

127 FERC ¶ 61,318
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.
New York Transmission Owners

Docket Nos. ER04-449-018
ER04-449-019

ORDER ON REHEARING, CLARIFICATION, AND COMPLIANCE

(Issued June 30, 2009)

1. In this order, we grant, in part, several requests for rehearing and clarification of the Commission's order in this proceeding issued on January 15, 2009.¹ We also accept the joint compliance filing of the New York Independent System Operator, Inc. (NYISO) and the New York Transmission Owners² (NYTOs) (jointly, the Filing Parties).

I. Background

2. This proceeding involves compliance with the Commission's Order No. 2003.³ After a lengthy stakeholder process, the Filing Parties submitted a Consensus

¹ *New York Independent System Operator, Inc.*, 126 FERC ¶ 61,046 (2009) (*Order on Tariff Revisions*).

² The New York Transmission Owners include: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA, New York Power Authority, New York State Electric & Gas Corporation, Orange & Rockland Utilities, Inc., Rochester Gas and Electric Corporation, and Niagara Mohawk Power Corporation d/b/a National Grid.

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 (2004), *order on reh'g*, Order No. 2003-B, 70 FR 265 (January 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *affirmed sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

Deliverability Plan on October 5, 2007, which provided the conceptual framework for adding to the NYISO OATT a second level of interconnection service with a deliverability component.⁴ In its *Guidance Order*,⁵ the Commission approved, in principle, the conceptual framework proposed in the Consensus Deliverability Plan and provided further guidance to the NYISO and its members to facilitate the development of revisions to the NYISO OATT. On August 5, 2008, the Filing Parties filed amendments to the NYISO's OATT and the NYISO Market Administration and Control Area Services Tariff (Services Tariff). In the *Order on Tariff Revisions*, the Commission conditionally accepted tariff revisions implementing a second level of interconnection service with a deliverability requirement that was conceptually approved by the Commission in its *Guidance Order*.

3. On February 17, 2009, requests for rehearing and/or clarification were filed by the NYISO, the New York Transmission Owners,⁶ Consolidated Edison Company of New York (Con Edison), the NRG Companies (NRG),⁷ Brookfield Energy Marketing Inc. (Brookfield), and H.Q. Energy Services (HQ Energy). On February 26, 2009, Astoria Energy LLC (Astoria) filed an answer to Con Edison's request for rehearing. On March 3, 2009, NRG filed a motion to strike the Astoria's answer. On March 4, 2009, HQ Energy filed an answer to NRG's motion for clarification. On March 9, 2009, the NYISO filed an answer to the joint motion for clarification or requests for rehearing filed by HQ Energy and Brookfield and to HQ Energy's March 4, 2009 answer.

4. On May 4, 2009, the Filing Parties submitted additional tariff revisions in compliance with the *Order on Tariff Revisions*, which are discussed in further detail below. The Filing Parties also propose ministerial modifications and further

⁴ For a detailed presentation of the background in this proceeding, see *Order on Tariff Revisions*, 126 FERC ¶ 61,046 at P 2-10.

⁵ *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,267 (2008) (*Guidance Order*).

⁶ The New York Transmission Owners include: 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 d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

⁷ 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.

clarifications to Attachments S, X, and Z of the NYISO Open Access Transmission Tariff (NYISO OATT) and are changing the effective date for all tariff sheets submitted to October 5, 2008, as directed by the Commission. The Filing Parties' filing also includes a proposal for future tariff revisions implementing long-term determinations of deliverability for External Installed Capacity.

II. Notice of Filing and Responsive Pleadings

5. Notice of NYISO's compliance filing was published in the *Federal Register*, 74 Fed. Reg. 23,180 (2009), with interventions, comments and protests due on or before May 18, 2009.

6. Motions to intervene were filed by Edison Mission Marketing & Trading, Inc., Shell Energy North America (U.S.), L.P., and GDF Suez Energy North America, Inc. Comments were filed by the NYISO, the NYTOs, Linden VFT, LLC (Linden), Brookfield, HQ Energy, and the Mirant Parties.⁸ A group of New York suppliers (the Suppliers) filed joint comments and protest.⁹ Dynegy Northeast Generation, Inc. and Sithe/Independence Power Partners, L.P. (collectively, Dynegy) filed a limited protest. On May 27, 2009, the Hess Corporation filed a motion to intervene out-of-time.

7. On May 28, 2009, the Suppliers filed an answer to the comments filed by Brookfield and HQ Energy. On June 2, 2009, the New York Transmission Owners filed an answer to the comments filed by the Mirant Parties and to the limited protest filed by Dynegy. On June 3, 2009, the Filing Parties filed an answer to the protests of the Suppliers and Dynegy and the comments of Brookfield. On June 4, 2009, NYISO filed an answer to the comments of the New York Transmission Owners regarding the modeling of emergency assistance.

⁸ The Mirant Parties include: Mirant Energy Trading, LLC, Mirant New York, LLC, and Mirant Bowline, LLC.

⁹ The Suppliers include: AES Eastern Energy, L.P., Constellation Energy Group, LLC, Empire Generating Co, LLC, GDF Suez Energy North America, the NRG Companies (NRG Power Marketing LLC, Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Oswego Harbor Power LLC), PSEG Companies (PSEG Power, LLC and PSEG Energy Resources & Trade LLC), Shell North America (U.S.), L.P., and TC Ravenswood, LLC.

III. Discussion

A. Procedural Matters

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

9. 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 or an answer unless otherwise ordered by the decisional authority. We will accept all answers filed because they have provided information that assisted us in our decision-making process.

B. Requests for Rehearing and Clarification

10. The NYISO asks the Commission to clarify whether the *Order on Tariff Revisions* accepted certain revisions to Attachment S of the NYISO OATT that would apply the new Deliverability Interconnection Standard to generators in Class Year 2007.¹⁰ If so, the NYISO asks the Commission to clarify whether the NYISO should complete the deliverability study for generators in Class Year 2008 without further delay, applying the deliverability test methodology, including the modeling of external resources, contained in the revised tariff. In the alternative, the NYISO seeks rehearing on this issue. The NYISO states that, as a first step in implementing the revised tariff, it completed the application of the minimum interconnection standard that must be satisfied by all generators in August 2008. At that time, the NYISO states, all generators remaining in the Class Year 2007 were required to post security for any system upgrade facilities required to meet the minimum interconnection standard.

11. With respect to the treatment of external resources under the revised tariff, HQ Energy seeks clarification that the revised tariff has not yet been accepted by the Commission because of the outstanding compliance directives regarding external resources. Brookfield seeks clarification that the Commission directed the NYISO to clarify that it does not discriminate against external resources as currently set out in the tariff language. HQ Energy and Brookfield both seek clarification that, to the extent the

¹⁰ Capitalized terms not otherwise defined have the meaning ascribed to them in the *pro forma* interconnection procedures and agreement.

