

131 FERC ¶ 61,074  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket No. ER10-811-000

ORDER REJECTING PROPOSED TARIFF SHEETS

(Issued April 27, 2010)

1. In this order we reject the New York Independent System Operator, Inc.'s (NYISO) proposed tariff sheets eliminating Network Integration Transmission Service (NITS) from its tariffs.

**I. Background**

2. On February 26, 2010, pursuant to section 205 of the Federal Power Act,<sup>1</sup> the NYISO submitted proposed revisions to its Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff) to eliminate provisions related to NITS.<sup>2</sup> Specifically, NYISO proposes to remove Part III of the OATT and all related references to NITS with the exception of certain provisions which it proposes to revise and retain by moving them to other provisions of the OATT,<sup>3</sup> and amend other provisions of the OATT, including attachments and rate schedules to eliminate references to NITS. NYISO also proposes to amend the Services Tariff to eliminate references to NITS.

3. In support of its proposal, NYISO states that NITS was included in its OATT as a result of a Commission requirement that both Point-to-Point and NITS *pro forma* tariff

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> See Appendix for list of rejected tariff sheets.

<sup>3</sup> NYISO is proposing to move the OATT reference to Load Shedding, currently found in Part III of the OATT, to Section 13.6 of the OATT, and to amend Section 19 E of the OATT and Section A.1.1 of OATT Attachment Y.

provisions had to be included in its OATT,<sup>4</sup> and that no market participant has ever sought NITS under the NYISO OATT because NITS is the more cumbersome of the two. NYISO states that this is because the principal advantage of the *pro forma* form of NITS is also available under the NYISO OATT through its less cumbersome bid-based, financial rights version of Point-to-Point transmission service without requiring the level of administrative complexity found in NITS. NYISO contends that it provides the same financial reservation-based transmission service using Transmission Congestion Contracts (TCCs) under the Point-to-Point service of its OATT that renders NITS unnecessary.

4. NYISO states that, although NITS has been unused, until recently NYISO had little reason to seek to remove it from its tariff. However, it states that it now seeks elimination of NITS because new rules being developed by the North American Energy Standards Board (NAESB) would require NYISO to commit resources to develop new online functionality in support of NITS, including a potentially expensive software upgrade. NYISO further states that it and a large majority of its stakeholders have decided that the cost of adding this new electronic functionality in order to continue maintaining NITS far surpasses any benefits of retaining the service. NYISO notes that, in the past, it sought and was granted waivers of other NAESB requirements, but that because of the proposed NAESB standards, a waiver would be less compelling if it continues to provide this service. Accordingly, NYISO states that it believes that its bid-based Point-to-Point financially-based transmission service, coupled with the regular availability of TCCs longer than 6-months' duration, will continue to result in NYISO's provision of transmission service that is consistent with or superior to the long-term physically firm transmission service available under the *pro forma* OATT. NYISO also asserts that, in 2008, the Commission held that its form of service reservation satisfied the Order No. 890 "consistent with or superior to" standard,<sup>5</sup> even though NYISO made clear in its compliance filings that NITS had been unused and would likely be the target for elimination in future filings.<sup>6</sup>

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<sup>4</sup> See *Central Hudson Gas & Electric Corp., et al.*, 86 FERC ¶ 61,062, *order on reh'g.*, 88 FERC ¶ 61,138 (1999).

<sup>5</sup> See *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 (2009), *order on reh'g.*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>6</sup> NYISO February 26, 2010 Filing Transmittal Letter at 4. (*Citing N.Y. Indep. Sys. Operator, Inc.*, 123 FERC ¶ 61,134, at P 13 (2008)).

## II. Public Notice

5. Notice of NYISO's filing was published in the *Federal Register*, 75 Fed. Reg. 11,162 (2010), with interventions and protests due on or before March 19, 2010.

6. Motions to intervene were filed by New York Association of Public Power (NYAPP) and the New York Transmission Owners (TOs).<sup>7</sup> NYAPP filed a protest of NYISO's proposal. A late-file motion to intervene was submitted by New York Municipal Power Agency (NYMPA). On April 13, 2010, NYISO filed an answer to NYAPP's protest.

