

128 FERC ¶ 61,239
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.

Docket No. ER08-1281-003

ORDER GRANTING CLARIFICATION

(Issued September 14, 2009)

1. The New York Independent System Operator, Inc. (NYISO) seeks clarification, or in the alternative, rehearing of the Commission's order issued July 16, 2009, in the above-captioned proceeding.¹ For the reasons discussed below, we will grant the requested clarification.

I. Background

2. In the July 16, 2009 Order, the Commission authorized the public disclosure of an Office of Enforcement Staff Report (OE Report) addressing a non-public investigation of alleged market manipulation in the placing of circuitous schedules in the Lake Erie region.² Based on the OE Report, the Commission found that no tariff violations or market manipulation had occurred in the placement of the scheduling requests at issue. The Commission also found that NYISO had not violated the market power mitigation provisions of its tariff.

3. However, the July 16, 2009 Order also reaffirmed the Commission's directives in two prior orders, requiring NYISO to continue to work with its market participants, the North American Electric Reliability Corporation, and neighboring regional transmission

¹ *New York Independent System Operator, Inc.*, 128 FERC ¶ 61,049 (2009) (July 16, 2009 Order).

² *Id.* P 4.

organizations (RTOs) to develop long-term comprehensive solutions to the loop flow problem.³ The Commission also required NYISO to submit a report to the Commission, within 180 days of the date of the Commission's order, addressing its proposed solutions to this problem, including, among other things, a proposed solution addressing interface pricing and congestion management.⁴

II. Motion to Intervene

4. On September 2, 2009, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM Interconnection, L.L.C. (PJM Market Monitor), submitted an out-of-time motion to intervene in this proceeding. The PJM Market Monitor states that it was not a fully separate entity when this proceeding commenced. In addition, it states that the report required by the Commission in its July 16, 2009 Order implicates matters within its purview, including design flaws, structural problems and market behavior rules. Further, the PJM Market Monitor states that it will accept the record in this proceeding as it stands and seeks to intervene in order to participate in the additional process required by the Commission that implicates PJM and its market design. The request for intervention is exceedingly late, coming as it does at the rehearing stage. The request for late intervention is, therefore, denied.⁵

III. Request for Clarification

5. In its request for clarification, NYISO states that it is working diligently with its neighboring RTOs, independent system operators (ISOs), and market participants to

³ *Id.* P 6 (citing *New York Independent System Operator, Inc.*, 124 FERC ¶ 61,174, at P 27 (2008) (August 21, 2008 Order); *New York Independent System Operator, Inc.*, 125 FERC ¶ 61,184 (2008) (November 17, 2008 Order)).

⁴ *Id.*

⁵ The denial of Monitoring Analytics' untimely motion to intervene does not, however, prevent it from working together with NYISO, just like any other interested entity, in developing solutions to the loop flow problem. The August 21, 2008 Order at P 28 and the July 16, 2009 Order at P 6 direct NYISO to continue working with its Market Participants, the North American Electric Reliability Corporation (NERC), and neighboring RTOs on a long-term comprehensive solution. This list was intended to encompass a wide-range of participants; it was not intended to be exclusive, nor was it intended to be limited to only those entities that sought and were granted intervention in this proceeding. Thus, the market monitors of all of the neighboring RTOs, as well as any other interested entities, are encouraged to help develop a comprehensive solution to the Lake Erie loop flow problem.

develop a comprehensive solution to Lake Erie loop flows. NYISO states, however, that while the July 16, 2009 Order requires it to “develop with its neighboring RTOs a long-term comprehensive solution to the loop flow problem” and requires NYISO to address market-based solutions in its 180-day report, the Commission’s order fails to explicitly discuss or address the implementation or effective operation of the Ontario-Michigan phase angle regulators (PARs).⁶ NYISO asserts that implementing an effective physical solution to control or mitigate Lake Erie circulation should be the cornerstone of any comprehensive solution that NYISO and its neighboring ISO and RTOs develop.

6. NYISO asserts that implementation of this physical solution will go a long way toward reducing unscheduled, circulating power flows around Lake Erie. NYISO further asserts that implementing an effective physical solution to control or mitigate Lake Erie circulation should be a cornerstone of any comprehensive solution that NYISO and its neighboring RTOs and ISOs are required to develop. Specifically, NYISO asserts that using the Ontario-Michigan PARs to more closely match actual power flows to scheduled power flows will reduce unscheduled Lake Erie loop flows and will permit NYISO to more accurately determine Locational Based Marginal Prices (LBMPs) at its external proxy generator buses. Accordingly, NYISO requests that the Commission indicate its interest in this topic by clarifying that the 180-day reporting requirement in its July 16,