Commission finds that the deliverability plan discriminates against external resources, the NYISO must modify its proposal to be non-discriminatory as part of its compliance filing. In the alternative, both parties seek rehearing of the *Order on Tariff Revisions* arguing that the proposed deliverability test unduly discriminates against external resources by always prioritizing new internal resources and imposing an annual obligation to meet deliverability on external resources but not internal resources.

12. The New York Transmission Owners seek rehearing on two issues they say were raised in their August 26 comments that were not addressed in the *Order on Tariff Revisions*. The New York Transmission Owners contend that the Commission erred in not limiting the rights of developers electing Capacity Resource Interconnection Service to supply unforced capacity in excess of the level studied by the NYISO with the possible exception for a small increment reflecting the potential for statistical variation in outage rates. The New York Transmission Owners state that, under the revised tariff, the NYISO will study a project and determine deliverability based on its unforced capacity level but if that project's unforced capacity later changes, the NYISO intends to allow the project to participate in the capacity market for any such higher level, even though it has never been studied or determined to be deliverable at that higher level. In addition, the New York Transmission Owners contend that, since unforced capacity ratings can change by significant margins, the NYISO's approach could lead to large amounts of capacity that are relied on (and paid for) as deliverable that may not in fact be deliverable. Accordingly, the New York Transmission Owners reiterate their request that the Commission direct the NYISO to modify section III.A.2 of Attachment S to limit Installed Capacity Supplier status and developer's ability to sell capacity to the level found to be deliverable by the NYISO's deliverability study analysis.

13. The New York Transmission Owners also contend that the Commission failed to address the argument that the joint compliance filing includes inappropriate and confusing language concerning the modeling of firm contract commitments across transmission ties connecting the capacity regions to neighboring capacity regions or external control areas. In particular, the New York Transmission Owners argue that the revised NYISO OATT fails to recognize existing facility agreements when adjusting phase angle regulators. Accordingly, the New York Transmission Owners reiterate the following suggested revision to Section VII.H.2.k of Attachment S:

[Phase angle regulators] within the applicable Capacity Region will be adjusted as necessary, in either direction and within their angle capability, to eliminate or minimize overloads without creating new ones. [Phase angle regulators] controlling external ties and ties between the Capacity Regions will be modeled, within their angle capability, to hold the tie flows to their respective base case schedules, which shall be set recognizing firm commitments and operating protocols set forth in Attachment M-1 of the Services

Tariff, and executed facility agreements, for example, the “Agreement Between Consolidated Edison Company of New York, Inc. and Long Island Lighting Company for Electric Transmission Service (Y-50 Agreement)” and the “Operating Guidelines for the 345 kV East Garden City – Sprain Brook (Y-49) Interconnection among LIPA, Consolidated Edison Company and the New York Power Authority.

The New York Transmission Owners contend that this change will better reflect the intent of the Consensus Deliverability Plan as well as preserve the expectations of the load serving entities in New York.

14. With respect to the grandfathering provisions of the revised tariff, Con Edison and NRG argue that the Commission erred in its decision to grandfather the second phase of the Astoria project if it were in operation by 2013, three years after the project’s date contained in the 2008 NYISO Gold Book. Con Edison contends that the Commission did not consider its prior determination that the second phase of the Astoria project would be in commercial operation by 2006.¹¹ Con Edison further contends that requiring the second phase of the Astoria project to comply with the deliverability requirements will not necessarily cause this generation project not to be constructed. According to Con Edison, Astoria has already begun the process of examining an alternative interconnection point for the second phase. Similarly, NRG points out that Astoria’s interconnection agreement, as filed with the Commission, contains numerous references to completion dates in 2006 and contemplates potential restudies or even removal from the interconnection process if the interconnection date did not occur on or before May 1, 2007. To the extent that the Commission wishes to consider evidence that parties did not intend to abide by the 2006 in-service date included in the interconnection agreement, NRG argues that the Commission should find that it erred in making a decision on the disputed facts without holding a hearing to decide the factual issues.

Commission Determination

15. To the extent necessary, we clarify that the Commission’s conditional acceptance of the revised tariff sheets was not intended to delay their implementation. In its *Order on Tariff Revisions*, the Commission accepted the NYISO’s revised tariff effective October 5, 2008 subject to a subsequent compliance filing.¹² The Commission also

¹¹ Con Edison Request for Rehearing at 2 (*citing Con Edison Company of New York, Inc.* 107 FERC ¶ 61,103, at 1 (2004)(accepting Astoria’s interconnection agreement for the 1000 MW generating facility scheduled to begin commercial operation by 2006)).

¹² *Order on Tariff Revisions*, 126 FERC ¶ 61,046 at P 120.

raised issues regarding the lack of specificity in the proposed treatment of external resources and directed NYISO to demonstrate that the proposed tariff revisions addressing the treatment of external resources met the independent entity standard.¹³ The Commission also directed the NYISO to make two minor clarifying revisions to its tariff, which the NYISO agreed to make.¹⁴ The other revisions were minor in nature. In a subsequent order, the Commission granted waiver to the NYISO to apply the deliverability requirement to external resources beginning with the winter 2009 capability year that begins on November 1, 2009 to account for the NYISO's outstanding issues that need to be addressed on compliance and directed NYISO to otherwise implement the deliverability requirement beginning with the entire 2009 capability year that begins in June 2009 so as not to interfere with class year studies for which deliverability studies have been performed.¹⁵ Accordingly, the Commission reiterated that the NYISO should apply the new Deliverability Interconnection Standard to generators in Class Year 2007 and complete the deliverability study for generators in Class Year 2008 without further delay, applying the deliverability test methodology, including the modeling of external resources, contained in the revised tariff.¹⁶

16. We deny the New York Transmission Owners' request for rehearing on the two points that the Commission did not address in the *Order on Tariff Revisions*; i.e., the questions of unforced capacity and the modeling of phase-angle regulators. As the New York Transmission Owners acknowledge, the de-rating rate for forced outages used to obtain the unforced capacity varies from year-to-year and the rate used for the deliverability analysis represents typical or average performance.¹⁷ Unlike an increase in resource capacity, variations in forced outage rates are the result of changes in resource performance. The Commission does not want to discourage improvements in performance and efficiency through overly restrictive deliverability rules. The New York

¹³ *Id.* P 76-78.

¹⁴ The NYISO agreed to revise the definition of Energy Resource Interconnection Service to include the provision of ancillary services. *Order on Tariff Revisions*, 126 FERC ¶ 61,046 at P 33-34. The NYISO also agreed to revise section 5.12.2 of the Services Tariff to clarify that the new deliverability standard does not apply to external capacity with unforced capacity deliverability rights. *Id.* P 81-82.

