

125 FERC ¶ 61,274  
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. OA08-107-000

ORDER ACCEPTING COMPLIANCE FILING

(Issued December 5, 2008)

1. On April 15, 2008, pursuant to section 206 of the Federal Power Act (FPA),<sup>1</sup> the New York Independent System Operator, Inc. (NYISO) submitted its compliance filing as required by Order No. 890-A,<sup>2</sup> with a proposed effective date of April 15, 2008. In this order, we accept the tariff revisions proposed in NYISO's filing, effective April 15, 2008, as in compliance with Order No. 890-A, as discussed below.

**I. Background**

2. In Order No. 890,<sup>3</sup> 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. In Order No. 890-A, the Commission granted limited rehearing and clarification of Order No. 890, largely affirming its reforms. The Commission concluded that such reforms would better enable transmission providers to achieve the Commission's core objective of remedying undue discrimination in the provision of electric transmission service, and therefore rejected requests to eliminate or substantially modify the reforms. The Commission, however, granted rehearing to clarify certain provisions of its regulations

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<sup>1</sup> 16 U.S.C. § 824e (2006).

<sup>2</sup> *Preventing Undue Discrimination and Preference in Transmission Service, order on reh'g and clarification*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261, at P 38 (2007).

<sup>3</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 73 Fed. Reg. 39,092 (July 8, 2008), 123 FERC ¶ 61,299 (2008).

and revise portions of the *pro forma* OATT. These revisions address, among other things, transmission providers' processing of service requests and obligation to offer generator imbalance service, long-term customers' ability to renew (roll over) their transmission service, and point-to-point customers' reassignment of transmission capacity. The Commission also directed transmission providers to address certain issues related to the calculation of available transfer capability, and the calculation of incremental costs for purposes of imbalance charges. The Commission in Order No. 890-A continued its Order No. 890 objectives of ensuring that electric transmission service is provided on a nondiscriminatory, just and reasonable basis, helping to improve the foundation for a competitive electric power market, and providing for more effective regulation and transparency in the operation of the transmission grid.

3. As noted above, the Commission adopted various revisions to the *pro forma* OATT and directed Regional Transmission Organization (RTO) and Independent System Operator (ISO) transmission providers to submit within 90 days from publication of Order No. 890-A in the *Federal Register* (i.e., April 15, 2008), section 206 compliance filings that contain the revised non-rate terms and conditions of the *pro forma* OATT or that demonstrate that their existing tariff provisions are consistent with or superior to the revised provisions of the *pro forma* OATT.

## **II. Compliance Filing**

4. NYISO states that its filing both proposes certain revisions to its OATT as required by Order No. 890-A and proposes not to adopt a number of other revisions that Order No. 890-A introduced into the *pro forma* OATT. In general, NYISO states that it is not proposing to accept tariff revisions that are only relevant to the "physical reservation" open access transmission regime. NYISO states that Order No. 890 was clear that it did not intend to require ISOs/RTOs to eliminate financial reservation systems, would not require them to "re-justify" existing OATT variations that were not affected by Order No. 890, and recognized that many ISOs/RTOs would show that their existing tariffs were already consistent with or superior to the *pro forma* OATT as revised by Order No. 890.<sup>4</sup> NYISO adds that nothing in Order No. 890-A departs from this overall approach.

## **III. Notice of Filing and Responsive Pleadings**

5. Notice of NYISO's filing was published in the *Federal Register*, 73 Fed. Reg. 21,930 (2008), with interventions and protests due on or before May 6, 2008. The New

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<sup>4</sup> Citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 158, 603, 992 (2007).

York Transmission Owners (NYTOs)<sup>5</sup> individually and collectively filed a motion to intervene. Beacon Power Corporation (Beacon Power) filed a motion to intervene and comments.

#### IV. Discussion

##### A. Procedural Matters

6. 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.

##### B. Substantive Matters

7. We find that NYISO's proposed tariff revisions are in compliance with the directives of Order No. 890-A. Accordingly, we accept NYISO's proposed tariff revisions to be effective April 15, 2008, as requested.