⁶ The status of the Ontario-Michigan PARs, an initiative designed to conform actual power flows to scheduled power flows at the Ontario/Michigan border, was addressed by the Commission in the August 21, 2008 Order. August 21, 2008 Order, 124 FERC ¶ 71,174, at P 24 (noting that while the better coordination of PARs may not, by itself, sufficiently address the Lake Erie loop flow problem, the Commission encourages the parties responsible for operating the Ontario-Michigan PARs to place the PARs in service as soon as practical). NYISO states that the last set of PARs needed to be able to more closely conform actual power flows to scheduled power flows at the Ontario-Michigan border is now expected to be placed in-service on or about November 1, 2009. NYISO further states that an appropriate operating protocol will need to be completed in connection with this effort and that functional control over the U.S. interface facilities will need to be assigned to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) so that the Midwest ISO can coordinate the operation of the interface with the Independent Electricity System Operator of Ontario. NYISO also states that it has submitted comments in the on-going proceeding before the United States Department of Energy (DOE) on the implementation of the latest set of Ontario-Michigan PARs. *See* International Transmission Company’s January 5, 2009 filing before the Department of Energy in OE Docket No. PP-230-4. NYISO further states that the Commission should take actions within its power to both inform and hasten the conclusion of the DOE proceeding and the execution of an effective operating agreement relating to the new PARs.

2009 Order also requires reporting by NYISO and other affected entities on: (i) the implementation status of the Ontario-Michigan PARs; (ii) the progress that has been made on the operating agreements for the Ontario-Michigan PARs; and (iii) the complementary role physical controls will play in the comprehensive solution to the Lake Erie loop flow problem. In the alternative, if the Commission does not grant the requested clarification, NYISO seeks rehearing of the July 16, 2009 Order and requests that the Commission add the foregoing reporting requirements.

IV. Answer Opposing Request for Clarification

7. On August 31, 2009, International Transmission Company (ITC), the owner of the PARs facilities on the United States side of the Michigan-Ontario interface, filed an answer in opposition to NYISO's request for clarification. ITC states that in its request for clarification, NYISO is seeking to enlarge the scope of the instant proceeding to include issues relating to the presidential permit for the PARs that is pending before DOE. ITC avers that the Commission should not expand the scope of the instant proceeding to include PARs issues nor should it inject itself into the pending DOE proceeding regarding PARs. It further states that information on the status of the PARs is posted on ITC's website and it would not be helpful for the Commission "to seek to interject itself at the eleventh hour into the ongoing discussion regarding the operation and functional control of the PARs."⁷ Finally, ITC recommends that, if the Commission is of a mind to modify the reporting requirements set forth in the July 16, 2009 Order, it should require NYISO to include in its report "how the costs associated with the PARs can effectively be shared by consumers in NYISO's service area and the service areas of other regional transmission organizations that will benefit from their operation."⁸

V. Discussion

8. We will grant the clarification requested by NYISO. Consistent with the prior orders issued in this proceeding, we intended that the status of all solutions to the loop flow problem be reported, including physical solutions such as the implementation of the Ontario-Michigan PARs. In the August 21, 2008 Order, the Commission encouraged the parties responsible for operating the Ontario-Michigan PARs to place these protocols into service as soon as practical.⁹ Further, the Commission stated that long-term solutions to the loop flow problem should be worked out through a collaborative process where all

⁷ ITC's Answer at 3.

⁸ *Id.*

⁹ August 21, 2008 Order, 124 FERC ¶ 61,174, at P 24.

such issues may be addressed.¹⁰ In the November 17, 2008 Order, the Commission directed NYISO to file a status report on its progress in developing solutions to the loop flow problem, without limiting the scope of the solutions to be considered.¹¹ Finally, in the July 16, 2009 Order, the Commission directed NYISO to expeditiously develop comprehensive solutions to the loop flow problem with its neighboring RTOs and to address, in its 180-day report, Lake Erie loop flow solutions “including . . . interface pricing and congestion management” solutions.¹² By stating that these solutions and reporting obligations must include certain specified topics, the Commission did not intend to exclude all other topics. Thus, these compliance requirements should not be read as countermanding or otherwise nullifying the broad directives of the August 21, 2008 or November 17, 2008 Orders. Rather, the references to specific issues identified by the Commission in the July 16, 2009 Order are non-exclusive in nature and, thus, are not intended to limit NYISO’s reporting obligation to those topics specifically referenced in that order. We agree with NYISO that physical solutions should be addressed and its specific clarification request be granted. However, although we expect NYISO to report on cost allocation issues, to the extent they are part of the solutions being developed to the loop flow problem, we will not address ITC’s answer to NYISO’s other comments as the comments and answer go beyond the specific clarification we are requested to grant.

9. Accordingly, we clarify here that NYISO must address, in its 180-day report, *all* solutions to the Lake Erie loop flow problem, including but not limited to: (i) the implementation status of the Ontario-Michigan PARs; (ii) the progress that has been made on the operating agreements for the Ontario-Michigan PARs; and, (iii) the complementary role that physical controls will play in the comprehensive solution to the Lake Erie loop flow problem.

¹⁰ *Id.* P 28.

¹¹ November 17, 2008 Order, 125 FERC ¶ 61,184, at P 20.

¹² July 16, 2009 Order, 128 FERC ¶ 61,049, at P 6 (emphasis added).

The Commission orders:

NYISO's request for clarification is hereby granted as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.