¹⁵ *New York Independent System Operator, Inc.*, 126 FERC ¶ 61,214, at P 13 (2009).

¹⁶ *Id.* P 15.

¹⁷ NYTO request for rehearing at 6.

Transmission Owners have not demonstrated whether changes in unforced capacity that result from fluctuations in resource performance would adversely affect system deliverability and for that reason should be limited. Therefore, we find there is no need to limit the installed capacity suppliers' ability to sell capacity to the level determined to be deliverable including the normal variations in resource performance.

17. With regard to the New York Transmission Owners' request to revise section VII.H.2.k of Attachment S to NYISO's OATT to include firm commitments and operating protocols set forth in existing facility agreements when adjusting phase-angle regulators, we find that New York Transmission Owners request lacking adequate support. For example, the New York Transmission Owners have not demonstrated how they would be harmed by not specifying existing facility agreements in section VII.H.2.k, or why the firm commitments and operating protocols that are included in this section, i.e., those set forth in Attachment M-1, are not adequate. Also, the New York Transmission Owners have not demonstrated how their proposed revisions better reflect the intent of the Consensus Deliverability Plan, or the potential impact their proposal may have on other market participants. In short, New York Transmission Owners have failed to demonstrate that the approved section VII.H.2.k is not just and reasonable. Therefore, we deny the New York Transmission Owners' request that Attachment S be modified to include their proposed amendment.

18. We deny rehearing regarding the Commission's acceptance of the applicability and grandfathering provisions contained in the revised tariff. The Commission continues to believe that these provisions strike a reasonable balance between existing capacity, pre-existing agreements and the needs of the market. In the *Guidance Order*, as reiterated in the *Order on Tariff Revisions* and the March 10, 2009 *Order on Clarification and Waiver*, the Commission articulated its reasons for accepting the proposal that the deliverability test and new interconnection standard would apply beginning with the Class Year 2007 queue and specifically rejected arguments that the deliverability mechanism be applied to earlier projects.¹⁸ The Commission also accepted the Filing Parties' proposal that interconnection customers could retain their Capacity Resource Interconnection Service status as long as their projects were in service within a three-year window.¹⁹ In reaching its conclusion, the Commission rejected several attempts by parties to apply the deliverability requirements to specific projects prior to Class Year 2007. The Commission was consistent in its reasoning that the proposed tariff revisions

¹⁸ See *Guidance Order*, 122 FERC ¶ 61,267 at P 63-67; *Order on Tariff Revisions*, 126 FERC ¶ 61,046 at P 117-118; *Order on Clarification and Waiver*, 126 FERC ¶ 61,214 at P 15.

¹⁹ *Id.*

preserved commitments entered into in accordance with existing tariff provisions, avoided retroactive ratemaking, and ensured that interconnection customers do not reserve available transmission system capacity for extended periods of time.

19. Astoria's interconnection agreement does not establish a commercial operation date, only the 2006 interconnection date, which the facility met. If a filed interconnection agreement does not specify a commercial operation date or any comparable commencement date, the revised tariff states that "the project shall qualify for [Capacity Resource Interconnection Service] so long as it begins commercial operations within three years of its in-service date specified in the 2008 Gold Book."²⁰ Based on Astoria's filed interconnection agreement and the plain language of the revised tariff, the Commission maintains that it is appropriate to grandfather the second phase of Astoria's project so long as it begins commercial operation within three years of its 2010 in-service date specified in the 2008 Gold Book. Accordingly, Astoria must begin commercial operation by 2013 in order to qualify for Capacity Resource Interconnection Service without committing to additional studies or upgrades. On the issues of discrimination raised by HQ Energy and Brookfield, we find, as discussed later in this order, that the Filing Parties' proposal does not discriminate between internal and external capacity resources.

C. May 4, 2009 Compliance Filing

1. General Tariff Revisions

20. The *Order on Tariff Revisions* directed several modifications to the proposed tariff sheets. In response, the Joint Filing Parties state they are clarifying the specific products that are included in Energy Resource Interconnection Service. To this end, the Joint Filing Parties propose to modify the definition of Energy Resource Interconnection Service in Attachments S, X and Z of the NYISO OATT to clarify that it enables "the New York State Transmission System to receive Energy and Ancillary Services" from the Large Generating Facility, Merchant Transmission Facility or Small Generating Facility.²¹

²⁰ Section IX.B, Attachment S, NYISO OATT, FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 688.00. Parties do not seek rehearing of the tariff provision that specifies the use of the 2008 Gold Book when a contractual commercial operation date is not otherwise specified.

²¹ Capitalized terms not otherwise defined have the meanings ascribed to them in the *pro forma* interconnection procedures and agreement.

21. In addition, as directed in the *Order on Tariff Revisions*, the Joint Filing Parties state that they have modified Attachment S section VIII.B of the NYISO OATT to clearly differentiate the alternatives available to members of the Class Year depending on their respective interconnection service election, and to clearly describe the results that follow from different decisions. Also, the Filing Parties propose a new subsection A to section IX of Attachment S of the NYISO OATT, titled “ERIS Election and Future Evaluation for CRIS” to clarify that a Generator that elects Energy Resource Interconnection Service may later request to have its deliverability reevaluated to identify necessary upgrades to allow its participation in the installed capacity market. The proposed subsection provides that:

[w]henever a Developer elects to interconnect taking [Energy Resource Interconnection Service], that Developer may, at a later date, ask the NYISO to evaluate the Developer’s Large Facility or Small Generating Facility in the then open Class Year and the Deliverability Study to be conducted for that Class Year.²²

The Joint Filing Parties further state that conforming revisions to the above addition have also been made to the Interconnection Facilities Study Agreement Data Form in Attachment X of the NYISO OATT.

22. The Joint Filing Parties also propose to modify section 5.12.2 of the Services Tariff to clarify that only External Installed Capacity not associated with unforced deliverability rights will be subject to the intra-New York capacity area deliverability test. To clarify that the deliverability requirements in the revised tariff apply to both new resources and increases in the capacity of existing resources, the Filing Parties propose revisions to section 5.12.8 of the Services Tariff to state that the deliverability requirement applies to increases in the capacity of existing internal Installed Capacity Suppliers.

23. The Joint Filing Parties state that their October 5, 2009 filing proposing tariff revisions contained numerous “inconsistencies, omissions, grammatical, and typographical errors” that are corrected by revisions proposed in the compliance filing. Moreover, the Filing Parties have modified several tariff sheets included in the October 5, 2009 proposed tariff revisions to provide the detail and clarity required by the Commission’s orders in this proceeding. The Joint Filing Parties state that none of these clarifications alter the substance of the Consensus Deliverability Plan accepted in the

²² *Id.*

Guidance Order. The Filing Parties contend that these ministerial corrections are necessary to clarify and ensure the internal consistency and accuracy of the proposed tariff modifications.

