UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

New York Independent System Operator, Inc. Docket No. ER05-727-000

ORDER ACCEPTING TARIFF REVISIONS, WITH MODIFICATION

(Issued May 24, 2005)

1. In this order, we grant a request by the New York Independent System Operator, Inc. (NYISO) to revise its open access transmission tariff (OATT) and its Market Administration and Control Area Services Tariff (Services Tariff) to implement rules for controllable transmission facilities or scheduled lines, and to establish the Cross-Sound Cable (CSC) as NYISO's first scheduled line. However, we order a modification to the proposed tariff revisions, as discussed below, to insert a term, defined later, that was inadvertently omitted from NYISO's Services Tariff. This order benefits customers by allowing NYISO to implement rules for scheduled lines.

Filing

2. On March 25, 2005, NYISO filed a request to revise its OATT and Services Tariff in connection with the scheduled use of the CSC. NYISO's proposed tariff revisions would enable it to: (1) put in place additional Proxy Generator Buses representing the interfaces between the New York Control Area (NYCA) and neighboring regional transmission organizations (RTOs); (2) schedule, on a facility-by-facility basis, certain controllable transmission facilities separately from the existing Proxy Generator Buses that each represent the entire transfer capability between the NYCA and a neighboring Control Area; and (3) implement the CSC as NYISO's first scheduled line. NYISO originally requested that the tariff revisions take effect on the earliest feasible date between May 24, 2005 and June 30, 2005; by letter dated May 23, 2005, however, NYISO advised the Commission that it expects its software modifications to be completed on approximately June 8, 2005.

3. Notice of NYISO's filing was published in the *Federal Register*, 70 Fed. Reg. 18,388 (2005), with protests and interventions due on or before April 15, 2005. A timely motion to intervene and limited protest was filed by Long Island Power Authority and its subsidiary LIPA (collectively, LIPA). A timely motion to intervene and

comments was filed by Indicated New York Transmission Owners. [1] A late-filed motion to intervene was filed by Cross-Sound Cable Company, LLC (Cross-Sound Cable). NYISO filed an answer to Indicated New York Transmission Owners' comments and to LIPA's limited protest.

Discussion

A. Procedural Issues

4. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Furthermore, we will grant Cross-Sound Cable's motion to intervene out of time, given its interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

5. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept NYISO's answer because it has provided information that assists us in our decision-making process.

B. Real Time Dispatch (RTD)

6. Indicated New York Transmission Owners support NYISO's tariff proposal in main part, but argue that it introduced an inadvertent error into the Services Tariff. They offer proposed language to fix this problem and state that NYISO has authorized them to state that NYISO agrees that the problem needs to be fixed and that NYISO does not object to the suggested language offered to accomplish this.

7. In this regard, Indicated New York Transmission Owners state that Sheet No. 335B of NYISO's proposed revisions to its Services Tariff, which describes pricing rules for non-competitive proxy generator buses, provides that, when proposed interchange schedule changes pertaining to increases in Real-Time Market Net Exports from NYCA to the Control Area where the Non-Competitive Proxy Generator Bus is located would exceed the Ramp Capacity limit imposed by the ISO for: [[2]]

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[1] Indicated New York Transmission Owners are: Central Hudson Gas & Electric Corporation; Consolidated Edison of New York, Inc.; New York Power Authority; New York State Electric & Gas Corporation; Rochester Gas and Electric Corporation; Orange and Rockland Utilities, Inc.; and Niagara Mohawk Power Corporation.

[2] *See* Fifth Revised Sheet No. 335A, Services Tariff.

> the Interface between the NYCA and the Control Area in which that Non-Competitive Proxy Generator Bus is located, the Real-Time [Locational Based Marginal Prices or LBMP] at the Non-Competitive Proxy Generator Bus will be the lower of (i) the [Real-Time Commitment]-determined price at the Non-Competitive Proxy Generator Bus or (ii) the higher of the LBMP determined by for the Non-Competitive Proxy Generator Bus or the Day-Ahead LBMP determined by [Security Constrained Unit Commitment] for the Non-Competitive Proxy Generator Bus. [[3]]

Indicated New York Transmission Owners state that the language quoted above inadvertently omits the term "RTD," *i.e.*, Real-Time Dispatch, which previously had been included on that sheet. It suggests that item (ii) be revised to read "the higher of the LBMP determined by RTD for the Non-Competitive Proxy Generator Bus . . ." [4]

8. NYISO states that it appreciates the support expressed by the Indicated New York Transmission Owners and agrees that on Sheet No. 335B of the Services Tariff it inadvertently deleted the term "RTD." NYISO proposes to replace the inadvertently omitted term in a compliance filing.

