

130 FERC ¶ 61,104
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

New York Independent System Operator, Inc.

Docket No. ER10-424-000

ORDER GRANTING IN PART AND DEFERRING IN PART
REQUEST FOR WAIVERS

(Issued February 12, 2010)

1. On December 15, 2009, the New York Independent System Operator, Inc. (NYISO) filed a request for waivers from certain Open Access Same-Time Information Systems (OASIS) posting regulations adopted by the Commission in Order Nos. 676, 889, and 890.¹ In this order, the Commission grants in part and defers in part, the request for waivers, as discussed below.

I. Background

2. In 2006, the Commission issued Order No. 676, in which certain standards promulgated by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB) were incorporated by reference into the Commission's regulations. In addition, the Commission directed public utilities to comply with these standards and revise their open access transmission tariffs (OATT) to include these

¹ *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676, FERC Stats. & Regs. ¶ 31,216, *order denying reh'g*, Order No. 676-A, 116 FERC ¶ 61,255 (2006), Order No. 676-B, FERC Stats. & Regs. ¶ 31,246 (2007), Order No. 676-C, FERC Stats. & Regs. ¶ 31,274 (2008), *order on clarification and reh'g*, Order No. 676-D, 124 FERC ¶ 61,317 (2008), Order No. 676-E, FERC Stats. & Regs. ¶ 31,299 (2009). *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997). *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008) *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

standards. The standards establish a set of business practices and communications protocols (Standards WEQ-001, 002, and 003) for the electric industry that replace the Commission's existing OASIS standards, and also include business practices to complement reliability standards of the North American Electric Reliability Corporation (NERC) (Standards WEQ-004, 005, 006, and 007).

3. In Order No. 890, issued in 2007, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems, and standardization of charges for generator and energy imbalance services.²

4. In 2008, the Commission issued Order No. 676-C,³ which incorporated by reference the Version 001 of certain standards adopted by NAESB's WEQ and directed public utilities to comply with the revised standards and revise their open access transmission tariffs to include the revised standards. The NAESB WEQ standards: (1) revised the OASIS business practice standards and communications protocols (Standards WEQ-001, 002, and 003); (2) revised four business practice standards relating to interchange matters (Standards WEQ-004, 005, 006, and 007); (3) added new standards on transmission loading relief for the Eastern Interconnection (WEQ-008); (4) added new standards regarding Gas/Electric Coordination (WEQ-011); (5) added new standards for key public infrastructure (WEQ-012); and (6) added a new OASIS implementation guide (WEQ-013).⁴

5. Finally, in 2009, the Commission issued Order No. 676-E,⁵ incorporating by reference the latest version (Version 002.1) of certain standards adopted by NAESB's WEQ, and directing public utilities to comply with the revised standards and revise their open access transmission tariffs to include the revised standards. The NAESB Version 002.1 Standards include standards adopted by NAESB in response to Order Nos. 890, 890-A, and 890-B. The Version 002.1 Standards also (1) modify NAESB's Commercial Timing Table (WEQ-004 Appendix D) and Transmission Loading Relief Standards (WEQ-008) to provide clarity and align NAESB's business practice standards

² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 83-85.

³ Order No. 676-C, FERC Stats. & Regs. ¶ 31,274 (2008).

⁴ *Id.* P 9.

⁵ Order No. 676-E, FERC Stats. & Regs. ¶ 31,299 (2009).

with the reliability standards adopted by NERC, and (2) amend certain ancillary services definitions appearing in the OASIS Standards (WEQ-001) relating to the inclusion of demand response resources as potential providers of ancillary services.

6. As an alternative to complying with the standards, Order No. 676 permitted public utilities to request a waiver of specific standards by explaining the reasons why the waiver should be granted.⁶ Moreover, public utilities, independent system operators (ISOs) and regional transmission organizations (RTOs) that have existing waivers may reapply for such waivers using simplified procedures. These streamlined procedures require an applicant to identify the specific standard(s) from which it seeks waiver and to provide the caption, date, and docket number of the proceeding in which it previously received the waiver. In addition, an applicant must certify that the circumstances warranting its waiver(s) have not changed.

II. Request for Waiver

A. Description of the Applicant

7. NYISO is a non-profit corporation responsible for the reliable operation of New York's wholesale electric transmission grid. As such, NYISO is subject to the Commission's OASIS requirements. NYISO states, however, that NYISO's financial reservation transmission service model uses location based marginal pricing (LBMP) to manage congestion and to operate bid-based spot markets, instead of the *pro forma* OATT physical reservation system.⁷ Consequently, NYISO considers certain OASIS standards inapplicable to and/or incompatible with NYISO's operations and therefore requests waiver of those OASIS standards.⁸

B. Requested Waivers

8. NYISO requests waiver of the following OASIS posting regulations: 18 C.F.R. §§ 37.2(b), 37.6(a)(4), 37.6(b)(1), 37.6(b)(2)(i-iii), 37.6(b)(3)(i-iii), 37.6(d)(2, 4), 37.6(e)(2, 3), 37.6(f), 37.6(g)(1-4), 37.6(i)(1-4), and 37.6(j)(1, 2) (2009). NYISO also requests waiver of 18 C.F.R. § 37.6(a)(1) to the extent it requires NYISO to post information relating to transmission services as contemplated in the *pro forma* OATT. NYISO further requests partial waiver of 18 C.F.R. § 37.6(a)(5) to the extent it requires posting of information related to historical transmission service requests; 18 C.F.R. § 37.6(c)(2) to the extent it requires posting information related to transmission services

⁶ Order No. 676, FERC Stats. & Regs. ¶ 31,216 at P 79.