24. The Filing Parties request that the Commission approve the proposed modifications to the NYISO OATT and Services Tariff with an effective date of October 5, 2008, as directed in the *Order on Tariff Revisions*.

25. Finally, the Joint Filing Parties state that, in accordance with the *Order on Tariff Revisions* and the *Order on Clarification and Waiver*, the NYISO has completed the Class Year deliverability study for Class Year 2007 applying the deliverability requirements as proposed in the revised tariff.

Comments

26. Linden states that it supports the proposed tariff revisions because they adopt the specific modifications required by the *Order on Tariff Revisions* and make conforming changes to new modifications to section 5.12.2.

Commission Determination

27. The Commission accepts the ministerial and clarifying revisions proposed by the Filing Parties because they address concerns raised in the *Order on Tariff Revisions* and provide needed clarity. However, the proposed revisions regarding the treatment of external resources and the modeling of emergency assistance raise issues that are addressed in more detail below. The Commission accepts the revised tariff sheets effective October 5, 2008, as requested by the Filing Parties.

2. Treatment of External Resources

28. In the *Order on Tariff Revisions*, the Commission found that the Filing Parties' August 5 tariff filing did not provide sufficient detail or expand upon the language of the Consensus Deliverability Plan to reduce uncertainties over the methods used to evaluate external resources for deliverability.²³ The Commission also noted the questions raised by commenters on the proposed treatment of external resources in directing NYISO to submit a clarification as to how deliverability tests for internal and external resources meet the requirements of Order No. 2003.

29. To address the Commission's concerns, the Filing Parties propose modifications to section 5.12.2 of the Services Tariff and section VII.J of Attachment S to the OATT to

²³ *Order on Tariff Revisions*, 126 FERC ¶ 61,046 at P 76.

clarify that the intra-New York Control Area deliverability test applied to external resources is the same as the test applied to new internal resources. According to the proposed revisions, the amount of external installed capacity not associated with unforced deliverability rights that can be imported into NYISO across each interface individually and taken together will be evaluated annually as part of the process that sets import rights. The proposed revisions provide additional details regarding the parameters for external capacity, including the effect on loss of load expectation, whether the external capacity is deliverable within the capacity region, taking into account Capacity Resource Interconnection Service resources within the New York control area and degradation limits on other interfaces by specified thresholds.

30. The Filing Parties also propose revisions to section 5.12.2 of the Services Tariff to state that the grandfathered external installed capacity agreements (Attachment E of the NYISO installed capacity manual) and existing transmission capacity for native load for the New York State Electric & Gas Corporation (NYSEG) (Table 3 of Attachment L to the Tariff) will be considered deliverable. The Filing Parties state that, while the October 5 tariff revisions specifically identified agreements listed in Attachment E of the NYISO installed capacity manual as grandfathered from the deliverability requirement, these NYSEG rights to long-term installed capacity imports have been identified in the Services Tariff since NYISO's inception and should be honored as well.²⁴ The Filing Parties state that NYSEG's grandfathered capacity will be made available for other external resources to the extent it is not used in a capacity period and is deliverable and that NYISO will develop procedures to implement this.²⁵ The Filing Parties also propose to modify section VII.H.2.h of Attachment S of the NYISO OATT to provide that NYSEG's existing transmission capacity for native load will be modeled in the Class Year deliverability study, just like the grandfathered agreements listed in Attachment E of the NYISO installed capacity manual.

31. The Filing Parties also propose to grandfather a certain level of imports on an interim basis and propose to implement a mechanism to determine the deliverability of external resources on a long-term basis. The proposed tariff revisions would grandfather a certain level of import capacity for use by external resources that have been consistently supplying capacity to the New York control area. Accordingly, the Filing Parties propose to grandfather and deem deliverable 1090 MW over the Chateaugay interface from Quebec through the summer 2010 capability period. The Filing Parties state that the Chateaugay rights will be made available on a first-come, first-served basis and any unused amount of this capacity for each capability period will be made available to other

²⁴ May 4 Compliance Filing at 14.

²⁵ May 4 Compliance Filing at n30.

external resources. The Filing Parties state that the grandfathered level for the Chateauguay interface will be modeled in the Class Year Deliverability Study beginning with Class Year 2008, until those rights expire after the summer 2010 capability period or when they are converted into long-term external Capacity Resource Interconnection Service rights. The Filing Parties state that the NYISO will develop a method to allocate the 1090 MW if requests exceed that quantity.

32. In response to the Commission's concern that the deliverability of external capacity will be reviewed annually as proposed in the August 5 Filing, the Filing Parties offer a consensus proposal for long-term determination of deliverability for external installed capacity.²⁶ The Filing Parties contend that a long-term deliverability determination, as provided in the consensus proposal, would avoid the annual re-evaluation of deliverability that would otherwise be applied to external resources with the annual setting of import limits. Under the proposal, a capacity supplier that has a long-term commitment (defined as five years or longer) to supply capacity to New York may request External Capacity Resource Interconnection Service Rights. To qualify for External Capacity Resource Interconnection Service Rights, an entity could enter into a long-term bilateral contract or non-contractual commitment for no less than five years. The Filing Parties state that the External Capacity Resource Interconnection Service Proposal will facilitate long-term contracts because once the External Capacity Resource Interconnection Service Rights are obtained, they are not re-evaluated until the term of the rights expires. Additionally, they are not subject to the first-come first-served allocation of import rights.²⁷ As proposed, External Capacity Resource Interconnection Service Rights will be evaluated as part of the class year deliverability studies and would have equal access to deliverability headroom that is available in that class year.²⁸ Under the proposal, external installed capacity suppliers would have the same decisional options as internal class year projects with regard to the identification and acceptance of system deliverability upgrades and the corresponding cost responsibility.

33. The Filing Parties state that the External Capacity Resource Interconnection Service Rights proposal responds to the Commission's concerns in the *Order on Tariff Revisions* regarding existing external capacity resources. Furthermore, they state that the proposal represents a consensus framework among stakeholders for implementing

²⁶ See May 4 Compliance Filing at Attachment VIII.

²⁷ May 4 Compliance Filing at 17.

²⁸ See May 4 Compliance Filing at Attachment VIII. Rights converting from the grandfathered 1090 MW of Chateauguay interface are exempt from the class year deliverability test.

External Capacity Resource Interconnection Service Rights and will require the development of implementing tariff sheets. Accordingly, the Filing Parties request that the Commission provide guidance on the proposal; however, they state that stakeholders will continue to develop the proposal while awaiting action from the Commission. The Filing Parties also state that the proposed tariff revisions satisfy the independent entity variation standard of Order No. 2003.