9. We agree that this change should be made and find reasonable NYISO's proposal to accomplish this by submitting, in a compliance filing, a substitute tariff sheet.

C. **Transmission Reservation Priorities**

10. While LIPA otherwise supports NYISO's proposal, LIPA filed a limited protest arguing that NYISO's proposal creates a problem with regard to the procedures proposed to deal with transactions at the CSC Proxy Generator Bus in the event of scheduling conflicts. LIPA argues that these procedures need revision to account for transmission service over the CSC. Specifically, LIPA argues that transmission service over the CSC should have priority over other bids and that the proposed procedure reducing the schedules of all parties on a *pro rata* basis, if the amount of bid at the CSC Proxy Generator Bus exceeds available capacity, does not properly recognize advance reservation priorities (*i.e.*, reservations for transmission service over the CSC). LIPA argues that, in the event that bids are made offering equal prices, priority should be given to the bid made using transmission service over the CSC.

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[3] *See* Proposed Revised Sheet No. 335B, Services Tariff.

[4] Indicated New York Transmission Owners Comments at 3.

11. In addition, LIPA states that its request is consistent with the Commission's findings in the *Cross-Sound Cable* cases, [5] where the Commission found that physical rights associated with the CSC could coexist with transmission rights assigned by ISO-New England, Inc. (ISO-NE). Further, LIPA contends that the result of NYISO's proposal will be that, in the event of economic merit ties between bidders, ISO-NE and NYISO will allocate the same flows on different bases, thereby causing a mismatch. LIPA contends that such a mismatch: (1) devalues the merchant transmission rights that were offered and awarded by Cross-Sound Cable; (2) adversely affects the secondary market releases of unused capacity over the CSC; and (3) results in the inefficient utilization of the CSC.

12. To address its concerns, LIPA requests that the Commission order that the following language be added to existing section 2.0 of NYISO's OATT:

> Where the NYISO is unable to schedule all economic merit transactions at the Proxy Generator Bus associated with the Cross-Sound Scheduled Line, any ties within economic merit shall be decided based on the transmission priority rights of the [transmission service over the CSC]. In the case of a tie within a category of transmission service: (i) transactions within a given sub-category of non-firm transmission priority shall be scheduled on the basis of their Real-Time Energy Market timestamp order, and (ii) transactions with firm transmission priority shall be scheduled on a *pro rata* basis.
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> The application of transmission priorities in the event of an economic merit order tie only apply with respect to bids for transactions utilizing the Cross-Sound Scheduled Line.

13. In its response, NYISO requests that the Commission reject LIPA's proposed revisions. NYISO argues that it has already undertaken all reasonable efforts to accommodate transactions over the CSC and that it would be unreasonable to require it to implement expensive additional steps that would not benefit customers. In addition, NYISO states that new rules and operating procedures would require complicated and expensive software upgrades and manual processes, some of which are necessary only to accommodate the unique requirements of the CSC. Finally, NYISO estimates that it would cost approximately $2.2 million to implement LIPA's proposed tariff revisions.

14. NYISO states that LIPA is not correct that NYISO does not respect the priority to be afforded transmission service over the CSC. NYISO explains that, to ensure that it does not interfere with the scheduling rules that apply in ISO-NE, NYISO will implement

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[5] *Cross-Sound Cable Company, LLC*, 106 FERC ¶ 61,116 at P 24 (2004), *order on reh'g*, 109 FERC ¶ 61,223 at P 28 (2004) (*Cross-Sound Cable*).

a two-part operating protocol that will apply to transactions over the CSC. NYISO states that under the first part of the protocol, it has determined that, for scheduling purposes, it will not derate the CSC based on system conditions in New England. Rather, NYISO will leave these operating decisions to ISO-NE. According to NYISO, this protocol will ensure that, when the capability of the CSC must be reduced due to system conditions in New England or due to problems with the CSC itself, the rules that will be applied will be ISO-NE's rules, not NYISO's. In addition, NYISO explains that, in the event that a reduction in schedules is necessary, it will conduct Inter-Control Area check-out with ISO-NE based on a schedule that assumes that all transactions over the CSC will flow. ISO-NE will apply the rules set forth in its OATT to determine the transactions that will flow.

