

146 FERC ¶ 61,082
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Hudson Transmission Partners, LLC

v.

Docket No. EL12-98-000

New York Independent System Operator, Inc.

ORDER ON MOTION FOR AN EXTENSION OF TIME

(Issued February 11, 2014)

1. On November 21, 2013, the Commission issued an order¹ granting, in part, and denying, in part, the complaint (Complaint) of Hudson Transmission Partners, LLC (HTP) against the New York Independent System Operator, Inc. (NYISO), which alleged that NYISO improperly implemented its New York City buyer-side market mitigation exemption test with respect to HTP's 660 MW high voltage, direct current merchant transmission facility (HTP Project). In the November 21, 2013 Order, the Commission directed NYISO to make a compliance filing by January 20, 2014, consisting of four items related to its application of a "scaling factor" in applying the mitigation exemption test to HTP. On January 15, 2014, NYISO submitted a motion for a 45-day extension of time to submit that compliance filing. In this order, the Commission suspends the fourth directive of the November 21, 2013 Order pending its receipt of a compliance filing for the first three directives and subject to further order. On that basis, the Commission denies NYISO's motion for an extension of time, while separately allowing a short extension to comply with the remaining compliance directives. Upon receipt of that compliance filing, the Commission will issue another order providing guidance to NYISO with respect to tariff submissions.

Background

2. NYISO administers market power mitigation rules for the New York City (NYC) zone of the installed capacity (ICAP) market by applying an Offer Floor for the purpose of inhibiting new entry of uneconomic capacity into the NYC ICAP market that

¹ *Hudson Transmission Partners, LLC v. New York Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,156 (2013) (November 21, 2013 Order).

artificially depresses NYC ICAP market prices to uneconomic levels. Consistent with those rules, NYISO may exempt a new resource from the Offer Floor if it meets either prong of a two-part exemption test. As relevant here, the calculation of the resource's cost of new entry, net of energy and ancillary services revenues (Unit Net CONE) is central to prong (b) of the exemption test² and to the calculation of the Offer Floor that applies to non-exempt resources.³

3. In the Complaint, HTP asserted, *inter alia*, that in calculating Unit Net CONE for the HTP Project, NYISO improperly applied a "scaling factor" to reduce HTP's projected energy revenues to account for "imperfect arbitrage." Among other things, HTP argued that NYISO's approach was based on undisclosed assumptions and lacked transparency. Therefore, HTP argued that the Commission should direct NYISO to recalculate HTP's energy revenues without applying this scaling factor. NYISO and commenters responded that a scaling factor is essential to prevent the deduction of revenues that a merchant transmission project like the HTP Project is unlikely to collect because of the imperfect coordination between the separate energy markets of PJM, where power transmitted by HTP is purchased, and NYISO, where that power is re-sold, due to interregional price differences and scheduling uncertainty.

4. The Commission agreed with NYISO that it was reasonable to project HTP's energy revenues by accounting for imperfect arbitrage using a scaling factor, but agreed with HTP's argument that NYISO's approach was based on undisclosed assumptions and was lacking in transparency.⁴ Paragraph 82 of the November 21, 2013 Order summarizes the Commission's determination:

For the reasons stated below we deny the Complaint to the extent that we find the use of a scaling factor to project HTP's energy revenues is reasonable, but we grant the Complaint to the extent that we require NYISO [1] to provide the specific scaling factor that it applied to HTP, [2] to explain in detail how such factor was calculated, and [3] to support its

² Prong (b) provides that a resource will be exempt if the average of the ICAP Spot Market Auction prices in the six capability periods starting with the capability period three years after the start of the project's Class Year is projected to be higher than the unit's reasonably anticipated Net CONE.

³ Projects that fail both prongs of the exemption test are subject to an Offer Floor equal to the lower of: (1) 75 percent of net CONE of the proxy peaking unit used to establish the demand curve which establishes the ICAP market price for that period (Default Net CONE); or (2) Unit Net CONE.

⁴ November 21, 2013 Order, 145 FERC ¶ 61,156 at P 89.

methodology. We also require NYISO [4] to file a proposed tariff provision to incorporate the scaling methodology into its tariff.

5. Paragraph 90 of the November 21, 2013 Order was intended to reiterate the Commission's Paragraph 82 directive to NYISO. Paragraph 90 states:

Accordingly, we direct NYISO, within sixty days of the date of this order, [1] to provide the Commission with the specific scaling factor used, [2] to explain in detail how it was calculated, and [3] to support the methodology. In addition, [4] we direct NYISO to file, within sixty days of the date of this order, proposed tariff provisions to include a detailed description of the methodology that it intends to use in order to project the likely energy and ancillary services revenues for merchant transmission lines. Such a description will provide certainty and transparency for future projects that are similarly situated.

