

153 FERC ¶ 61,340
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket Nos. ER15-2059-000
ER15-2059-001

ORDER REJECTING TARIFF REVISIONS

(Issued December 23, 2015)

1. On June 29, 2015, pursuant to section 205 of the Federal Power Act (FPA),¹ the New York Independent System Operator, Inc. (NYISO) filed proposed revisions to the Public Policy Transmission Planning Process (Public Policy Process) portion of its Comprehensive System Planning Process (CSPP).² NYISO states that the proposed revisions, reflected in Attachment Y of its Open Access Transmission Tariff (OATT or Tariff), clarify and enhance its existing Order No. 1000³ Public Policy Process. As discussed below, we reject NYISO's proposed Tariff revisions.

I. NYISO's Filing

2. NYISO states that, on January 1, 2014, it began the 2014-2015 planning cycle for its CSPP in accordance with the requirements in Attachment Y of its OATT, as amended

¹ 16 U.S.C. § 824d (2012).

² Capitalized terms that are not otherwise defined have the meaning specified in the NYISO Tariff and the NYISO Market Administration and Control Area Services Tariff.

³ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

to meet the requirements of Order No. 1000.⁴ NYISO states that, on August 1, 2014, it solicited from interested parties proposed transmission needs driven by public policy requirements in compliance with the Public Policy Process portion of its CSPP. NYISO states that, based on experience thus far in implementing Order No. 1000, NYISO and its stakeholders agreed to a series of proposed reforms to its existing process.⁵

3. NYISO's proposed revisions are intended to require that a transmission developer submit, as applicable, a valid Interconnection Request for the project under Attachment X of the Tariff, or a Study Request for the project pursuant to sections 3.7.1 or 4.5.1 of the Tariff.⁶ NYISO's proposed revisions are also intended to: clarify in what circumstances NYISO would make a filing on behalf of the New York Power Authority;⁷ consolidate cost recovery requirements for the Public Policy Process into a single section of the Tariff;⁸ and clarify what project information NYISO may disclose or must maintain as confidential during the Public Policy Process.⁹

II. Deficiency Letter and NYISO's Response

4. On August 28, 2015, Commission Staff issued a deficiency letter requiring NYISO to provide additional information, including: (i) a demonstration that NYISO's proposed interconnection and transmission milestones are consistent with the Order No. 1000 requirement that a transmission planning region use the same process to evaluate a new transmission facility proposed by a nonincumbent transmission developer as it does for a new transmission facility proposed by an incumbent transmission developer; (ii) an explanation of the transmission expansion and study process under sections 3.7.1 and 4.5.1 of the Tariff; (iii) an explanation of whether an Eligible Customer proposing a transmission expansion under sections 3.7.1 and 4.5.1 of the Tariff may include a developer that is not a Transmission Owner; (iv) an explanation of the study

⁴ The Commission accepted a January 1, 2014 effective date for the Order No. 1000-related revisions to Attachment Y of the NYISO Tariff to provide for their implementation in the current 2014-2015 planning cycle. *See N.Y. Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,044, at P 37 (2014).

⁵ NYISO Transmittal Letter at 2-3.

⁶ *Id.* at 7 n.23.

⁷ *Id.* at 4 n.14.

⁸ *Id.* at 4.

⁹ *Id.* at 9.

process under Attachment X; and (v) a comparison of the differences between sections 3.7.1 and 4.5.1, on the one hand, and Attachment X on the other.

5. NYISO argues that its proposed revisions to the Public Policy Process do not alter its existing transmission expansion and interconnection processes (i.e., in sections 3.7 and 4.5, and Attachment X of its Tariff). NYISO states that it applies the transmission expansion process in sections 3.7 and 4.5 of its Tariff to the incumbent Transmission Owners and that these Tariff sections have existed since its founding.¹⁰

6. NYISO maintains that it treats “all transmission projects proposed to be developed and owned by entities other than existing Transmission Owners as Merchant Transmission Facilities, which are subject to the interconnection requirements in Attachment X of the OATT[.]”¹¹ Noting its existing, distinct transmission expansion and interconnection processes for nonincumbent transmission developers and the incumbent Transmission Owners, NYISO argues that Order No. 1000 did not require changes to existing interconnection requirements.¹²

7. NYISO explains that sections 3 and 4 of its Tariff do not apply to Merchant Transmission Facilities, outlining a 35-step process that incumbent Transmission Owners must follow in order to implement a transmission expansion under the NYISO Tariff. NYISO explains that this process begins with the Transmission Owner’s initial request for transmission service, proceeds through system impact and facilities studies, and culminates in facilities construction.¹³

8. NYISO reiterates that this process will not apply to a transmission developer proposing a Merchant Transmission Facility. NYISO adds that those facilities would proceed through the interconnection process outlined in Attachment X.¹⁴ NYISO details a 28-step process that begins with an interconnection request, followed by a feasibility study, and then proceeds through system impact and facilities studies, and culminates in facilities construction.¹⁵ Finally, NYISO alleges that any differences between the

¹⁰ NYISO Deficiency Response at 4 (citing *Central Hudson Gas & Elec. Corp.*, 88 FERC ¶ 61,138, at P 12 (1999) (“We find . . . that the revised transmission expansion provisions are consistent with or superior to the *pro forma* terms and conditions.”)).

¹¹ *Id.*

¹² *Id.* at 5.

¹³ *Id.* at 8-14.

¹⁴ *Id.* at 14.

