

148 FERC ¶ 61,181
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

New York Independent System Operator, Inc.

Docket No. ER14-473-000

ORDER ON COMPLIANCE

(Issued September 9, 2014)

1. On November 26, 2013, New York Independent System Operator, Inc. (NYISO) submitted a filing to comply with the requirements of Order No. 784.¹ In this order, we find that NYISO partially complies with Order No. 784 and accept the proposed revisions to NYISO's Market Administration and Control Area Services Tariff² (Services Tariff) to bring it into compliance with this directive, effective November 27, 2013, subject to NYISO filing a further compliance filing regarding the requirement to post Area Control Error data, as discussed below. We also deny NYISO's request for waiver of Order No. 784's data posting requirements.

I. Background

2. On July 18, 2013, the Commission issued Order No. 784 to foster competition and transparency in ancillary services markets. In Order No. 784, the Commission explained that, under the then-current *pro forma* OATT Transmission Customers considering using their own or third-party resources to self-supply Regulation Service are required to demonstrate to the public utility Transmission Provider that they have made "alternative comparable arrangements."³ However, the Commission noted that the then-current *pro*

¹ *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, 78 Fed. Reg. 46,178 (July 30, 2013), FERC Stats. & Regs. ¶ 31,349 (2013), *order on clarification*, Order No. 784-A, 146 FERC ¶ 61,114 (2014).

² New York Independent System Operator, Inc., NYISO Tariffs, [NYISO MST, 15.3 MST Rate Schedule 3 - Payments for Regulation Service, 6.0.0.](#)

³ Order No. 784, FERC Stats. & Regs. ¶ 31,349 at P 112.

forma OATT provided no information as to how such a determination would be made, and contained no express obligation on the part of the Transmission Provider to consider the relative speed and accuracy of resources a customer might desire to use in self-supplying Regulation Service. Given this lack of clarity in the *pro forma* OATT, the Commission found that if the performance characteristics of a Transmission Provider's regulation resources differed from those of a customer's regulation resources, the Transmission Provider may under- or overstate the regulation reserve requirements and impair a Transmission Customer's ability to self-supply Regulation Service at the lowest possible cost.⁴ The Commission determined that certain reforms were necessary to address this potential undue discrimination in the provision of Regulation Service.⁵

3. Thus, relevant here, Order No. 784 requires that each public utility Transmission Provider add to its OATT Schedule 3 (Regulation and Frequency Response Service) a *pro forma* statement that:

The Transmission Provider will take into account the speed and accuracy of regulation resources in its determination of Regulation and Frequency Response reserve requirements, including as it reviews whether a self-supplying Transmission Customer has made alternative comparable arrangements. Upon request by the self-supplying Transmission Customer, the Transmission Provider will share with the Transmission Customer its reasoning and any related data used to make the determination of whether the Transmission Customer has made alternative comparable arrangements.⁶

4. In addition, to aid the Transmission Customer's ability to make an "apples-to-apples" comparison of regulation resources, Order No. 784 amended Part 37 of the Commission's regulations⁷ to require each public utility Transmission Provider to post historical one and ten-minute Area Control Error (Area Control Error) data on its Open Access Same Time Information System (OASIS).⁸

⁴ *Id.* P 112.

⁵ *Id.* P 111.

⁶ *Id.* at Appendix B.

⁷ 18 C.F.R. § 37.6(k) (2014).

⁸ Order No. 784, FERC Stats & Regs. ¶ 31, 349 at P1, 116.

5. NYISO states that it proposes a revision to Schedule 3 of its Services Tariff to bring it into compliance with Order No. 784. NYISO explains that NYISO's Open Access Transmission Tariff (OATT) Rate Schedule 3 identifies the transmission customers that are obligated to purchase Regulation Service from NYISO and describes how their charges are calculated. However, Rate Schedule 3 of the NYISO Services Tariff identifies eligible Regulation Service suppliers and specifies how they are compensated. NYISO notes that it made the compliance tariff revisions required by Order No. 755 to its Services Tariff rather than its OATT and the Commission accepted this approach in *N.Y. Indep. Sys. Operator, Inc.*, 133 FERC ¶ 61,072 (2012). Thus, NYISO proposes to include language regarding accounting for the speed and accuracy of regulation suppliers in its Services Tariff.⁹

6. As discussed further below, in its compliance filing, NYISO asserts that it provides customers with a wealth of market and transmission system information that goes far beyond what the OASIS regulations, including section 37.6(k) require, and that changing NYISO's posting practices in accordance with section 37.6(k) would serve no useful purpose in the context of NYISO, but would require NYISO staff time and resources to implement. NYISO seeks a waiver of the posting requirement of Area Control Error data.

II. Notice of Filing and Responsive Pleadings

7. Notice of the filing was published in the *Federal Register*, 78 Fed. Reg. 73,188 (2013), with interventions, comments, and protests due on or before December 17, 2013. NRG Companies¹⁰ and New York Transmission Owners¹¹ (NYTO) filed timely motions to intervene. No comments or protests were filed.