Comments

34. Commenters generally support the consensus proposal for external resources but raised questions regarding the interim measure to temporarily grandfather imports over the Chateauguay interface.

35. HQ Energy supports the revised tariff language that would temporarily grandfather imports over the Chateauguay interface. HQ Energy states it has been exporting excess energy and capacity to New York for decades and the Chateauguay-Marcy line was built for this very purpose. HQ Energy contends that the proposal to grandfather 1090 MW over the Quebec/Chateauguay interface reflects the long history of consistent capacity imports from HQ Energy and other importers. HQ Energy states that, in 2009, 1095 MW of capacity can be imported over this interface to support NYISO load and reliability/adequacy requirements. HQ Energy states that under the rules that pre-date this proceeding, this quantity of capacity imports is both deliverable to the NYISO border, and deemed deliverable internally to support the reliability requirements of New York Load. In addition, HQ Energy contends that the proposed grandfathering of the Chateauguay interface does not give HQ Energy or any other importer any special treatment because capacity will be made available on a first-come, first served basis to any capacity importer utilizing the interface. Finally, HQ Energy states that it fully supports the long-term consensus proposal and asks the Commission to approve it without modification because it treats external resources comparably and represents a stakeholder consensus. Linden also supports the External Capacity Resource Interconnection Service Rights proposal particularly with regard to its treatment of unforced deliverability rights and the fact that it does not subject external resources to annual deliverability reviews.

36. Brookfield contends that the Filing Parties have not explained why only the Chateauguay interface should be grandfathered. Brookfield argues that, without sufficient information in the record, it is difficult to assess whether the current proposal is non-discriminatory as to external resources that do not use the Chateauguay interface. Brookfield suggests that a pro-rata method be used to allocate grandfathered import rights over all interfaces that the Commission decides should be grandfathered. Brookfield states that the proposed first-come, first served approach on the Chateauguay line represents a “first to the fax machine” method that would allow a single market participant to obtain capacity on a permanent basis to the exclusion of all other participants. Brookfield contends that this approach is particularly troublesome given the

possibility of converting the temporarily grandfathered import rights into permanent Capacity Resource Interconnection Service rights under the consensus proposal for long-term external capacity rights.

37. The Suppliers, supported by Dynegy, express support for the consensus proposal for external capacity rights, but protest the proposal to temporarily grandfather 1090 MW over the Chateaugay interface. The Suppliers argue that the proposal contravenes the Consensus Deliverability Plan and constitutes an impermissible collateral attack on the *Guidance Order* and exceeds the Commission's directives in the *Guidance Order* and the *Order on Tariff Revisions*. Similarly, Dynegy states that the proposal to grandfather Chateaugay was not raised by HQ Energy while the Commission was considering the Consensus Deliverability Plan and is an attempt to "re-open" settled positions.²⁹ In addition, the Suppliers argue that Chateaugay interface should not be grandfathered because these external resources are not required to meet significant capacity obligations, and, thus, they are not, in fact, similarly situated to internal resources. Finally, the Suppliers contend that the Commission should reject the Chateaugay proposal because the Filing Parties failed to provide analysis or evidence that imports over the Chateaugay interface are deliverable throughout the Rest-of-State capacity zone.

Answers

38. In its answer, the Suppliers reiterate their argument that the Commission approved the Consensus Deliverability Plan and that this cannot now be modified on compliance. The Suppliers argue that HQ Energy erred in stating that accepting the Chateaugay proposal will simply mean that this amount of capacity will continue to be deemed deliverable through the summer 2010 capability period. According to the Suppliers, the Chateaugay interface capacity will not be deliverable to the Rest of State zone as the Commission-approved deliverability rules require. Responding to Brookfield's argument that capacity rights over all interfaces should be grandfathered, the Suppliers state that external resources have never had any historical right to sell capacity in the New York capacity area, nor have they taken advantage of available interface capacity.³⁰

39. In response to Brookfield's argument that the Commission should direct the NYISO to allocate grandfathered import rights on a *pro rata* basis, HQ Energy argues that a pure *pro rata* allocation does not take into account commitments such as length of term that may make one offer for capacity rights superior to another. In response to the Suppliers protest, HQ Energy argues that the Filing Parties' compliance filing is not a

²⁹ Dynegy protest at 6-7.

³⁰ Statewide Suppliers answer at 8.

collateral attack on past orders. HQ Energy points out the *Guidance Order* approved in principle only the outlines of a conceptual external deliverability test. HQ Energy also points out that the *Order on Tariff Revisions* stated that the “Deliverability Plan should not create a situation that discourages the development or use of external resources to satisfy installed capacity requirements in the NYISO market.”³¹ HQ Energy states that, in response to the Commission’s directives, most stakeholders agreed that the deliverability proposal had to be changed to ensure that it would not discourage the use of external resources to provide capacity. HQ Energy also argues that the history of these external resources with the NYISO market and their long-term contracts are evidence that they are similarly situated with internal resources even if external resources are not treated identically to internal resources. HQ Energy reiterates its argument that internal resources should not have priority rights to system headroom over existing external resources. Further, HQ Energy contends that grandfathering the Chateauguay interface capacity raises no reliability concerns.

40. In their answer, the Filing Parties argue that the Chateauguay proposal is an interim measure to afford a subset of capacity that has long supplied the NYISO market with treatment comparable to that provided for existing internal generators. They state that this is intended to address the Commission’s concerns with respect to potentially disparate treatment of external resources articulated in the *Order on Tariff Revisions*. Accordingly, the Filing Parties propose that Chateauguay capacity should receive treatment similar to the grandfathered installed capacity agreements listed in Appendix E of the installed capacity manual per the Consensus Deliverability Plan. The Filing Parties state that installed capacity has been supplied to New York for many years over Chateauguay, transmission has been constructed to accommodate the deliveries and that these characteristics justify a certain amount of grandfathered capacity. The Filing Parties state that no comparable showing has been made for any other interface other than specifically identified long-term contracts or tariff rights that have previously been grandfathered.

41. Responding to the Suppliers’ and Dynegy’s claims that the Chateauguay proposal is a collateral attack on the Consensus Deliverability Plan, the Filing Parties contend that the proposal directly addresses the Commission’s concerns raised in the *Order on Tariff Revisions* and is therefore within the scope of a permissible compliance filing. The Filing Parties also state that the proposal to secure long-term rights over Chateauguay after the interim period expires in 2010 will not use the first-come, first-served method that parties

³¹ HQ Energy answer at 2 (citing *Order on Tariff Revisions*, 126 FERC ¶ 61,046 at P 78).

protest. The Filing Parties state that a conversion to external Capacity Resource Interconnection Service rights will be conducted using a method currently under development in the stakeholder process.³²

Commission Determination

42. We accept, in principle, the External Capacity Resource Interconnection Service Rights proposal as outlined in Attachment VIII of the May 4 compliance filing, and direct the Filing Parties to file tariff revisions within 120 days. The proposal recognizes and enables long-term Capacity Resource Interconnection Service rights for external resources without discouraging capacity imports through the use of annual re-evaluations. Deliverability of external resources will also be evaluated as part of the class year interconnection process ensuring that they receive the same opportunity to make use of available system headroom and decision timelines.

