noble argues against including functional capacity in Headroom payments because, it asserts, system protection facilities create no capacity, let alone excess capacity. Noble states that “it is true that capacity need not be limited to something measured in [megawatts or amperes],” but contends that any definition of “capacity” requires that there be a “finite availability of such capacity that is divisible in logical units.”¹⁷ Noble avers that there is no finite amount of capacity (with respect to such system protection upgrades). Further, Noble contends that such facilities benefit the

¹⁵ Filing at Attachment II (NYISO FERC Electric Tariff, Original Vol. No. 1 Attachment S, Proposed Fourth Revised Sheet No. 656-A).

¹⁶ *Id.* (NYISO FERC Electric Tariff, Original Vol. No. 1 Attachment S, Proposed Fifth Revised Sheet No. 675; Proposed Fourth Revised Sheet No. 687).

¹⁷ Noble Protest at 8.

entire system as no developer is using up any capacity of these SUFs. Moreover, since there is no finite capacity and no capacity being used up, there is no finite amount of capacity available for the use of other developers, i.e., there is no excess.

28. Noble also contends that any allocation of functional capacity to Class Year 2007 would violate the filed rate doctrine and the prohibition on retroactive ratemaking because Class Year 2007 developers have moved through the entire interconnection process based on the current tariff provisions (and NYISO's interpretation of them). Noble contends that the OATT does not provide notice of such costs.¹⁸

29. Further, Noble maintains that the costs of these facilities are more appropriately allocated to transmission owners, transmission customers, and load.¹⁹ It asserts that these are not the type of costs that should be allocated to developers because the need for such facilities does not result from the addition of generation capacity to the transmission grid; rather, they are simply required by rules of the North American Electric Reliability Corporation or NERC.

30. IPPNY filed comments in support of NYISO's proposal. IPPNY states that NYISO's proposed revisions with respect to the SUFs which cannot be allocated based on a discrete unit of measurement (such as the system protection facilities) will rectify this omission in the Tariff and "broaden the tariff to provide allocation and accounting rules for all types of [SUFs], regardless of the manner in which they can be quantified."²⁰

31. In its answer, NYISO maintains that the Commission should reject arguments by Noble that Headroom payments are not permitted by the Tariff and that system protection facilities should never qualify for Headroom payments. NYISO states that the instant filing proposes to expand the facilities eligible for Headroom payments to include those that provide functional capacity capable of use by other developers (such as system protection facilities). NYISO states that, to the extent developers in subsequent Class Years use and benefit from system protection facilities paid for by an earlier developer, a subsequent developer should be expected to bear a portion of the costs charged to the original developer for the required SUFs. NYISO also states that this would eliminate an opportunity for developers to game the system in order to evade costs, thereby becoming

¹⁸ *Id.* at 12.

¹⁹ Noble takes issue with the allocation to developers of additional costs related to changes to the construction design (other than changes proposed by the developers), because such changes are not under the control of the developer. Noble Protest at 13-14 (referencing proposed changes to Sheet No. 685).

²⁰ IPPNY Protest at 4.

“free riders” on facilities paid for by others. In response to Noble’s assertion that system protection facilities should be borne by all users of the transmission system, NYISO explains the “but for” provisions of its Tariff ensure that developers pay for those facilities required for their projects to interconnect; and that, facilities that maintain the reliability of the transmission system without considering the impacts of interconnection projects are allocated to users of the system.²¹

32. In its answer, the New York Transmission Owners state they completely agree with NYISO’s proposed revision, which, they state, was also unanimously approved by the Stakeholders. They state that system protection costs are no different than any other SUF costs that one Class year pays for and that benefit future Class Years that should reimburse the earlier developers proportionately. The New York Transmission Owners also state, contrary to Noble’s claim, to apply the revision to Class Year 2007, whose cost responsibility is not final, in no way constitutes retroactive application.²²

33. Canandaigua filed comments in support of NYISO’s proposed changes to the Headroom cost allocation provisions and supports NYISO’s request for waiver to permit an effective date of July 16, 2008. Canandaigua states that the revisions will satisfy the concerns relating to Headroom treatment raised in its complaint.²³ Canandaigua states that, if the Commission accepts the proposed tariff changes without modification effective July 16, 2008, Canandaigua would withdraw its complaint. Canandaigua states that acceptance of the proposed Headroom provisions will cure the problem with the existing tariff provisions that allow subsequent developers to receive a windfall by being able to use the system protection facility SUFs at no charge. Canandaigua states this acceptance will result in just and reasonable rates that will allow it to collect from 2007 Class Year developers approximately \$900,000 for system protection facility SUFs constructed by Canandaigua that will be used by 2007 Class Year developers.