#### 1. Proposed Deviations from the *Pro Forma* OATT

##### a. NYISO's Filing

8. NYISO states that, consistent with its October 12, 2007 Order No. 890 compliance filing in Docket No. OA08-13-000,<sup>6</sup> 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.

9. Specifically, NYISO refers to section III of its October 12, 2007 Order No. 890 compliance filing in Docket No. OA08-13-000 where, according to NYISO, it described in detail the differences between its "financial reservation" transmission model using Locational Based Marginal Pricing (LBMP) and the "physical reservation" model

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<sup>5</sup> 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.

<sup>6</sup> NYISO refers to the filing as its "October 11, 2007 filing," but the filing was actually received on October 12, 2007, and will be referred to herein by that filing date.

contemplated by Order No. 890. NYISO states that, in addition, its October 12, 2007 filing notes that the Commission's early orders on the NYISO had directed it to offer both Point-to-Point and Network Integration Transmission Service, but also accepted tariff revisions that reflected the fact that both services would be offered in an "LBMP context." NYISO states it has never received an application requesting Network Integration Transmission Service. NYISO states that it continues to believe that this is not evidence of a problem and instead demonstrates that the Network Integration Transmission Service provisions are redundant in New York. NYISO states that it has concluded that it would be appropriate to eliminate them as part of a future filing under section 205 of the Federal Power Act (FPA) to simplify, clarify, and update the NYISO OATT. In the interim, according to NYISO, the October 12, 2007 filing proposed revisions to the existing Network Integration Transmission Service provisions in order to conform to Order No. 890 and the instant compliance filing proposes to adopt Order No. 890-A's revisions to the *pro forma* Network Integration Transmission Service provisions, to the extent that they are applicable to NYISO.

10. Additionally, NYISO explains that several deviations from the *pro forma* OATT adopted in Order Nos. 890 and 890-A are necessitated by NYISO's market design. Specifically, NYISO states that it does not include *pro forma* Schedules 4 (Energy Imbalance Service) and 9 (Generator Imbalance Service); nor does it include the *pro forma* changes required by Order No. 890-A, because these services are provided in the context of LBMP market mechanisms. Further, NYISO states that it does not include any revisions regarding: (1) credits for network customers, (2) capacity reassignments, or (3) penalties for unreserved transmission use.

11. NYISO proposes to not include *pro forma* revisions required by Order No. 890-A pertaining to conditional firm service or planning redispatch. Specifically, NYISO proposes to not make changes to the following *pro forma* sections required by Order No. 890-A: (1) section 2.2 regarding rollover rights for existing transmission service contracts, (2) sections 1.39, 17.2 and 18.2 related to pre-confirmation priorities, (3) section 17.7 regarding extensions of commencement of transmission service, (4) sections 13.2 and 14.2 regarding reservation priorities for transmission service, (5) sections 29.2 and 30.4 regarding the evaluation of designation and undesignation of network resources via Open Access Same-time Information System, (6) part of section 28.4 regarding secondary network service, and (7) *pro forma* Attachment J. NYISO also proposes to not include definitions required by Order No. 890 that it states are not relevant to the NYISO system.

**b. Commission Determination**

12. 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.<sup>7</sup> The Commission conditionally accepted NYISO's Order No. 890 compliance filing on May 7, 2008.<sup>8</sup> Accordingly, in the May 7, 2008 Order, the Commission accepted the aforementioned variations to the *pro forma* OATT provisions.

13. In the instant proceeding, we note that no party objects to the aforementioned deviations from the *pro forma* OATT. We recognize that NYISO's proposed deviations from the *pro forma* OATT reflect the actual market design used by NYISO, and find the deviations to be consistent with or superior to the *pro forma* OATT.

**2. Participation by Non-Generation Resources in Ancillary Services Markets**

**a. NYISO's Filing**

14. NYISO states that its October 12, 2007 Order No. 890 compliance filing in Docket No. OA08-13-000 explained that it was not proposing to make any changes to the ancillary services provisions of its Services Tariff, or its OATT, to reflect Order No. 890's *pro forma* revisions allowing non-generation resources that are "capable" of providing the services to do so. NYISO states that it argued in the October 12, 2007 filing that these revisions to NYISO's tariffs were unnecessary because they already allow non-generation resources to provide ancillary services to the extent practicable given NYISO's specific circumstances. NYISO states that on March 24, 2008, in Docket No. ER04-230-034, it proposed a package of tariff revisions that will allow Demand Side Resources to fully participate in its Operating Reserves and Regulation Services markets. NYISO further states that the March 24, 2008 filing is not its final word on the subject, in that it intends to continue working with its stakeholders, and with the relevant reliability organizations, to pursue new opportunities for participation by Demand Side Resources in the future.