43. We also accept the Filing Parties' interim proposal to modify section 5.12.2 of the Services Tariff to temporarily grandfather capacity imports over the Chateaugay interface. The Filing Parties have offered sufficient justification that grandfathering the 1090 MW of installed capacity imports is reasonable without additional deliverability determinations because of the level of capacity import transactions that have historically taken place over this particular interface. If these capacity import rights were not grandfathered, historical capacity imports would have to undergo a deliverability test while other existing capacity would not. This issue goes back to the determination made by the Commission in the *Guidance Order* that the deliverability requirements will begin with the Class Year 2007 interconnection projects in order to not interfere with existing or settled arrangements.³³

44. Although there are differences between external and internal resources regarding the generator interconnection process and market obligations, the Suppliers fail to demonstrate why such differences would render the proposal to temporarily grandfather the Chateaugay interface unjust and unreasonable. Similarly unpersuasive is the Suppliers' argument that the proposed modifications grandfathering the Chateaugay interface should be rejected because the proposed treatment of external resources meets the independent entity variation standard without the Chateaugay proposal. Inexplicably, the Suppliers and Dynegy support the Filing Parties' proposal to grandfather NYSEG's import rights and other existing capacity imports but not Chateaugay. In addition, while internal and external capacity may have different

³² Filing Parties answer at 6-7.

³³ *Guidance Order*, 122 FERC ¶ 61,267 at P 63-64.

obligations to the NYISO market, external resources have qualified to supply installed capacity under NYISO rules. Such differences between internal and external capacity do not preclude external resources from participating in NYISO's capacity market. We also find that the Filing Parties do not need to make any further demonstration that the 1090 MW of the Chateauguay interface is deliverable throughout the rest-of-state capacity region based on the same rationale for denying rehearing of the grandfathering issue earlier in this order. Under the revised tariff, reliability is to be demonstrated beginning with the Class Year 2007 interconnection projects, not for grandfathered arrangements that precede Class Year 2007.

45. We also reject the arguments that the Filing Parties' interim proposal to temporarily grandfather the 1090 MW of the Chateauguay interface should be rejected because it was not included in the Consensus Deliverability Plan and, thus, represents a collateral attack on the *Guidance Order* and the *Order on Tariff Revisions*. The Consensus Deliverability Plan did not propose, nor did the *Guidance Order* accept, any revised tariff sheets. Instead, the *Guidance Order* accepted, in principle, the Consensus Deliverability Plan as a conceptual framework for the development of revised tariff sheets that would establish a second level of interconnection service implementing a deliverability requirement.³⁴ In its *Order on Tariff Revisions*, the Commission found that a lack of specificity in the deliverability test methodology raised questions regarding the treatment of external resources that take Capacity Resource Interconnection Service.³⁵ Accordingly, the Commission directed NYISO to clarify how the proposed tariff sheets addressing deliverability tests for internal and external resources met the independent entity variation standard.³⁶ In response, the Filing Parties presented additional tariff revisions to ensure that the tariff would not discourage the use of existing external resources to provide capacity to the NYISO market.

46. Additionally, we find that the proposed tariff revisions do not represent a collateral attack on the *Guidance Order* because the additional tariff revisions comply with the Commission's directive in both the *Guidance Order* and the *Order on Tariff Revisions* that the tariff should not discourage the development or use of external resources to satisfy installed capacity requirements in the NYISO market.

³⁴ *Id.* P 24.

³⁵ *Order on Tariff Revisions*, 126 FERC ¶ 61,046 at P 78.

³⁶ *Id.*

47. We disagree with Brookfield's argument that all interfaces should be grandfathered. Brookfield did not point to any specific pre-existing transactions of capacity that would qualify for the earlier-described rationale for grandfathering capacity.

48. According to the External CRIS Rights proposal, long-term External CRIS Rights over the Chateaugay interface beyond the 2010 summer capability period will be made available to market participants. The Filing Parties state that an allocation method is under development in the stakeholder process and it is not the intention that the first-to-the-fax method will be used as claimed by protesters. Since this method will need to be in place before entities can request capacity on a long-term basis, we direct NYISO to make a compliance filing that revises the tariff to include the proposed allocation method within 120 days. We expect that NYISO would make this proposal in the same filing as it includes tariff revisions necessary to implement the External Capacity Resource Interconnection Service Rights proposal.

3. Locational Capacity Zones

49. Currently, the NYISO installed capacity market comprises three capacity zones—Rest-of-State, New York City, and Long Island. Referring to paragraph 19 of the Consensus Deliverability Plan,³⁷ the compliance filing states that NYISO will work with stakeholders to develop criteria for the potential formation of an additional capacity zone within the Rest-of-State capacity zone.

Comments

50. HQ Energy states that it supports the NYISO's proposed stakeholder process to review and develop criteria for the potential formation of a new capacity zone within the current Rest-of-State zone.

51. Mirant Parties and Dynegy, noting that the NYISO independent market advisor recognized the need for a new capacity zone in the lower Hudson Valley of southeast New York (carved out from the Rest-of-State zone), argue that capacity market signals are needed to provide incentives for suppliers to build in this zone. Dynegy argues that the May 4 Compliance Filing proposes to grandfather existing imports, specifically across the Hydro-Quebec interface (discussed later), that cannot be delivered into the lower Hudson Valley, which is the constrained location that requires a new capacity zone. Dynegy asks the Commission to direct the NYISO to develop and implement a new lower Hudson Valley capacity zone by a date certain. Citing to the Consensus

³⁷ May 4 Compliance Filing at 18 (*citing* Consensus Deliverability Plan at P 19).

Deliverability Plan requirement to develop criteria for a new capacity zone, Mirant Parties ask the Commission to direct NYISO to file the criteria to develop a new capacity zone by December 31, 2009.

Answers

52. In their answer, the New York Transmission Owners state the creation of a new capacity zone may not be the best way to address a transmission constraint within NYISO. The New York Transmission Owners also state that NYISO's 2009 Reliability Needs Assessment and Comprehensive Reliability Plan does not project capacity needs or reliability needs for the next 10 years. Furthermore, they state that the request of Dynegy that the Commission direct NYISO to implement a new capacity zone in the lower Hudson Valley is outside the scope of this compliance filing. HQ Energy supports the process to develop criteria to ensure that new capacity zones can actually be created when necessary.