¹⁵ *Id.* at 15-19.

two processes reflect Transmission Owners' "existing system knowledge, their role in performing technical studies, and their unique responsibilities under the interconnection process."¹⁶

III. Notice of Filings and Responsive Pleadings

9. Notice of NYISO's June 29, 2015 filing was published in the *Federal Register*, 80 Fed. Reg. 38,444 (2015), with protests and interventions due on or before July 20, 2015. No protests or comments were filed. Exelon Corporation filed a timely motion to intervene.

10. Notice of NYISO's August 28, 2015 deficiency letter response was published in the *Federal Register*, 80 Fed. Reg. 67,737 (2015), with protests and interventions due on or before November 17, 2015. No protests or comments were filed. Public Service Electric and Gas Co. and New York Transmission Owners (NYTO)¹⁷ filed timely motions to intervene. ITC New York Development LLC submitted an out-of-time motion to intervene.

IV. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁸ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant the unopposed motion to intervene out of time filed by ITC New York Development LLC given its interest, the early stage of this proceeding, and the absence of undue prejudice or delay.

B. Substantive Matters

12. We reject NYISO's proposed revisions as unjust, unreasonable, unduly discriminatory, and preferential because NYISO proposes to subject nonincumbent transmission developers to an interconnection process with different requirements than

¹⁶ *Id.* at 21.

¹⁷ NYTOs include Central Hudson Gas & Electric Corp.; Consolidated Edison Co. of New York, Inc.; Long Island Lighting Co. d/b/a Long Island Power Authority; New York Power Authority; New York State Electric & Gas Corp.; Niagara Mohawk Power Corp. d/b/a National Grid; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corp.

¹⁸ 18 C.F.R. § 385.214 (2015).

the interconnection process that applies to incumbent Transmission Owners.¹⁹ For example, the requirements for nonincumbent transmission developers using NYISO's interconnection process in Attachment X include, but are not limited to, submitting an Interconnection Request, participating in all necessary studies (i.e., a Feasibility Study, a System Impact Study, and a Facility Study, each with an associated study deposit), and executing, and/or requesting NYISO to file unexecuted, an interconnection agreement for Commission review and acceptance.²⁰ In contrast, the requirements for Transmission Owners using NYISO's transmission expansion process in sections 3.7 and 4.5 of the NYISO OATT are more limited and flexible; for example, while a System Impact Study and a Facilities Study are required (without an associated study deposit), a Feasibility Study is not.²¹

13. NYISO contends that a Feasibility Study is not necessary for Transmission Owners interconnecting to their own system. According to NYISO, the Transmission Owner would have already conducted the same type of study prior to interconnection, often as part of its local transmission planning process.²² Nevertheless, we find this to be unduly discriminatory because the result would be two interconnection processes that are

¹⁹ Because we reject this fundamental aspect of NYISO's filing, we also find it appropriate to reject NYISO's filing in its entirety.

²⁰ Pursuant to Attachment X, a developer proposing to interconnect a new transmission project must submit an Interconnection Request, a nonrefundable \$10,000 application fee to be divided equally between NYISO and the Connecting Transmission Owner(s), and a refundable \$30,000 study deposit for the Feasibility Study. NYISO, OATT, Attachment X, § 30.3.1 (5.0.0). NYISO then assigns each project a queue position, which will determine the order of performing the interconnection studies, based on the date and time of receipt of the Interconnection Request. *Id.* § 30.4.1 (2.1.0). Attachment X requires the developer of a new transmission project to go through a Feasibility Study (additional \$30,000 deposit), a System Impact Study (additional \$120,000 deposit), and a Facilities Study (the greater of \$100,000 or the project's portion of the estimated monthly cost of conducting the Facilities Study for that Class Year). *Id.* §§ 30.6 (0.0.0), 30.7 (1.0.0), 30.8 (1.0.0).

²¹ In addition, pursuant to sections 3.7 and 4.5 of the NYISO OATT, a Transmission Owner may conduct all or part of the System Impact and Facilities Studies itself and there are no deposit requirements associated with the studies, even if NYISO performs all or part of the studies. NYISO, OATT, §§ 3.7.1, 3.7.4, 4.5.2, 4.5.4 (0.0.0). Attachment X does not, however, grant a nonincumbent transmission developer the option of conducting all or part of its own studies. Both processes require reimbursement to NYISO of its study costs if NYISO performs all or part of the studies.

²² NYISO Deficiency Response at 21.

not comparable in that the incumbent Transmission Owner's internal Feasibility Study was conducted through a process other than NYISO's interconnection process. In addition, pursuant to sections 3.7 and 4.5 of the NYISO OATT, a Transmission Owner does not have deposit requirements associated with the studies that NYISO performs on the Transmission Owner's behalf.²³ Attachment X, however, requires nonincumbent transmission developers to pay study deposits. Accordingly, we find that NYISO's proposal is unjust, unreasonable, unduly discriminatory, and preferential.²⁴

The Commission orders:

NYISO's proposed Tariff revisions are hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²³ NYISO, OATT, §§ 3.7.1, 3.7.4, 4.5.2, 4.5.4 (0.0.0).

²⁴ We note that, in a related proceeding in Docket No. ER13-102-007, the Commission finds that the two separate and different interconnection processes for similarly situated entities that propose transmission solutions in NYISO's CSPP for Order No. 1000 reliability projects is unjust and unreasonable and unduly discriminatory and preferential. *N.Y. Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,341 (2015). This related proceeding may provide guidance on how NYISO might design its interconnection process for public policy transmission projects.