15. NYISO further states that, under the second part of the operating protocol, NYISO, for scheduling purposes, will not derate the CSC based on system conditions in New York, except when derating the CSC is necessary to avoid or respond to a system emergency in New York. Under these unusual circumstances, NYISO should determine which transactions have transmission priority because the transmission limitation is in New York, rather than in New England or on the CSC itself.

16. NYISO further states that holders of firm advance reservations over the CSC are not entitled to require NYISO to evaluate their transaction using ISO-NE tariff rules to address a New York transmission limitation. Indeed, the best method of avoiding a mismatch in schedules between NYISO and ISO-NE may be for ISO-NE to defer to NYISO's scheduling determination when system conditions in New York are the reason that schedules over the CSC must be reduced. This result would appropriately parallel NYISO's decision that it will defer to ISO-NE when CSC schedules need to be reduced due to system conditions in New England or limitations on the CSC, itself.

17. Finally, NYISO states that if it is forced to adopt the LIPA tariff proposals, then LIPA or Cross-Sound Cable should be required to pay all costs incurred by NYISO to implement the ISO-NE "tiebreaker" measures in New York.

18. The Commission accepts NYISO's proposed tariff revisions, to become effective, as requested, on the date NYISO's software is operational, which is currently expected to be on or about June 8, 2005. First, the Commission finds that NYISO's proposed tariff revisions, along with the associated software modifications, will allow for the release of unused capacity on the CSC. This will enable third parties to access such capacity through the secondary market. Second, the Commission further finds that it is appropriate to use NYISO's tariffs and market rules to determine scheduling transmission on the New York transmission grid. Third, the Commission further finds that NYISO's

proposal to treat the Proxy Generator Bus associated with the CSC differently from all of its other external Proxy Generator Buses for scheduling purposes as a reasonable accommodation of the special needs of the CSC, a merchant transmission facility that connects two different ISOs.

19. Further, we concur with NYISO that the circumstance LIPA is concerned about (where the amount bid at the CSC Proxy Generator Bus exceeds available capacity and the competing bids are equal) is likely to occur only rarely, if at all. We find that the two-part protocol proposed by NYISO to address such a situation is reasonable because it establishes a rational and objective basis for scheduling when reductions are necessary, and we decline to impose the additional steps and associated costs suggested by LIPA to address this contingency.

20. LIPA is concerned that different scheduling protocols on ISO-NE and NYISO will adversely impact transmission rights on the CSC. The Commission disagrees. One of the fundamental criteria for allowing negotiated rates for merchant transmission projects is the creation of tradable firm secondary transmission rights. As we stated in the order approving the CSC, "a vibrant secondary market for firm transmission rights in TransEnergie's proposed interconnector [the CSC] will enhance competition in both the New York and New England markets."[6] Because NYISO has not yet had operating protocols addressing the release of transmission capacity on the CSC, this fundamental goal has not yet been met. NYISO's proposal will finally allow for a secondary market to develop for transmission rights on the CSC. The Commission finds that the emergence of a secondary market outweighs concerns that scheduling protocols on either end of the CSC may differ. However, should any market participant or either the NYISO or ISO-NE Market Monitors find that, in fact, the differing protocols create problems, based on actual operations, we will reconsider this decision at that time.

<u>The Commission orders</u>:

(A) NYISO's requested tariff revisions are hereby accepted for filing, as modified in the body of this order, to become effective, as requested, on the date NYISO's software is operational, which is currently expected to be on or about June 8, 2005. In its compliance filing ordered below, NYISO shall advise the Commission of the date its software became operational.

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[6] *TransEnergie U.S., Ltd.*, 91 FERC ¶ 61,230 at 61,839-40 (2000).

(B) NYISO shall, within 30 days of the date of issuance of this order, file a revised Tariff Sheet No. 335B to its Services Tariff, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.