

133 FERC ¶ 61,208  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket No. ER10-424-001

ORDER GRANTING AMENDED REQUEST FOR WAIVER

(Issued December 10, 2010)

1. On February 12, 2010, the Commission issued an order granting in part and deferring in part a request filed by the New York Independent System Operator, Inc. (NYISO) for waivers from certain Open Access Same-Time Information Systems (OASIS) posting requirements.<sup>1</sup> The Commission deferred action on certain of the requested waivers because they were deemed by the Commission to be closely correlated with the outcome of then-pending Docket No. RD10-5-000.<sup>2</sup> On October 12, 2010, NYISO filed a motion to amend its waiver request with respect to the deferred waivers (October 12, 2010 Motion).<sup>3</sup> In this order, the Commission grants the amended waiver request, as discussed below.

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<sup>1</sup> *New York Independent System Operator*, 130 FERC ¶ 61,104 (2010) (February 12, 2010 Order).

<sup>2</sup> In Docket No. RD10-5-000, NERC petitioned the Commission for approval of NERC's interpretations of two FERC-approved NERC Reliability Standards related to the calculation of Available Transfer Capability (ATC).

<sup>3</sup> The February 12, 2010 Order deferred 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) (2010).

## I. Background

2. On December 15, 2009, NYISO filed a request for waivers from certain OASIS posting regulations<sup>4</sup> adopted by the Commission in Order Nos. 676, 889, and 890 (December 15, 2009 Request).<sup>5</sup> NYISO argued that the OASIS requirements at issue are inapplicable to NYISO's financial reservation transmission service model and therefore should be waived.

3. In its December 15, 2009 Request, NYISO stated that it features a financial reservation transmission service model that 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 contemplated in Order No. 890. Therefore, NYISO argued that many of the OASIS posting requirements do not apply to NYISO's financial transmission rights system.

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<sup>4</sup> NYISO requested 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) (2010). NYISO also requested 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* Open Access Transmission Tariff (OATT), 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 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 Wholesale Electric Quadrant (WEQ) OASIS standards.

<sup>5</sup> *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).

4. NYISO argued in its December 15, 2009 Request that waiver of certain regulations that concern, *inter alia*, the calculation and posting of ATC,<sup>6</sup> specifically, 18 C.F.R. §§ 37.6(b)(1), 37.6(b)(2)(i-ii), and 37.6(b)(3)(i-iii) (2010) (ATC Regulations),<sup>7</sup> was warranted because the information conveyed by NYISO's ATC postings is different than what is conveyed in traditional systems. NYISO stated that ATC postings in New York are advisory projections that are used only as an instantaneous indication of the existence of uncongested transmission paths. NYISO explained that it does not calculate ATC values for various time intervals further in the future than one day ahead, because its FERC-approved market design does not allow customers to schedule transactions or reserve transmission service more than one day ahead.

5. In the February 12, 2010 Order, the Commission found that most of the posting regulations at issue were incompatible with the transmission services provided under NYISO's current tariff and granted the requested waivers. However, the Commission found that NYISO's request for waiver of the ATC Regulations was closely correlated with the outcome of Docket No. RD10-5-000, then pending before the Commission.<sup>8</sup> Therefore the Commission deferred action on the request for waiver of these regulations.

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<sup>6</sup> The NYISO tariff defines ATC as a "measure of the Transfer Capability remaining in the physical transmission network for further commercial activity over and above already committed uses" and as "Total Transfer Capability, less Transmission Reliability Margin, less the sum of existing transmission commitments, (which includes retail customer service) less the Capacity Benefit Margin." NYISO OATT, 1.1 OATT Definitions – A, 0.0.0.

<sup>7</sup> 18 C.F.R. § 37.6(b)(1) provides that the ATC on the Transmission Provider's system and the total transfer capability (TTC) of that system "shall be calculated and posted for each Posted Path as set out in this section." 18 C.F.R. § 37.6(b)(2)(i-ii) sets forth how ATC and TTC calculations shall be performed and when data used to calculate ATC, TTC, capacity benefit margin (CBM), and transmission reliability margin (TRM) must be made publicly available. 18 C.F.R. § 37.6(b)(3)(i-iii) provides that the "ATC, TTC, CBM, and TRM for all Posted Paths must be posted in megawatts by specific direction and in the manner prescribed in this subsection." "Posted Path" is defined as: "Any control area to control area interconnection; any path for which service is denied, curtailed or interrupted for more than 24 hours in the past 12 months; and any path for which a customer requests to have ATC or [Total Transfer Capacity] posted." 18 C.F.R. § 37.6(b)(1)(i) (2010).

<sup>8</sup> February 12, 2010 Order, 130 FERC ¶ 61,104.

6. On December 2, 2009, in Docket No. RD10-5-000, NERC had petitioned the Commission for approval of NERC's interpretations of two Reliability Standards related to the calculation of ATC: 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.<sup>9</sup> NERC stated, in its December 2, 2009 interpretation request, that NYISO had 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.<sup>10</sup> As relevant here, NERC found that NYISO has multiple ATC Paths that it asserted are subject to the calculation and recalculation requirements of MOD-001-1 Requirements R2 and R8, and that ATC is defined in the NYISO tariff in the same manner in which NERC defines it, making it difficult to conclude that NYISO's “advisory” ATC is not the same as ATC.