c. Commission Determination

34. We will accept NYISO’s proposed revisions to the Attachment S procedures for the allocation and recovery of SUF costs, including its new Headroom provisions. We find that they are just and reasonable as they appropriately implement Order No. 2003 by allowing for reimbursement of all costs of SUFs that exceed those SUFs that, “but for” the interconnection projects in a given Class Year, would not be required. This

²¹ NYISO Answer at 6.

²² New York Transmission Owners Answer at 6 n.7.

²³ *Canandaigua Power Partners, LLC*, Docket No. EL08-70-000 (filed June 17, 2008).

eliminates conflicting treatment of different types of SUFs and removes a potential opportunity for developers to manipulate the interconnection process; under the Tariff as currently applied, a project developer may opt out of a Class Year and move to a subsequent Class Year and thereby avoid responsibility to pay for the cost of SUFs that it uses and that are needed to permit its interconnection with the system.

35. In its protest, Noble essentially asserts that an SUF which cannot be measured in terms of watts or amperes does not create capacity that can be “used” in a measurable way and thus the cost of such an SUF should not receive Headroom treatment. We disagree and find that such costs should receive Headroom treatment. In the interconnection study process, NYISO must measure and allocate “use” of any facility, whether it has capacity measurable in steady state watts or amperes, such as a circuit breaker or is a system protection facility, to determine what is needed in order for the interconnection customer(s) to reliably connect to the system.²⁴ Otherwise, a subsequent interconnection customer would be required to construct an identical facility, but for, the earlier interconnection. That is not the case, as the pleadings demonstrate that subsequent interconnection projects do, in fact, make use of system protection facilities installed by other project developers. As clarified in its answer, NYISO proposes to initially allocate SUFs whose capacity is not measurable in terms of watts or amperes based on the number of projects in the relevant Class Year. The determination of what portion of that capacity is un-used and excess, i.e., Headroom, such that the costs thereof are recoverable under the Headroom provisions, is not to be based on some contentious inquiry into what actual “use” of such capacity is occurring. Rather, as NYISO clarifies in its answer, the costs of the SUFs would be re-allocated by splitting the costs equally among the original project developers and the subsequent Class Year developers, by dividing the costs based on the total number of projects.²⁵ We recognize that other methods of allocation could have been adopted, but cost allocation is “not a matter for the slide rule,”²⁶ and we find

²⁴ For example, circuit breaker fault current interrupting capacity (measured in amperes) is a type of electrical capacity essential for reliable operation.

²⁵ NYISO proposes to implement the following methodology to determine the amount of the Headroom payment each subsequent project developer will owe each original project developer: SUF cost divided by (the sum of the number of original and subsequent projects times the number of original projects). The proposed methodology appears in materials submitted in the record of the complaint proceeding in Docket No. EL08-70-000. *See* Motion for Leave to Answer and Answer of Canandaigua Power Partners, LLC to Answers and Protests, Docket No. EL08-70-000, filed July 22, 2008 at Exhibit B (Functional Headroom Cost Allocation as Supplement to Facilities Study for Class 2007 Projects: Part 2 — System Upgrade Facilities, Draft 2, July 16, 2008).

²⁶ *Colorado Interstate Gas Co v. FPC*, 324 U.S. 581, 589 (1945).

that, given the nature of the facilities and costs at issue, and the fact that the proposal was thoroughly vetted through the NYISO Stakeholder process and received unanimous approval, NYISO's proposal falls within a zone of reasonableness.