Commission Determination

53. The Commission accepts the Filing Parties' proposal to have the NYISO work with stakeholders to address dynamic changes to the New York Control Area that may warrant the creation of additional capacity zones within the NYISO market. The establishment of criteria for the addition of zones will facilitate their development and allow market participants to assess the effect on their interconnected projects. We agree with the New York Transmission Owners that the creation of a specific capacity zone is beyond the scope of this proceeding. The Consensus Deliverability Plan did not direct the creation of a new locational installed capacity zone, but simply directed NYISO staff to work with market participants to develop, over the next three years, criteria for the potential formation of additional locational installed capacity zones. We expect that this process is continuing. Three years from the date of filing of the Consensus Deliverability Plan will be October 5, 2010. Therefore, we direct NYISO to make a filing by this date that satisfies paragraph 19 of the Consensus Deliverability Plan. Such a filing should address the implications and effects of a new capacity zone or zones on the tariff provisions and market rules governing Capacity Resource Interconnection Service.

D. Modeling Emergency Assistance

54. In the Consensus Deliverability Plan, the Filing Parties stated that external system imports will be considered through the annual process of setting import rights and, thus, subject to the deliverability test. Under the plan, however, grandfathered import contract rights and emergency benefits will be honored and, thus, not subject to the deliverability test. In the August 5, 2008 tariff filing, the Filing Parties stated that they had not reached

agreement on how to treat or model external emergency assistance as contemplated in the Consensus Deliverability Plan in a manner that reconciles emergency assistance benefits with evaluation of the deliverability of external resources.³⁸ At the request of the Filing Parties, the Commission granted additional time for stakeholders to resolve the issue and make a tariff filing.³⁹

55. In the May 4, 2009 Compliance Filing, the Filing Parties state that NYISO and the New York Transmission Owners have not reached consensus on the appropriate modeling of emergency assistance. NYISO states that no technical basis has been demonstrated to require any particular megawatt level of emergency assistance to be explicitly modeled either as a part of the class year deliverability studies or the deliverability analysis applied to imports during the annual process of setting import limits on external installed capacity.⁴⁰ By contrast, the New York Transmission Owners argue that some emergency assistance is warranted and that level of emergency assistance in the order of 50 MW per interface would be appropriate for some interfaces.⁴¹

56. In Attachment IX of the compliance filing, NYISO states that on average the expected level of emergency assistance is 1.16 MW based on the 2009 Installed Reserve Margin study⁴² using probabilistic modeling methods. NYISO states that the New York control area still has a reserve capacity margin of 2458 MW based on the 2010 assumptions of the load forecast (including load forecast uncertainty) and capacity (less forced outages) for the deterministic (powerflow-based) assessment. This margin represents extra capacity that could cover an additional amount of load above the assumed load forecast uncertainty, or additional capacity outages above the assumed forced outages before any external emergency assistance is needed.

³⁸ August 5 Tariff Filing at 19.

³⁹ *Order on Tariff Revisions*, 126 FERC ¶ 61,046 at P 99.

⁴⁰ May 4 Compliance Filing at 20. A summary of NYISO's supporting analysis is included as Attachment IX of the May 4 compliance filing.

⁴¹ May 4 Compliance Filing at 20. A summary of the New York Transmission Owner's supporting analysis is included as Attachment X of the May 4 compliance filing.

⁴² The Installed Reserve Margin study is conducted annually by the New York State Reliability Council to provide technical parameters for establishing New York control area installed capacity reserve margin and installed capacity requirements for the upcoming capability year. NYISO comments at 5.

57. In Attachment X of the compliance filing, the New York Transmission Owners propose to model 50 MW of emergency assistance on the upstate New York to New England and New York to Ontario interfaces beginning with Class Year 2008 while the NYISO stakeholders discuss a definitive methodology to be included in a future tariff revision. The New York Transmission Owners contend that it is less important to explicitly model emergency assistance over the external interfaces with PJM Interconnection and Quebec since there is already existing flow modeled due to the Chateauguay and NYSEG grandfathered rights. The New York Transmission Owners admit that trying to translate the probabilistic emergency assistance concept to a deterministic deliverability test is a challenging task since the two can not be matched exactly. The New York Transmission Owners contend that it is inappropriate to model in the deliverability test the maximum amount found in the probabilistic analysis because this would overstate the effect of emergency assistance. Conversely, the New York Transmission Owners contend that to model the average amount, which is close to zero, would understate the effect of emergency assistance and ignore the flow used in other planning studies that is assumed fully deliverable but never tested.

Comments

58. NYISO contends that its proposed application of the deliverability testing methodology, without explicitly modeling emergency assistance in the deliverability base case, honors emergency assistance benefits and is consistent with the Consensus Deliverability Plan. NYISO explains that each year it sets limits on the megawatts of External Installed Capacity that can be imported over each of the New York control area external interfaces during the Capability Year. NYISO states that the process of setting import limits of external installed capacity over each external interface already reserves transfer capability for emergency assistance if needed. The reserved amount for emergency assistance is calculated to maintain the loss of load expectation (LOLE) for New York control area at no more than 0.1 day per year. By reserving megawatts for emergency assistance on external interfaces when setting import limits for external installed capacity, NYISO asserts that it is in compliance with the need to honor emergency assistance benefits.

59. NYISO also contends that the Commission should reject the New York Transmission Owners' proposal because there is no technical basis, or any specific methodology, to support the representation of any megawatt level of emergency assistance in either the class year deliverability studies or in the process to set import limits for external installed capacity. NYISO explains that the objective of the deliverability testing methodology is to ensure that the "[New York control area] transmission system shall be able to deliver the aggregate of [New York control area]

capacity resources to the aggregate of the [New York control area] load under summer peak load condition.”⁴³ NYISO states that in the class year deliverability studies, all generators are de-rated to reflect forced outages and the transmission system is assumed to be in operation without any outages. Under these assumptions, the internal New York control area generating capacity exceeds New York control area load (including load forecast uncertainty). NYISO concludes that this excess generating capacity obviates the need for emergency assistance.

60. HQ Energy supports NYISO’s position that there is no technical basis to explicitly model emergency assistance in the deliverability test.

61. The New York Transmission Owners contend that NYISO’s technical analysis is flawed. The New York Transmission Owners state that the range of emergency assistance provided in NYISO’s analysis is inaccurate. The New York Transmission Owners contend that the average value of emergency assistance is not a meaningful number because NYISO requires the actual level of emergency assistance that is needed for a particular period to avoid loss of load, not the average level needed over some longer period. The New York Transmission Owners contend that the actual need during peak hours could be thousands of megawatts of emergency assistance even if the probability of the need arising may be less than 1 percent. Moreover, the New York Transmission Owners contend, NYISO’s analysis only looks at the peak hour even though system outages and the need for emergency assistance do not only occur during the peak hour.