7. In its comments in Docket No. RD10-5-000, NYISO stated that it supports NERC's interpretation of MOD-001-1 so long as it is understood to allow NYISO to take future steps to clarify that it need not calculate ATC for time periods during which it is not possible to schedule transactions under the NYISO system. NYISO argued that, unlike transmission providers in physical reservation systems, NYISO does not calculate ATC more than one day ahead for most interfaces. NYISO also argued that, in determining that it was “difficult to conclude” that NYISO's ATC was “advisory” in nature, NERC placed too much emphasis on the NYISO tariff's definition of “ATC.” NYISO stated that the NYISO tariff definition of ATC closely tracks the *pro forma* OATT definition but does not fully reflect the advisory nature of most NYISO ATC calculations. NYISO also stated that it is planning to initiate a stakeholder process to update the definition of ATC in the NYISO tariff to accurately reflect its advisory nature.

8. On September 16, 2010, the Commission approved NERC's Interpretations.<sup>11</sup> The Commission agreed with NERC that NYISO must comply with MOD-001-1 Requirements R2 and R8 to calculate and recalculate ATC for those paths that fit within

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<sup>9</sup> *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 Dec. 2, 2009).

<sup>10</sup> NERC also stated that NYISO requested clarification whether the Other Services Firm (OS<sub>F</sub>) term in MOD-029-1, Requirement R5 and the Other Services Non-Firm (OS<sub>NF</sub>) term in MOD-029-1, Requirement R6 could be calculated using Transmission Flow Utilization in the determination of ATC.

<sup>11</sup> *North American Electric Reliability Corp.*, 132 FERC ¶ 61,239 (2010) (September 16, 2010 Order).

the NERC definition of ATC Paths.<sup>12</sup> The Commission stated that “NYISO’s internal interfaces are not ATC Paths because ATC is not calculated and none of the categories of ‘Posted Path’ in the Commission’s regulations apply,” but recognized that “NYISO’s external interfaces are ATC Paths, because, whether or not ATC is calculated by NYISO, they are ‘a control area to control area interconnection’ within the Posted Path definition.”<sup>13</sup> The Commission also noted in Paragraph 26 of the order that, to the extent needed for compliance with MOD-001-1, NYISO should account for the impacts of its internal congestion on its external ATC Paths as accurately as possible, so that to the extent that NYISO would have to calculate internal flows in order to fulfill its obligation to calculate external flows, it would be required to do so.<sup>14</sup>

9. In light of the September 16, 2010 Order, NYISO submitted the October 12, 2010 Motion to amend its waiver request to apply only to its internal interfaces. NYISO states in the October 12, 2010 Motion that, given the Commission’s guidance in the September 16, 2010 Order, it no longer seeks waiver with respect to external interfaces. NYISO also maintains that the reasoning of the September 16, 2010 Order supports its request for waiver of the relevant regulations with respect to its internal interfaces.

## **II. Notice of Filing**

10. Public notice of NYISO’s October 12, 2010 Motion was issued on October 15, 2010, with interventions and protests due on or before November 2, 2010. None was filed.

## **III. Discussion**

11. NYISO has represented that its financial reservation transmission service model differs from the *pro forma* OATT physical reservation system contemplated in Order No. 890 and, therefore, many of the OASIS posting requirements do not apply to NYISO’s system. NYISO argued in its December 15, 2009 Request that it should be granted waiver with regard to ATC because the information conveyed by NYISO’s ATC postings is different from what is conveyed in traditional systems. In Docket No. RD10-5-000, NYISO also asserted that there is a discrepancy between the NYISO tariff’s definition of ATC and the “advisory” nature of ATC in the NYISO system in practice. In its

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<sup>12</sup> NERC defines ATC Paths as: “Any combination of Point of Receipt and Point of Delivery for which ATC is calculated; any Posted Path.” NERC Petition, at p. 8.

<sup>13</sup> September 16, 2010 Order, 132 FERC ¶ 61,239, at P 23-24.

<sup>14</sup> *Id.* P 26.

September 16, 2010 Order, the Commission acknowledged this inconsistency between the NYISO tariff and NYISO's operations, and stated that, to the extent that NYISO's tariff does not reflect its actual mode of operation, NYISO is required to take steps to ensure that its tariff and its actual operations are in harmony. However, the Commission also found that "NYISO's internal interfaces are not ATC Paths because ATC is not calculated and none of the categories of 'Posted Path' in the Commission's regulations apply."

12. Relying on the Commission's finding in the September 16, 2010 Order that NYISO's internal interfaces are not ATC Paths, NYISO now seeks waiver of the ATC regulations with respect only to its internal interfaces. Based on the Commission finding in the September 16, 2010 Order that NYISO's internal transmission interfaces are not ATC Paths, we will grant waiver of the ATC Regulations and its tariff with respect to NYISO's internal interfaces to the extent necessary, subject to the requirement discussed above to take steps to modify its tariff and subject to the clarification discussed below.

13. The Commission also reaffirms the clarification in paragraph 26 of the September 16, 2010 Order, which states that, to the extent needed for compliance with MOD-001-1 of the NERC Reliability Standards, NYISO should account for the impacts of its internal congestion on its external ATC Paths as accurately as possible.<sup>15</sup> Thus, to the extent that NYISO has to calculate internal flows in order to fulfill its obligation to calculate external flows, it is required to do so.<sup>16</sup>

The Commission orders:

NYISO's amended request for waivers of certain OASIS posting requirements is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*