36. Finally, Noble's allegation that NYISO's proposed revisions relating to Headroom violate the filed rate doctrine and amount to retroactive ratemaking is without merit. The proposed Tariff revisions were filed before the proposed effective date of July 16, 2008.²⁷ Apart from observing that the existing Tariff process had been followed, Noble has not shown that it would incur any specific harm by our acceptance of the revisions effective July 16, 2008. The Tariff also provides procedures for class members to opt out of a Class Year after notice of their costs responsibility. Further, the amount of additional SUF costs Noble could be responsible for if it were to opt into a future Class Year is speculative. Moreover, Noble had actual notice of the Tariff proposal as early as January of 2008 through the stakeholder process and knew by then that it would be subject to additional costs under that proposal.²⁸ Finally, Noble was on actual notice of the exact amount of additional costs resulting from the instant tariff proposal at least as early as July 15, 2008, by receipt of the NYISO Class 2007 Supplemental Staff report referenced earlier herein, *supra*, note 25.²⁹

37. However, because the above-discussed allocation methodology NYISO alludes to in its answer is not spelled out in detail in the proposed Tariff provisions, we direct NYISO to file revised tariff sheets within 21 days of this order that include the allocation methodology.³⁰

38. With the acceptance of NYISO's proposed revisions to the Headroom provisions of its Tariff, to be effective on July 16, 2008, we expect Canandaigua to abide by its commitment to withdraw its complaint in Docket No. EL08-70-000.

4. Waiver and Effective Date

39. NYISO requests an effective date of July 16, 2008, one day after the date of the filing, asserting that good cause exists to for the Commission to waive the 60-day prior notice requirement. NYISO states that NYISO market participants have had advance notice of NYISO's intention to apply the tariff amendments concerning Headroom for

²⁷ Moreover, according to the New York Transmission Owners, Answer at 6 n.7, the cost responsibility of Noble's Class Year 2007 is not yet final.

²⁸ See Canandaigua Comments at 5.

²⁹ Transmittal at 7.

³⁰ See 16 U.S.C. § 824d (2006); 18 C.F.R. §§ 35.1, .2 (2008).

SUFs that are not readily measured in discrete electrical units to developers in Class Year 2007. NYISO details how it worked with stakeholders beginning in late 2007 to develop this amendment, which was presented to the January 17, 2008 Operating Committee meeting; however, it was not approved at that time for reasons unrelated to the substance of the amendments, but rather due to other issues. NYISO states that it clearly indicated at that January 2008 meeting that it would calculate Headroom payments for SUFs not readily measured in discrete electrical units beginning with the Class 2007 projects. In addition, NYISO notes that, as indicated earlier herein, it has provided a supplement to the Class Year 2007 study report with the functional Headroom responsibility of Class Year 2007 projects. It states that the approval of the Class Year 2007 project cost allocation for SUFs will occur on or after July 17, 2008, and, accordingly, to ensure that the proposed provisions are in place at the time of the final cost allocation, it requests an effective date of July 16, 2008.

40. In its protest, Noble asserts that the Commission should reject the waiver request on the basis that Noble and other developers must rely on FERC-filed rate schedules, not potential changes to those rate schedules that have neither been filed with, nor accepted by, the Commission. Noble argues that, by merely pointing out that affected parties had notice of NYISO's intentions, NYISO failed to meet what Noble asserts is NYISO's burden of demonstrating extraordinary circumstances to justify waiver of the Commission's 60-day prior notice requirement.

41. In its comments, Canandaigua states that good cause exists to grant the waiver and permit a July 16, 2008 effective date for two reasons: first, to have substantive effect they must apply to Class Year 2007 developers, which effect will occur because the Class Year 2007 allocation report was voted out at the July 17, 2008 Operating Meeting; and, second, affected stakeholders have known that the Attachment S changes proposed in the July 15, 2008 filing were slated to be applicable to Class Year 2007 developers since at least January 2008.

42. Based on the circumstances of this case, including the reasons set forth above in NYISO's transmittal, Canandaigua's comments, and in our discussion above finding no violation of the filed rate doctrine or retroactivity, we find good cause to waive the 60-day prior notice requirement and permit those Tariff sheets that we are accepting to go into effect on July 16, 2008, as proposed, subject to the conditions of this order.

The Commission orders:

(A) Waiver of the 60-day prior notice requirement is hereby granted and the proposed revised tariff sheets are, except for the proposed revisions rejected in Order Paragraph (B) below, accepted to be effective on July 16, 2008, subject to the conditions discussed in the body of this order.

(B) The proposed revisions to Attachment X regarding the recovery of scoping meeting costs are rejected, as discussed in the body of this order, without prejudice to NYISO making another filing that justifies such modifications. NYISO is hereby directed to file revised tariff sheets removing this provision within 21 days from the date of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.