62. The New York Transmission Owners claim that NYISO’s decision to not model any emergency assistance in the deliverability test is in direct conflict with the Consensus Deliverability Plan’s commitment to honor emergency assistance benefits. The New York Transmission Owners also contend that a failure to model emergency assistance in the deliverability studies would introduce fundamental inconsistencies between those studies and the Installed Reserve Margin and Reliability Needs Assessment studies. The New York Transmission Owners state that in the Installed Reserve Margin and Reliability Needs Assessment studies, both internal surplus capacity and capacity from emergency assistance imports can simultaneously be used to serve load at times when demand within the New York control area probabilistically exceeds supply without creating any transmission overloads. To be consistent, the New York Transmission Owners contend that it is necessary for NYISO’s deliverability test to account for the same simultaneous use of emergency assistance and surplus capacity.

⁴³ NYISO, FERC Electric Tariff Original Volume No. 1, Attachment S, Original Sheet No. 679.05.

63. The New York Transmission Owners ask the Commission to direct NYISO to explicitly model at least 50 MW of emergency assistance at eleven interfaces in all deliverability studies. The New York Transmission Owners state that the proposed minimum levels of emergency assistance are derived from the probabilistic study which models 8760 hours of the year instead of the single annual peak hour and also focuses on the actual levels of emergency assistance required rather than average levels of emergency assistance. The New York Transmission Owners offer expert testimony to support their arguments.

Answer

64. In its answer, NYISO contends that its position is entirely consistent with the deliverability testing methodology and that the New York Transmission Owners' position is entirely inconsistent. NYISO explains that the deliverability testing methodology is deterministic because it uses a power flow model to determine the deliverability of a Class Year project or import under a certain set of modeling assumption. By contrast, NYISO states, emergency assistance is a concept associated with a probabilistic analysis. NYISO contends that to model emergency assistance in the base case for deliverability testing, there must be a sound basis to convert the various levels of emergency assistance observed in the probabilistic Installed Reserve Margin study to some fixed level of emergency assistance to model in the deliverability base case. NYISO further contends that, if emergency assistance is going to be modeled in the deliverability base case, the probability of emergency assistance being required should be considered. NYISO states that the highest values for emergency assistance recorded in the Installed Reserve Margin study have essentially a zero probability of occurring.

65. NYISO contends that the New York Transmission Owners' comments provide no sound technical basis for modeling a specific level of emergency assistance. In response to New York Transmission Owners' expert testimony proposing a methodology to calculate a level of emergency assistance to model in the deliverability base case, NYISO argues that the methodology fails to take into account the near-zero probability that emergency assistance will be required. NYISO states that the New York Transmission Owners do not question NYISO's conclusion that the probability of the New York capacity region needing emergency assistance is extremely rare. NYISO further contends that the New York Transmission Owners did not provide sufficient justification for other pieces of its methodology.

66. NYISO argues that its plan is consistent with the Consensus Deliverability Plan including the requirement that emergency assistance benefits be honored. NYISO describes that emergency assistance is honored in a two-step process: first, during the annual process of setting limits on imports of external installed capacity; and second, by application of the deliverability testing methodology as applied to imports. In addition, NYISO contends that the deliverability testing methodology for proposed imports, and

proposed Class Year projects, includes a requirement that the import or Class Year project may not adversely affect the transfer capability of interfaces over which emergency assistance must flow if needed.

Commission Determination

67. We accept the filed proposal regarding the modeling of emergency assistance, i.e., the method proposed by NYISO. We agree with NYISO that no technical basis has been identified that would require modeling a specific megawatt level of emergency assistance, either as a part of the Class Year Deliverability Studies or the deliverability analysis applied to imports during the annual process of setting import limits on External Installed Capacity. Moreover, the process of setting import limits in the Installed Reserved Margin (IRM) Study already accounts adequately for emergency assistance. This study is performed annually by NYISO for the New York State Reliability Council (NYSRC) to establish the capacity needed to ensure Loss of Load Expectation (LOLE) of 1 in 10 (1 day in 10 years or 0.1 day per year) for the New York Control Area.

68. The objective function of a probabilistic analysis is different from a deterministic analysis. Emergency assistance is a concept associated with probability analysis while the deliverability test is a deterministic test. While we agree with the New York Transmission Owners that trying to translate the probabilistic emergency assistance concept to a deterministic deliverability test is a difficult task since the two can not be matched exactly, the Transmission Owners proposed use of 50 MW is arbitrary and without demonstrated basis. Additionally, we agree with NYISO that given the very low probability of using emergency assistance as modeled, any reasonable method to convert the results of the probabilistic Installed Reserve Margin study into the deterministic deliverability study would calculate a megawatt level of emergency assistance that is essentially zero.

69. On the calculation for the expected level of emergency assistance, the New York Transmission Owners propose to model 8760 hours and to use the maximum actual levels of emergency assistance resulting from the probabilistic Installed Reserve Margin study while NYISO uses peak hour and the weighted average value. We find that it is appropriate to use peak hour since the New York capacity deliverability test is studied under summer peak load conditions. We also find that it is appropriate to use the weighted average value because using the maximum actual value as the Transmission Owners propose, would overstate the effect of emergency assistance. In addition, each generator output in the deliverability test is reduced by an average Equivalent Forced Outage Rate on demand. Therefore, it would be inconsistent to use the maximum value for the emergency assistance but the average value for deliverability.

70. Regarding the proposed simultaneous uses of emergency assistance and surplus capacity in the deliverability test, we agree with NYISO that the deliverability test is performed under a set of base case conditions under which no emergency assistance is

required, so that such simultaneous delivery will not be needed. We also find that there is no need to conduct explicit modeling of emergency assistance in the deliverability studies applied to Class Year Deliverability Studies or imports during the annual import process of setting import limits on external installed capacity. We find this to be the case because NYISO already reserves a level of megawatts of transfer capability on external interfaces for emergency assistance when setting limits on imports of external installed capacity.

The Commission orders:

(A) The requests for rehearing and/or clarification filed by Con-Edison, Brookfield, the New York Transmission Owners, NYISO, NRG and HQ Energy are hereby granted, in part, and denied in part, as discussed in the body of this order.

(B) The Filing Parties' compliance filing is hereby accepted as discussed in the body of this order.

(C) The revised tariff sheets are hereby accepted for filing, effective October 5, 2008, as discussed in the body of this order.

(D) The Filing Parties are directed to submit revised tariff sheets implementing the consensus proposal for external resources within 120 days from the date of this order, as discussed in the body of this order.

(E) The Filing Parties are directed to submit criteria for the development of additional capacity zones by October 5, 2010, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.