⁹ NYISO Compliance Filing at 2 n.5.

¹⁰ The NRG Companies are: NRG Power Marketing LLC (NRG PML), GenOn Energy Management, LLC (GEM), Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, NRG Bowline LLC, Oswego Harbor Power LLC and Energy Curtailment Services, Inc. (ECS).

¹¹ Central Hudson Gas & Electric Corporation, Consolidated Energy 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 (referred to collectively as the "New York Transmission Owners" or "NYTO").

III. Discussion

A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely-filed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

1. Speed and Accuracy of Regulation Resources

a. Compliance Filing

8. NYISO proposes to amend section 15.3.1.1 of Rate Schedule 3 to its Services Tariff to include a statement that NYISO will “take into account the speed and accuracy of regulation resources in determining reserve requirements for Regulation Service.”¹² NYISO explains that the proposed language does not include a reference to NYISO Transmission Customers making “alternative comparable arrangements” for self-supply, because NYISO's market design “does not provide for the traditional ‘physical’ form of self-supply contemplated by Order Nos. 888 and 890.”¹³ NYISO adds that, under NYISO's Commission-approved tariff, Transmission Customers may enter into financial hedging arrangements that are the functional economic equivalent of self-supply but may not “physically ‘opt out’ of the centralized Regulation Service market by identifying and

¹² NYISO Compliance Filing at 3; NYISO, NYISO Tariffs, OATT, Rate Schedule 3, § 15.3.1.1.

¹³ *Id.* (referring to *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002); and *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *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, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

providing Regulation Service from individually contracted-for resources.”¹⁴ NYISO therefore submits that the compliance tariff language that it has proposed here should likewise be accepted as “consistent with or superior to” the language specified by Order No. 784.

b. Commission Determination

9. We accept NYISO’s proposal to amend section 15.3.1.1 of Rate Schedule 3 to its Services Tariff by inserting the statement that NYISO will take into account the speed and accuracy of regulation resources in determining reserve requirements for Regulation Service, as “consistent with or superior to”¹⁵ the language specified in Order No. 784. As stated by NYISO in its compliance filing, the NYISO tariff provides the functional equivalent of self-supply in the form of financial hedging arrangements and as such does not provide for the traditional “physical” form of self-supply contemplated by Order Nos. 888 and 890.¹⁶ Therefore, we find that NYISO’s proposal to amend section 15.3.1.1 with respect to taking account the speed and accuracy of regulation resources in determining reserve requirements for Regulation Service is consistent with or superior to Order No. 784.

2. Area Control Error Data Posting

a. Compliance Filing

10. NYISO asserts that its existing Regulation Service market arrangements and data posting practices already surpass the Area Control Error data posting requirements in new section 37.6(k). NYISO states that it provides six-second Area Control Error data to the North American Electric Reliability Corporation (NERC). NYISO argues that, given the nature of NYISO’s transmission model and markets, the Commission should find that the information NYISO currently posts is sufficient to satisfy section 37.6(k).¹⁷

11. Alternatively, to the extent that the Commission deems it necessary for compliance with Order No. 784, NYISO seeks a waiver of the section 37.6(k)’s

¹⁴ *Id.* (citing NYISO, NYISO Tariffs, OATT, Rate Schedule 3, § 6.3).

¹⁵ 18 C.F.R. § 35.28(c)(4)(ii) (2014).

¹⁶ *See* NYISO Compliance Filing at 3.

¹⁷ NYISO does not specify, in its transmittal, where it currently posts information that is sufficient to satisfy section 37.6(k).

requirements, noting that the Commission has granted NYISO waivers of other OASIS posting regulations that are “incompatible with the transmission services” that NYISO provides or are otherwise practically inapplicable.¹⁸ NYISO claims that it provides customers with a wealth of market and transmission system information that goes beyond the OASIS requirements, including the section 37.6(k) requirements, and includes detailed Regulation Service price information. In addition, NYISO states that the information that NYISO already makes available to all of its customers, including those interested in “Regulation Service financial self-supply,” provides a great deal of value to them.¹⁹

12. NYISO further claims that changing its posting practices would require staff time and resources to implement, particularly in translating its existing six-second data into one-minute and ten-minute blocks. It states that this translation would constitute another software project, but notes that it could be considered for its “Maps and Graphs” project, which is anticipated to be in place in 2015. NYISO also states that it already shares six-second Area Control Error data with any Transmission Customer who requests such data on a case by case basis.²⁰

13. NYISO states that, under established precedent, in similar circumstances, the Commission has granted tariff waivers when the waiver is of limited scope, a concrete problem will be remedied by granting the requisite waiver, and the waiver does not have undesirable consequences, such as harming third parties. NYISO asserts that each prong of the waiver analysis would be satisfied in this instance. It asserts that it would be acting in good faith, the waiver would be limited in scope to a single regulation, and the waiver would avoid the concrete problem of requiring NYISO to expend time and resources developing software posting functionality and related procedures that would neither be necessary nor beneficial to NYISO stakeholders. For the same reason, NYISO asserts that the waiver would not have undesirable consequences or harm third parties.