**b. Beacon Power's Protest**

15. Beacon Power states that in Order No. 890 the Commission amended the regulations and the *pro forma* OATT to ensure that transmission services are provided in a manner that is just, reasonable, and not unduly discriminatory or preferential,<sup>9</sup> and that

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<sup>7</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 158.

<sup>8</sup> *New York Indep. Sys. Operator, Inc.*, 123 FERC ¶ 61,134 (2008) (May 7, 2008 Order).

<sup>9</sup> *Citing* Order No. 890, FERC Stats. and Regs. ¶ 31,241 at P 42.

the Commission modified the Regulation and Frequency Response Services tariff to allow provision of those services by generation and non-generation resources.<sup>10</sup> Further, according to Beacon Power, NYISO stated in its October 12, 2007 compliance filing that its current version of Services Tariff Rate Schedule 3 only authorized generators to provide Regulation Services, however it would propose Demand Side Ancillary Services Program tariffs that would facilitate participation of other resources in its energy and ancillary service markets.

16. Beacon Power asserts that NYISO's March 24, 2008 revisions to its Services Tariff contravenes the Commission's directives to submit an OATT that allows for the provision of Regulation Services by both generators and non-generators without discrimination. Beacon Power contends that in its protest in Docket ER04-230-034, it noted, that, among other things, NYISO's proposed Demand Side Ancillary Services Program tariff prevented Beacon Power from providing Regulation Services and remains discriminatory against certain suppliers of regulation services.

17. Beacon Power states that when NYISO submitted its October 12, 2007 Order No. 890 compliance filing, Beacon Power raised the concern that NYISO is neither consistent with nor superior to the Order No. 890 mandates,<sup>11</sup> to which NYISO responded that Beacon is a "generator" as defined in NYISO OATT at § 1.13c.<sup>12</sup> According to Beacon Power, it responded that even if its energy storage flywheels met the technical definition of a "Generator," under the current rules, Beacon Power could not compete on a level playing field against traditional generators to provide Regulation Services.<sup>13</sup> Beacon Power states that NYISO reiterated that it was working with Beacon Power and, if necessary, would adjust market rules or software in time for Beacon Power's planned start of operations in 2008.<sup>14</sup>

18. Beacon Power explains that its new non-generation, flywheel-based energy storage technology provides Regulation Service different from both generators, which control the amount of energy they produce, and demand side resources, which control the amount of energy they demand. Beacon Power further states that its flywheel energy storage technology operates by using flywheels to recycle energy from the grid such that

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<sup>10</sup> *Citing Id.* P 888.

<sup>11</sup> Beacon Power Corporation, November 1, 2007 Comments, Docket No. OA08-13-000.

<sup>12</sup> NYISO, November 19, 2007 Answer, Docket No. OA08-13-000, at 6.

<sup>13</sup> Beacon Power, December 4, 2007 Answer, Docket No. OA08-13-000, at 4–5.

<sup>14</sup> *Citing* NYISO, December 18, 2007 Answer, Docket No. OA08-13-000, at 7.

when generated power exceeds load, Beacon Power's flywheels absorb the excess energy and conversely, when load increases the flywheels return energy to the grid. Thus, according to Beacon Power, approximately half the time its facility operates like a generator providing energy to the grid, and the remainder of the time it operates like load by withdrawing excess energy from the grid. Therefore, Beacon Power asserts, in order for energy storage technologies to participate in the Regulation Services market on comparable terms to generators and demand side resources, the tariff must be expanded to recognize the unique operating characteristics of energy storage technologies. Beacon Power contends that neither the current schedule 3 tariff nor the Demand Side Ancillary Services Program tariff filed on March 24, 2008 in Docket No. ER04-230-034 fully removes the barriers to energy storage technologies participating in NYISO's Regulation Service market.