⁷ NYISO Request at 2-3.

⁸ NYISO Request at 8-11.

as contemplated in the *pro forma* OATT; and 18 C.F.R. §§ 38.2(a)(1-3) and 38.2(11) as consistent with the Commission's previous grant of waivers to NYISO of WEQ OASIS standards, as discussed below.

C. NYISO's Basis for Granting Waivers

1. Past Waivers

9. In its petition, NYISO observes that the Commission has previously granted NYISO waivers from various OASIS regulations and related NAESB WEQ standards that were inapplicable to the NYISO's operations and transmission service model. For example, due to the differences between the NYISO's "financial reservation" based transmission model and the "physical reservation" based transmission model contemplated in Order No. 889, the NYISO requested, and the Commission granted, waivers from various OASIS regulations in an order issued on September 17, 1999.⁹ In addition, on February 26, 2001, the Commission issued an order partially granting NYISO's request for waiver of certain sections of the Standards and Communications Protocols Documents and the Uniform Business Practice Standards.¹⁰ On November 16, 2006, the Commission issued an order partially granting NYISO's request for limited waiver of various portions of OASIS standards WEQ-001 through WEQ-004 adopted in Order No. 676.¹¹ The Commission has also granted various other requests by NYISO for waiver of OASIS-related NAESB WEQ standards.¹²

10. Finally, NYISO points to an audit of its compliance with the OASIS requirements under 18 C.F.R § 37.6 (2009), conducted by the Commission's Division of Audits, Office of Enforcement. The audit covered the period from March 17, 2008 through April 30, 2008, and included review of information posted on NYISO's OASIS website, interviews

⁹ *Central Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,253 (1999).

¹⁰ *New York Independent System Operator, Inc.*, 94 FERC ¶ 61,215 (2001).

¹¹ *New York Independent System Operator, Inc.*, 117 FERC ¶ 61,197, at P 15-17 (2006).

¹² *See New York Independent System Operator, Inc.*, 127 FERC ¶ 61,005, at P 7 (2009) (granting the NYISO's request for waiver of certain OASIS-related NAESB WEQ standards adopted in Order No. 676-C governing resales and transfers of traditional point-to-point transmission reservations); *New York Independent System Operator, Inc.*, 125 FERC ¶ 61,275, at P 15 (2008) (granting NYISO's request for waiver of various WEQ OASIS standards which were modified by Order No. 676-C, and from which the NYISO had previously been granted waiver).

with NYISO personnel, and consideration of supporting documentation provided by NYISO. In a letter order and report,¹³ the Division of Audits confirmed NYISO's compliance with the OASIS regulations from which it does not have waivers, the waivers then in effect, and found two instances of non-compliance for which it provided recommendations for corrective actions, which NYISO states that it has since resolved.

2. Waivers Going Forward

11. NYISO states that NYISO's financial reservation transmission service model for the New York Control Area (NYCA) transactions uses LBMP to manage congestion and to operate bid-based spot markets instead of the *pro forma* OATT physical reservation system. NYISO also states that under the LBMP framework, spot markets handle imbalances and set the price for energy and various ancillary services, on both a "day-ahead" and "real-time" basis. Transmission service is provided "implicitly" within customers' submitted bid and offers for energy via the spot markets or schedules for bilateral energy transactions.

12. NYISO further states that with the exception of Pre-Scheduled Transaction Requests, transactions over Scheduled Lines, and grandfathered transactions, the NYISO's system does not use express reservations of transmission service. Customers may schedule transactions between any two points so long as doing so is not inconsistent with a security-constrained economic dispatch. In NYISO's system, all desired uses of the transmission system are scheduled to the extent that customers are willing to pay congestion charges (that can be hedged using financial rights). The NYISO continuously redispatches resources connected to the NYCA grid on a security-constrained least-cost basis. NYISO states that NYISO's model, therefore, does not have any of the following features associated with physical reservation transmission service: (1) explicit transmission service requests; (2) transmission service reservations; (3) resales or reassignments of transmission service reservations; (4) redirects; or (5) rollover rights.

13. NYISO notes that the Commission has authorized the NYISO to provide financial transmission rights in lieu of physical transmission service for NYCA transactions in NYISO markets, and that the Commission has found that the NYISO's services are consistent with or superior to the *pro forma* requirements.¹⁴ Accordingly, NYISO contends that the OASIS requirements at issue are inapplicable to NYISO's transmission

¹³ *New York Independent System Operator, Inc.*, Docket No. PA08-14-000 (Aug. 22, 2008) (unpublished letter order).