## III. Protest and Answer

7. In its protest, NYAPP states that the inclusion of NITS in the NYISO OATT is not simply attributable to a wide-sweeping Commission policy that all *pro forma* tariff provisions be included, but to a specific finding in the orders addressing the formation of NYISO that NYISO had failed to demonstrate that excluding network service from the NYISO OATT was consistent with or superior to the *pro forma* tariff terms and conditions.<sup>8</sup> NYAPP states that the Commission found that the absence of long-term firm service at a fixed price provided no avenue for customers to obtain long-term rights and, therefore, directed the reinstatement of the *pro forma* long-term firm tariff services. NYAPP states that the Commission approved the NYISO OATT with the understanding that long-term transmission congestion contracts (TCCs)<sup>9</sup> would be available by early 2000 but, ten years later, these long-term TCCs still remain unavailable to non-historical loads.<sup>10</sup> NYAPP notes that in accepting the NYISO proposal for long-term TCCs for historic loads, the Commission ordered a compliance filing to expand the availability of long-term firm transmission rights to load serving entities using non-historic points of

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<sup>7</sup> Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

<sup>8</sup> NYAPP Protest at 3. (*Citing Central Hudson Gas & Electric Corp., et al.*, 86 FERC ¶ 61,062 at 61,207-61,208).

<sup>9</sup> The NYISO OATT includes provisions for TCCs which, like firm transmission rights, are intended to protect the holders from congestion costs when the system is constrained. *See* New York Independent System Operator, Inc., FERC Electric Tariff, Original Volume No. 1, Fifth Revised Sheet No. 561, Attachment M (Sale and Award of Transmission Congestion Contracts TCCs).

<sup>10</sup> NYAPP Protest at 3.

injection and withdrawal.<sup>11</sup> NYAPP states that this compliance filing is due in April 2010 and contends that removing NITS one month prior to NYISO's providing long-term firm transmission rights to load serving entities using non-historical points of interjection and withdrawal would be shortsighted and inequitable. NYAPP asserts that such action would hinder NYISO's ability to comply with the requirements of Order Nos. 681 and 681-A,<sup>12</sup> and that NYISO has failed to demonstrate how eliminating NITS is consistent with or superior to the *pro forma* tariff.

8. NYAPP also states that the proposed NAESB rules, which NYISO indicates would require NYISO to add electronic functionality to facilitate the administration of NITS, have not been approved, and NYISO has not even provided a reference to the proposed NAESB rules that NYISO points to as the impetus for this drastic tariff revision. Further, NYAPP contends that NYISO has failed to provide an explanation or quantification of how the elimination of NITS is justified, and suggests that if implementing the NAESB standards would be unduly burdensome, NYISO should be required to demonstrate that through a request for the waiver of the standards, prior to submitting tariff revisions to completely eliminate NITS.

9. Finally, NYAPP argues that NYISO does not represent the findings of the Commission in context when claiming that, in 2008, the Commission held that its form of service reservation satisfied the Order No. 890 "consistent with or superior to" standard, even though NYISO made clear in its compliance filings its intent to target NITS for elimination. NYAPP asserts that the Commission made no such general finding and made no mention of NYISO's intent to subsequently file to eliminate NITS.<sup>13</sup> NYAPP also states that the Commission noted that both the Point-to-Point and NITS provisions already had been substantially revised to reflect that these services are offered in a Locational Based Market Pricing (LBMP) context.

10. NYISO filed an answer to NYAPP's protest reiterating its justifications for removing NITS from its OATT and Services Tariff. NYISO contends that, contrary to NYAPP's argument, its proposal to eliminate NITS is consistent with Commission precedent, arguing that the Commission, in a July 1999 order,<sup>14</sup> accepted NYISO's

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<sup>11</sup> *Citing N.Y. Indep. Sys. Operator, Inc.*, 123 FERC ¶ 61,044 (2008).

<sup>12</sup> NYAPP Protest at 5. (*Citing Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226, *reh'g denied*, Order No. 681-A, 117 FERC ¶ 61,201 (2006)).

<sup>13</sup> NYAPP Protest at 8.