19. Beacon Power states that in the instant proceeding, NYISO did not propose any changes to its OATT wherein new energy storage technologies would be allowed to participate in NYISO's Regulation Services market. Beacon Power states that NYISO has submitted three compliance filings that relate to the provision of ancillary services by non-generation resources<sup>15</sup> and not one of these complies with the Commission's mandates to ensure that non-generation resources are authorized to provide ancillary services. Beacon Power requests that the Commission find that NYISO has failed to comply with Order No. 890 and with Order No. 890-A.

20. Beacon Power asserts that, similar to the Midwest ISO, the Commission should require NYISO to adjust the Operating Requirements for ancillary services to remove barriers to comparable treatment of new technologies in the regulation services marketplace.<sup>16</sup> Beacon Power requests that the Commission direct NYISO to comply with Order No. 890 and ensure that all technologies capable of providing Regulation Service be permitted to participate on terms comparable to generators and demand side resources.

**c. Commission Determination**

21. As discussed below, Beacon's protest is outside of the scope of this Order No. 890-A compliance filing because, in Order No. 890-A, the Commission did not require any revisions to *pro forma* schedule 3. Accordingly, NYISO has no compliance obligation to meet in the instant filing regarding schedule 3. Moreover, in response to

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<sup>15</sup> Beacon Power refers to NYISO's Order No. 890 compliance filing in Docket No. OA08-13-000, NYISO's filing in Docket No. ER04-230-034, and NYISO's compliance filing in the instant proceeding.

<sup>16</sup> *Citing Midwest Indep. Transmission Sys. Operator*, 122 FERC ¶ 61,172, at P 365 (2008).

Beacon's concerns, we note that Beacon's issues are being addressed in another forum, as explained below.

22. Order No. 890 modified schedule 3 of the *pro forma* OATT to permit regulation and frequency response service to be provided by generating units as well as other non-generation resources.<sup>17</sup> In its October 12, 2007 Order No. 890 compliance filing in Docket No. OA08-13-000, as amended, NYISO proposed to not revise schedule 3, which drew a protest from Beacon similar to its protest here. Subsequently, in Order No. 890-A, the Commission did not require any further revisions to *pro forma* schedule 3. On May 7, 2008, after NYISO had made the instant Order No. 890-A compliance filing, the Commission conditionally accepted NYISO's October 12, 2007 Order No. 890 compliance filing, but concluded that NYISO would not fully comply with Order No. 890 until non-generation resources could provide this service.<sup>18</sup> However, the Commission also noted that, on March 25, 2008, in Docket No. ER04-230-034, NYISO had filed proposed revisions to its Market Services Tariff and OATT to allow certain demand side resources to offer operating reserves and Regulation Service into NYISO's markets, which included a revised schedule 3 to NYISO's Market Services Tariff. Previously, in an order issued on May 23, 2008, in Docket No. ER04-230-034, the Commission accepted NYISO's March 25, 2008 tariff proposals in that docket but required NYISO to submit Quarterly Reports to provide information regarding the ongoing process to accommodate energy storage technologies in providing Operating Reserves and Regulation Service.<sup>19</sup> In the May 7, 2008 Order, the Commission found that Beacon Power's issues would be more appropriately addressed in Docket No. ER04-230-034 and found that NYISO's compliance with Order No. 890 regarding *pro forma* schedule 3 to Order No. 890 would be subject to the outcome of that proceeding in Docket No. ER04-230-034. Accordingly, the issues Beacon raises here are being addressed in Docket No. ER04-230.

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<sup>17</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 888.

<sup>18</sup> May 7, 2008 Order, 123 FERC ¶ 61,134 at P 38.

<sup>19</sup> *New York Indep. Sys. Operator, Inc.*, 123 FERC ¶ 61,203, at P 35 (2008) (May 23 Order). We note that on September 23, 2008, Beacon Power filed comments in response to NYISO's September 5, 2008 quarterly report in Docket No. ER04-230-039 in compliance with the May 7, 2008 Order, stating that "Beacon Power is grateful for the productive working relationship it has with the NYISO and looks forward to continuing its collaborative work with market stakeholders and [the Northeast Power Coordinating Council] to ensure that new and commercially ready energy storage technologies can provide Regulation Service on a non-discriminatory basis by early 2009."