¹⁴ NYISO Request at 3-4 (citing *New York Independent System Operator, Inc.*, 123 FERC ¶ 61,134, at P 13 (2008); *New York Independent System Operator, Inc.*, 125 FERC ¶ 61,274, at P 13 (2008)).

service model and should therefore be waived. NYISO argues that the requested waivers would allow NYISO to more efficiently use its resources and would clarify the scope of its compliance obligations.

14. Finally, NYISO states that the requested waivers would put NYISO in largely the same position as the California Independent System Operator Corporation (CAISO), which NYISO asserts has been granted waivers of the relevant regulations for the same reasons that NYISO is now seeking them.¹⁵ NYISO states that CAISO operates a financial reservation based transmission system very similar to NYISO's. NYISO explains that like NYISO's system, CAISO's system: (1) schedules energy on a day-to-day basis, with the exception of certain transactions scheduled pursuant to existing contracts; (2) requires users to schedule their transactions day-ahead; and (3) uses a bid-based, security constrained economic dispatch/redispach process to balance real-time control area requirements.

III. Notice of Filing

15. Notice of NYISO's December 15, 2009 request for waivers was published in the *Federal Register* with comments, interventions, and protests due on or before January 5, 2010. A timely motion to intervene was filed by the New York Transmission Owners.¹⁶ No protests were filed.

IV. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Commission Determination

17. NYISO's instant request for waiver includes requested waiver of 18 C.F.R. §§ 37.6(b)(1), 37.6(b)(2)(i-ii), and 37.6(b)(3)(i-iii), which concern the calculation and

¹⁵ NYISO Request at 1 (citing *California Independent System Operator, Corp.*, 126 FERC ¶ 61,260 (2009)).

¹⁶ 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.

posting of Available Transfer Capability (ATC), Total Transfer Capability (TTC), Capacity Benefit Margin (CBM), and Transmission Reliability Margin (TRM).¹⁷ In a separate filing on December 2, 2009, currently pending before the Commission in Docket No. RD10-5-000, NERC petitioned the Commission for approval of NERC's interpretations of two FERC-approved NERC Reliability Standards¹⁸ related to the calculation of ATC.¹⁹ NERC states in its petition that NYISO requested interpretations of these reliability standards.²⁰ On January 8, 2010, NYISO submitted comments in Docket No. RD10-5-000 on the proposed interpretations.²¹ We find that NYISO's request for waiver of 18 C.F.R. §§ 37.6(b)(1), 37.6(b)(2)(i-ii), and 37.6(b)(3)(i-iii) is closely correlated with the outcome of Docket No. RD10-5-000. Therefore, the Commission will defer action on the request for waiver of 18 C.F.R. §§ 37.6(b)(1), 37.6(b)(2)(i-ii), and 37.6(b)(3)(i-iii) pending resolution of Docket No. RD10-5-000, subject to further Commission action.

18. Based on our review of NYISO's request for waivers of the remaining OASIS posting regulations at issue, we find that such regulations are incompatible with the

¹⁷ The Commission denied NYISO's previous request for waiver of 18 C.F.R. §§ 37.6(b)(2) and 37.6(b)(3) in Docket No. EL99-77-000. *Central Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,253 (1999).

¹⁸ Reliability Standard MOD-001-1 -- Available Transmission System Capability, Requirements R2 and R8; and Reliability Standard MOD-029-1 -- Rated System Path, Requirements R5 and R6.

¹⁹ *North American Electric Reliability Corp.*, Petition for Approval of Interpretations to Reliability Standards MOD-001-1 and MOD-029-1, Docket No. RD10-5-000 (filed December 2, 2009).

²⁰ *Id.* at 5-6. NERC states in its December 2, 2009 interpretation request that NYISO asked for clarification whether the "advisory ATC" used under the NYISO tariff is subject to the ATC calculation and recalculation requirements in MOD-001-1, Requirements R2 and R8, and if not, whether it is necessary to document the frequency of "advisory" calculations in the responsible entity's Available Transfer Capacity Implementation Document (ATCID). *Id.* at 7-8. Additionally, NERC states, NYISO requested clarification whether the Other Services Firm (OS_F) term in MOD-029-1, Requirement R5 and the Other Services Non-Firm (OS_{NF}) term in MOD-029-1, Requirement R6 could be calculated using Transmission Flow Utilization in the determination of ATC. *Id.* at 10.

²¹ *New York System Operator, Inc.*, Motion to Intervene and Comments, Docket No. RD10-5-000 (filed January 8, 2010).

transmission services provided under NYISO's current tariff for the reasons NYISO states. Therefore, the Commission grants the remaining waivers requested in the filing.

The Commission orders:

NYISO's request for waivers of certain OASIS posting regulations is hereby granted in part and deferred in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.