<sup>14</sup> *Id.* at 3. (*Citing Central Hudson Gas & Elec. Corp.*, 88 FERC ¶ 61,138 (1999)).

compliance filing that contained Point-to-Point and NITS provisions that, of particular importance here, provided for transmission customers to obtain firm service in exactly the same way. NYISO states that it has offered TCCs with a duration of one year and, contrary to what NYPA implies, has also complied with the Commission directive to offer TCCs with longer durations (although it states that those products were eventually discontinued largely due to then-limited customer interest). In short, it asserts, Fixed Price TCCs are the instrument through which the cost of financial transmission reservation is fixed, and the transmission service firmed up, regardless of whether the customer chooses Point-to-Point service or NITS. It asserts that removing NITS would not reduce NYISO customers' ability to obtain long-term firm transmission service because the exact same "firming" mechanism will continue to be available to Point-to-Point transmission service customers.

11. NYISO also asserts that, contrary to NYAPP's arguments, NYISO's proposal is fully supported and consistent with Commission actions permitting NYISO to remove other "vestigial" OATT provisions without relying on extensive documentary evidence.<sup>15</sup>

12. NYISO further argues that, contrary to NYAPP's claim, removal of NITS will have no impact on its compliance filing to be made this April 2010 to provide long-term transmission rights to load serving entities using non-historical points of interjection and withdrawal. NYISO states that, like all of its previously accepted long-term transmission rights submissions, this compliance filing will not tie eligibility to obtain such rights to a customer electing to take NITS.

13. Finally, NYISO repeats its concern that leaving NITS in the OATT would require it to track NITS-related policy developments, and NYISO further raises the issue of tracking similar developments at the North American Electric Reliability Corporation (NERC), and the Commission.

#### **IV. Commission Determination**

##### **A. Procedural Matters**

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>16</sup> the timely, unopposed motion to intervene serves to make NYAPP and the TOs parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and

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<sup>15</sup> In response to NYAPP's argument that it is unclear which NAESB proposals serve as the initiative for NYISO's proposal to remove NITS from its tariffs, NYISO cites: [http://www.naseb.org/weq\\_oasis.asp](http://www.naseb.org/weq_oasis.asp).

<sup>16</sup> 18 C.F.R. § 385.214 (2009).

Procedure,<sup>17</sup> the Commission will grant NYMPA's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>18</sup> prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept NYISO's answer because it has provided information that assisted us in our decision-making process.

### **B. Substantive Ruling**

16. The Commission will reject NYISO's proposed tariff sheets eliminating NITS from its OATT and Services Tariff. We find that eliminating NITS has not been shown to be just and reasonable.

17. Even though TCCs may be used in relation to either Point-to-Point service or NITS, Point-to-Point service is inherently different from NITS. NITS was intended to allow Network Customers to efficiently and economically utilize Network Resources (as well as other non-designated generation resources) to serve their Network Load located in, as relevant here, the New York Control Area.<sup>19</sup> Thus, as NYISO notes, NITS allows a customer to schedule service from a single generator to a variety of loads, or from a variety of generators to a single load without securing physical transmission reservations for each transaction.<sup>20</sup> In contrast, Point-to-Point transmission service provides for the reservation and transmission of Capacity and Energy on either a firm or non-firm basis from particular Point(s) of Receipt to particular Point(s) of Delivery.<sup>21</sup>

18. Further, while NYISO contends that other provisions of its OATT render NITS unnecessary, the Commission has required that all public utilities that own, operate or control interstate transmission facilities to offer network transmission services, and we

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<sup>17</sup> 18 C.F.R. § 385.214(d) (2009).

<sup>18</sup> 18 C.F.R. § 385.213(a)(2) (2009).

<sup>19</sup> See New York Independent System Operator, Inc., FERC Electric Tariff, First Original Volume No. 1, First Revised Sheet No. 162.

<sup>20</sup> NYISO February 26, 2010 Filing Transmittal Letter at 1-2.

<sup>21</sup> See New York Independent System Operator, Inc., FERC Electric Tariff, First Original Volume No. 1, First Revised Sheet No. 45.

are not persuaded to adopt a different policy here.<sup>22</sup> That customers do not currently avail themselves of NITS does not mean that the service should be unavailable.<sup>23</sup>

19. Moreover, NYISO has not (1) provided a supporting cost estimate of complying with the specific NAESB or NERC standards under development, should they be approved, or (2) provided a timeframe in which those NAESB or NERC standards would be expected to become effective, in the case of eventual approval. NYISO has not provided sufficient justification to warrant the removal of NITS from its OATT.<sup>24</sup>

The Commission orders:

NYISO's proposed tariff sheets listed in the Appendix to this order are hereby rejected.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>22</sup> *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, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 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).