NYISO's Motion and HTP's Answer

6. On January 15, 2014, NYISO submitted a motion requesting a 45 day extension, i.e., until March 7, 2014, to submit the compliance filing required by the November 21, 2103 Order. NYISO describes its compliance obligation by referring to Paragraph 82 and Paragraph 90 of the November 21, 2013 Order as follows:

- “[P]rovide the specific scaling factor that it applied to HTP, to explain in detail how such factor was calculated, and to support its methodology”; and
- “[F]ile a proposed tariff provision to incorporate the scaling methodology” . . . “to project the likely energy and ancillary services revenues for merchant transmission lines.”⁵

7. NYISO states that the requested extension will allow it to obtain stakeholder input as it completes its work to address complex compliance issues and to develop final tariff revisions to govern the scaling factor methodology for its calculation of projected energy and ancillary services revenues in the market power mitigation determinations for merchant transmission facilities. NYISO states that it has made substantial progress toward proposed tariff modifications that would incorporate the merchant transmission energy and ancillary services rules into the Services Tariff, but it was not possible to engage in sufficient outreach to stakeholders within the prescribed sixty-day compliance period. NYISO explains that it is directly interconnected with three neighboring Control Areas with resources that participate in its capacity markets and, upon requesting Capacity Resource Interconnection Service, would be subject to NYISO's buyer-side

⁵ NYISO January 15, 2014 Motion at 2.

mitigation rules. NYISO states that each of the neighboring Control Areas are governed by different market rules and structures and that designing merchant transmission energy and ancillary services rules that could be workably implemented for projects connecting to all of these neighboring Control Areas has been difficult and has underscored the potential value of meaningful stakeholder input.

8. NYISO states that granting the requested extension would not harm any party. It adds that the November 21, 2013 Order's rejection of HTP's Complaint was in no way contingent upon Commission acceptance of the compliance filing, thus the extension would not harm HTP. Further, according to NYISO, the extension in no way affects NYISO's compliance with the November 21, 2013 Order's directive that it issue a redetermination based on HTP's actual cost of capital, which is an obligation separate from the compliance filing obligation. NYISO adds that although there are proposed merchant transmission line projects in its Interconnection Queue, it believes that the requested extension and the Commission's acceptance of the new rules would not interfere with the required mitigation exemption determinations for them.

9. Finally, NYISO states that its request for an extension of time for both the compliance obligation to provide details on the scaling factor it used for HTP, and the obligation to provide tariff revisions reflecting proposed merchant transmission energy and ancillary services rules, should not be taken as an indication that it requires more time to provide the specific factor it applied to HTP, a detailed explanation of how that factor was calculated, and support for its approach. NYISO states that it has the information necessary to complete the first obligation but believes that it would be simpler, and make for a clearer record, if it were to address both obligations in the same compliance filing.

10. HTP requests that the Commission deny NYISO's request for an additional 45 days to comply with the Commission's directive to provide the specific scaling factor applied to HTP, the explanation of how such factor was calculated, and support for its methodology. However, HTP states that it does *not* oppose the second part of the NYISO motion to be granted a 45-day extension to file proposed tariff revisions that detail the methodology that NYISO will use to project energy and ancillary services revenues for future merchant transmission projects. HTP states that since NYISO has acknowledged that it is developing an entirely new scaling factor for future projects that is not dependent upon the scaling factor applied to HTP, it should be "simpler" and "cleaner" to submit the two different scaling factors in two separate filings. HTP asserts that the difficulty NYISO has had in developing these proposed tariff revisions underscores the fact that NYISO did not address or even consider these complexities, or obtain any meaningful stakeholder input from HTP or anyone else, when it developed the scaling factor that it applied to HTP.

Discussion

11. In its January 15, 2014 motion (at 1), NYISO states it is developing “final tariff revisions to govern the scaling factor methodology for its calculation of projected energy and ancillary (“E&AS”) revenues in the buyer-side capacity market power mitigation determinations for merchant transmission facilities.” However, upon further consideration, we conclude that it would be premature to require NYISO to develop and file any proposed tariff revisions in response to the fourth compliance directive before we review NYISO’s compliance filing as to the information required in the first three compliance directives. Accordingly, we will suspend the fourth compliance directive of our November 21, 2013 Order pending the receipt of a compliance filing for the first three compliance directives. Upon consideration of that compliance filing and any comments, we will issue an order providing NYISO with further guidance regarding tariff submissions for the scaling factor methodology.

12. Regarding NYISO’s motion for extension of time, NYISO states that it has the information necessary to comply with the first three of the Commission’s compliance directives and, in light of our suspension of the fourth compliance direction above, we see no need for a lengthy extension of time. But we will allow NYISO a short extension of time to comply with the three remaining compliance obligations since the January 20, 2014 filing deadline has passed. Accordingly, we deny NYISO’s motion for an extension of time and instead grant an extension of time for NYISO to file its compliance filing, as modified herein, within 10 days of the date of this order.

The Commission orders:

(A) The compliance directives of the November 21, 2013 Order are hereby modified, as discussed above.

(B) NYISO’s motion is hereby denied and NYISO is hereby granted an extension of time to make its filing to comply with the remaining three compliance directives of the November 21, 2013 Order, as discussed above, within 10 days of the date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.