¹⁸ NYISO Compliance Filing at 6 (citing *N.Y. Indep. Sys. Operator, Inc.*, 133 FERC ¶ 61,208 (2010); *Cent. Hudson Gas & Elec. Corp.*, 88 FERC ¶ 61,253 (1999); and *N.Y. Indep. Sys. Operator*, 130 FERC ¶ 61,104 (2010)).

¹⁹ See NYISO Compliance Filing at 5.

²⁰ NYISO Compliance Filing at 5 n.17.

b. Commission Determination

14. The ACE data posting requirement was meant to “ensure a level of transparency adequate to support self-supply decision-making by transmission customers.”²¹ While NYISO’s regulation market does not permit physical self-supply, it does permit what NYISO terms “Regulation Service financial self-supply.” Accordingly, the question before us in this proceeding is whether NYISO’s current posting practices ensure a level of transparency adequate to support financial self-supply decision-making.

15. NYISO argues that given the nature of its transmission model and markets, the Commission should find that the information NYISO currently posts is sufficient to satisfy section 37.6(k). In this regard, NYISO states that it already makes available to all of its customers, including those interested in “Regulation Service financial self-supply,” information that provides a great deal of value to them. However, NYISO fails to specify in its transmittal the location of currently posted information that is sufficient to satisfy section 37.6(k) and ensure a level of transparency adequate to support financial self-supply decision-making in its regulation market. Before the Commission can permit NYISO to rely on what it currently posts, NYISO would need to make a further compliance filing to provide the Commission with the location of this information and demonstrate that it is consistent with or superior to the requirement of Order No. 784. Alternatively, as discussed below, we find that NYISO may choose to come into compliance by posting its existing six-second Area Control Error data which NYISO contends would be less burdensome than posting one-minute/ten-minute average data as otherwise required by Order No. 784.

16. We believe that posting Area Control Error data would not be overly burdensome for NYISO. NYISO currently provides six-second Area Control Error data to NERC²² and there should be minimal incremental burden associated with posting it on OASIS.²³ In Order No. 784 the Commission required the posting of one-minute and ten-minute average Area Control Error data because shorter duration Area Control Error data is more useful for the purpose of assessing the performance of regulation resources than the monthly and 12-month rolling averages reflected in the NERC Control Performance

²¹ Order No. 784, FERC Stats & Regs. ¶ 31, 349 at P 116.

²² NYISO Compliance Filing at 5 n.17.

²³ See Order No. 784, FERC Stats. & Regs. ¶ 31,349 at P 116 (finding that historical one-minute and ten-minute Area Control Error data is already collected and provided to NERC, through balancing area operators and reliability coordinators, so there should be minimal incremental burden associated with posting it on OASIS).

Standard 1, Control Performance Standard 2, and Balancing Authority Area Control Error Limit scores.²⁴ In order to minimize the burden on respondents, the Commission specified one-minute and ten-minute average data because the Commission believed such data were already collected by most public utility transmission providers to produce those scores.²⁵ However, where even shorter duration Area Control Error data are available, as here, such data can also be used to assess the performance of regulation resources consistent with the goals of Order No. 784. If NYISO prefers to post its existing six-second Area Control Error data because it reduces the burden of posting Area Control Error data, instead of providing the Commission with the location of this information and demonstrating that it is consistent with or superior to the requirement of Order No. 784, we permit NYISO to choose to comply with Order No. 784 by posting Area Control Error data on either a six-second or one-minute/ten-minute average basis and direct it to inform us of its choice and the expected date in a further compliance filing.

17. Accordingly, in summary, we require NYISO to file a further compliance filing with the Commission, to be submitted within 15 days of the date of this order, that either (1) provides the location of the information it currently posts and demonstrates that it is consistent with or superior to the requirement of Order No. 784, or (2) specifies the date that it will begin posting Area Control Error data and whether the data will be posted on a six-second or on a one-minute/ten-minute average basis. For the reasons stated above, we deny NYISO's requested waiver without prejudice, but may consider it again following receipt of the required compliance filing or any subsequent modification by NYISO.

The Commission orders:

(A) NYISO's proposal to amend section 15.3.1.1 of Rate Schedule 3 to its Services Tariff, is hereby accepted, effective November 27, 2013, as requested.

(B) NYISO's request for waiver of the Area Control Error data posting requirement contained in section 37.6(k) of the Commission's regulations is hereby denied without prejudice, but the Commission may consider it again following receipt of the required compliance filing or any subsequent modification by NYISO.

²⁴ *Id.* PP 113, 116.

²⁵ *Id.* P 116 (explaining that "historical data for the most recent calendar year, updated once per year" should be adequate).

(C) NYISO is permitted to comply with the Order No. 784 data posting requirement by posting Area Control Error data either on a six-second or one-minute/ten-minute average basis, as discussed in the body of this order.

(D) NYISO is directed to file a compliance filing with the Commission, to be submitted within 15 days of the date of this order, as discussed above in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.