<sup>23</sup> *See New England Power Pool*, 83 FERC ¶ 61,045, at 61,231 n.30 (1998) (requiring NEPOOL to reinstate point-to-point service as an option for transmission service; "the choice must be the customer's to make, not the transmission provider's to dictate").

<sup>24</sup> The Commission, by this order, does not prejudge how it would address an appropriately supported request that may be filed in the future for an extension of time or temporary waiver from compliance with NAESB standards.

## **Appendix**

### **New York Independent System Operator, Inc. FERC Electric Tariff Original Volume No. 1**

#### **Rejected Tariff Sheets**

Tenth Revised Sheet No. 22  
Fifth Revised Sheet No. 35  
Seventh Revised Sheet No. 38A  
Seventh Revised Sheet No. 39  
Fifth Revised Sheet No. 44  
Sixth Revised Sheet No. 51A  
Sixth Revised Sheet No. 52  
Sixth Revised Sheet No. 54  
Third Revised Sheet No. 73  
First Revised Sheet No. 74  
Third Revised Sheet No. 75  
First Revised Sheet No. 76  
First Revised Sheet No. 77  
First Revised Sheet No. 86  
Sixth Revised Sheet No. 111  
First Revised Sheet No. 112  
Fourth Revised Sheet No. 114  
First Revised Sheet No. 118  
Third Revised Sheet No. 122  
Second Revised Sheet No. 140B.02  
Fourth Revised Sheet No. 144  
Third Revised Sheet No. 144A  
Fifth Revised Sheet No. 145  
First Revised Sheet No. 154  
First Revised Sheet No. 161  
Second Revised Sheet No. 162  
Second Revised Sheet No. 163  
Second Revised Sheet No. 164  
First Revised Sheet No. 165  
Second Revised Sheet No. 166  
Third Revised Sheet No. 167  
Second Revised Sheet No. 167A  
First Revised Sheet No. 168  
First Revised Sheet No. 169

**New York Independent System Operator, Inc.  
FERC Electric Tariff  
Original Volume No. 1**

**Rejected Tariff Sheets (continued)**

Third Revised Sheet No. 170  
First Revised Sheet No. 170A  
First Revised Sheet No. 170B  
Fourth Revised Sheet No. 171  
First Revised Sheet No. 171A  
First Revised Sheet No. 172  
Second Revised Sheet No. 173  
First Revised Sheet No. 173A  
First Revised Sheet No. 174  
Second Revised Sheet No. 175  
First Revised Sheet No. 176  
Second Revised Sheet No. 177  
Second Revised Sheet No. 178  
Third Revised Sheet No. 179  
First Revised Sheet No. 179A  
First Revised Sheet No. 179B  
Second Revised Sheet No. 180  
First Revised Sheet No. 180A  
First Revised Sheet No. 180B  
Second Revised Sheet No. 181  
Fourth Revised Sheet No. 182  
First Revised Sheet No. 182A  
Fourth Revised Sheet No. 183  
Fourth Revised Sheet No. 184  
Fourth Revised Sheet No. 185  
Fourth Revised Sheet No. 185A  
First Revised Sheet No. 186  
Second Revised Sheet No. 187  
First Revised Sheet No. 188  
Second Revised Sheet No. 189  
Second Revised Sheet No. 190  
Second Revised Sheet No. 191  
Second Revised Sheet No. 192  
Second Revised Sheet No. 193

**New York Independent System Operator, Inc.  
FERC Electric Tariff  
Original Volume No. 1**

**Rejected Tariff Sheets (continued)**

First Revised Sheet No. 202  
Fifth Revised Sheet No. 231  
First Revised Sheet No. 237  
Fourth Revised Sheet No. 252  
First Revised Sheet No. 256  
Second Revised Sheet No. 291  
First Revised Sheet Nos. 292-299  
First Revised Sheet No. 387  
Third Revised Sheet No. 388  
First Revised Sheet No. 451  
Third Revised Sheet No. 459  
Fifth Revised Sheet No. 465  
First Revised Sheet Nos. 626-630  
Second Revised Sheet No. 946  
First Revised Sheet No. 958E  
Third Revised Sheet No. 959

**New York Independent System Operator, Inc.  
FERC Electric Tariff  
Original Volume No. 2**

**Rejected Tariff Sheets**

Third Revised Sheet No. 51A  
Second Revised Sheet No. 72