### 3. Waiver of Transmission Study Deadlines

#### a. NYISO's Filing

23. NYISO notes that, at the time of the instant filing, NYISO had pending before the Commission NYISO's October 12, 2007 filing to comply with Order No. 890's requirements regarding transmission study deadlines and a request to temporarily waive the applicability of such provisions. The waiver was to last until April 1, 2008, when it anticipated making a new section 205 filing following the completion of its stakeholder process to address the matter of the deadlines. NYISO renews its request for temporary waiver until it makes its section 205 filing. 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 stakeholder process requirements; or (ii) completing studies in sixty days even when doing so could negatively affect their quality. Consequently, NYISO renews its request 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 it makes its section 205 filing 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.<sup>20</sup>

#### b. Commission Determination

24. In the May 7, 2008 Order, the Commission accepted NYISO's proposed tariff language in sections 19.9 and 32.5 effective October 11, 2007, which included penalty provisions for failure to meet the transmission study deadlines.<sup>21</sup> The Commission denied NYISO's request for waiver to provide that late study penalties not become applicable until April 11, 2008.<sup>22</sup> We again deny NYISO's request for waiver of late

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<sup>20</sup> NYISO, April 15, 2008 Filing at 28.

<sup>21</sup> May 7, 2008 Order, 123 FERC ¶ 61,134 at P 23.

<sup>22</sup> *Id.*

study penalties.<sup>23</sup> We find that NYISO has not provided sufficient justification for its request for waiver. However, we note that on September 12, 2008, while the instant filing was pending, NYISO filed a section 205 filing in Docket No. ER08-1527-000 proposing to modify the deadlines governing the completion of transmission studies by NYISO and the NYTOs under sections 19 and 32 of the NYISO OATT. NYISO proposed to increase the transmission study deadlines from 60 days to 120 days. The Commission accepted the filing, effective September 13, 2008, in an unpublished letter order.<sup>24</sup>

#### 4. Waiver of Capacity Reassignment Requirements

##### a. NYISO's Filing

25. NYISO states that Order No. 890 directed transmission providers to work through the North American Energy Standards Board (NAESB) to develop new Open Access Same-Time Information System (OASIS) functionality to allow for the posting of capacity reassignments before they occur, but excused transmission providers from introducing any such new functionality until the NAESB process was complete. NYISO states that Order No. 890-A clarified that during the interim period “transmission providers should identify in their business practices any procedures necessary to accomplish the reassignment of capacity by their customers.”<sup>25</sup> NYISO states that it has not established detailed non-tariff procedures related to capacity reassignments because the reassignment tariff procedures are not used under its financial reservation system and NYISO does not interpret Paragraph 428 of Order 890-A as requiring the development of new procedures that are not already in place.

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<sup>23</sup> 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. In Order No. 890-B, the Commission clarified that transmission providers were free to make section 205 filings proposing to modify the standard 60-day study deadline established under the *pro forma* OATT. Order No. 890-B, 73 Fed. Reg. 39,092 (July 8, 2008), 123 FERC ¶ 61,299, at P 101 (2008).

<sup>24</sup> *New York Indep. Sys. Operator*, Docket No. ER08-1527-000, at 1 (Nov. 4, 2008) (unpublished letter order). Therefore, NYISO and the NYTOs are required to follow the *pro forma* deadlines under sections 19 and 32 of NYISO's OATT as accepted by the May 7, 2008 Order through September 12, 2008.

<sup>25</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 428.

**b. Commission Determination**

26. It was not our intent that NYISO should develop new procedures when capacity reassignments are not used under its financial reservation system. Therefore, we grant NYISO waiver of the requirement under Paragraph 428 to identify procedures related to capacity reassignments.

The Commission orders:

The tariff revisions proposed in NYISO's April 15, 2008 Order No. 890-A compliance filing are hereby accepted, effective April 15, 2008, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.