

157 FERC ¶ 61,102
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket No. ER17-144-000

ORDER GRANTING WAIVER

(Issued November 17, 2016)

1. On October 19, 2016, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (NYISO) requested a limited, temporary waiver of its obligation under section 2.4 of the 1993 PARs Facilities Agreement (Agreement)² to settle, on a monthly basis, certain amounts associated with the phase angle regulators (PARs) at the Ramapo terminal that are charged to transmission owners in PJM Interconnection, L.L.C. (PJM). In this order, we grant the request for waiver, effective October 20, 2016, as discussed below.

I. Background

2. On December 30, 1993, the Commission accepted the Agreement executed by certain transmission owners in New York (NYTOs)³ and certain transmission owners in

¹ 18 C.F.R. § 385.207(a)(5) (2016).

² See *Consol. Edison Co. of N.Y., Inc.*, Docket No. ER93-640-000 (Dec. 30, 1993) (delegated letter order) (accepting the Agreement).

³ NYTOs consist of: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Long Island Lighting Company; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation.

PJM (PJM TOs).⁴ The Agreement provides for Consolidated Edison Company of New York, Inc. (ConEd) to install, operate, and maintain two PARs and associated facilities at the Ramapo terminal of the Branchburg-Ramapo line interconnecting NYISO and PJM. The Agreement also provides for NYTOs and PJM TOs to equally share the financial obligations associated with the two PARs. Section 2.4 of the Agreement requires ConEd to submit an itemized monthly bill to NYISO, 50 percent of which NYISO will include in the monthly settlement with PJM, and the other 50 percent of which NYISO will bill to NYTOs.⁵

II. Waiver Request

3. NYISO seeks a limited, temporary waiver of its obligations under section 2.4 of the Agreement, as well as any other provisions of the Agreement or NYISO tariffs that may be necessary to grant the request. NYISO states that ConEd, NYTOs, PJM TOs, and PJM do not oppose this request for waiver.⁶ NYISO explains that ConEd, NYTOs, PJM TOs, and the New York Power Authority⁷ are currently reviewing the charges and related billings under the Agreement, and these parties requested that NYISO cease monthly settlements of amounts related to the Ramapo PARs charged to PJM TOs while they perform their review. NYISO asserts that, upon conclusion of the review, NYISO expects to invoice PJM for the PJM TOs' share of ConEd's costs pursuant to section 2.4 of the Agreement, or otherwise settle the costs that ConEd bills pursuant to an alternate agreement filed with the Commission or as otherwise directed by the Commission.⁸

⁴ PJM TOs consist of: Public Service Electric and Gas Company; Philadelphia Electric Company; Pennsylvania Power & Light Company; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; Potomac Electric Power Company; Atlantic City Electric Company; and Delmarva Power & Light Company.

⁵ The Agreement provides for the New York Power Pool to receive the monthly bill and settle the amounts. However, NYISO, as the successor to the New York Power Pool, now has this obligation. NYISO Transmittal Letter at 3.

⁶ *Id.* at 3.

⁷ Although not a party to the Agreement, NYISO states that the New York Power Authority is affected by assessments concerning the Ramapo PARs and is, therefore, a party to the discussions. *Id.* at 2 n.3.

⁸ *Id.* at 3.

4. NYISO argues that the Commission's evaluation of whether it should grant tariff waivers has focused on whether: (1) the waiver is of a limited scope; (2) a concrete problem needs to be remedied; and (3) the waiver will not have undesirable consequences, such as harming third parties.⁹ NYISO contends that its request for waiver meets each of these criteria, as explained below.

5. First, NYISO asserts that its request for waiver is of limited duration and scope because it applies to the finite period from October 20, 2016, the requested effective date, through the date the parties complete their review, which NYISO expects to be completed by March 2017. Furthermore, NYISO states that its request for waiver applies only to NYISO's settlement obligations under section 2.4 of the Agreement and any associated obligations NYISO may have under the Agreement or under its tariffs.¹⁰

6. Second, NYISO claims that its request for waiver is necessary to remedy a concrete problem because, absent waiver, the parties' efforts to collaboratively review the charges and related billings under the Agreement may be impaired.¹¹

7. Third, NYISO asserts that its request for waiver will not harm third parties, or have any other undesirable consequences. NYISO states that the parties that would be affected by the waiver have authorized NYISO to indicate that they do not oppose the request for waiver.¹²

8. NYISO requests waiver of the Commission's 60-day prior notice requirement to allow an effective date of October 20, 2016. NYISO contends that the Commission has granted waivers of its prior notice requirement when the filing is uncontested.¹³

⁹ *Id.* at 4 (citing *Indianapolis Power & Light Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,047, at P 64 (2014); *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,078, at P 38 (2014); *N.Y. Indep. Sys. Operator, Inc.*, 144 FERC ¶ 61,147, at P 8 (2013); *N.Y. Indep. Sys. Operator, Inc.*, 139 FERC ¶ 61,108, at P 14 (2012); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011)).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 5 (citing *ISO New England Inc.*, 116 FERC ¶ 61,308, at P 8 (2006); *Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,338 (1992)).

9. NYISO further requests that the Commission grant its request for waiver no later than October 31, 2016, to provide time for NYISO to modify its settlement practices developed to implement section 2.4 of the Agreement prior to issuing monthly invoices on November 7, 2016. NYISO asserts that Commission action by October 31, 2016, will also facilitate an expeditious review of the charges and related billings under the Agreement.¹⁴

III. Notice of Filing

10. Notice of NYISO's request for waiver was published in the *Federal Register*, 81 Fed. Reg. 75,395 (2016), with comments due on October 26, 2016. ConEd, PJM, Exelon Corporation, PPL Electric Utilities Corporation, and New York Transmission Owners¹⁵ filed timely motions to intervene. The New York Public Service Commission filed a notice of intervention.

IV. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁶ the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

12. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete

¹⁴ *Id.* at 5.

¹⁵ The New York Transmission Owners consist of: Central Hudson Gas & Electric Corporation; ConEd; Power Supply Long Island; 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.

¹⁶ 18 C.F.R. § 385.214 (2016).

problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹⁷ We find that NYISO's request for waiver satisfies the foregoing criteria.

13. First, we find that NYISO is acting in good faith by filing a timely request for waiver and working with all relevant stakeholders. Second, we find that NYISO's request for waiver is of limited scope as the waiver applies to a finite period of time from October 20, 2016, through the date the parties complete their review of certain charges and billings under the Agreement. Third, we find that NYISO's request for waiver addresses a concrete problem. Absent a temporary waiver of NYISO's obligation under section 2.4 of the Agreement, NYISO states that the parties' efforts to collaboratively review the charges and related billings under the Agreement may be impaired.¹⁸ We also note that, absent a waiver, NYISO would have to continue invoicing PJM for the PJM TOs' share of disputed charges while the review is ongoing. Finally, we find that NYISO's request for waiver does not have undesirable consequences. NYISO represents that all parties that would be affected by the waiver have authorized NYISO to indicate that they do not oppose it, and no protests were filed in response to the request for waiver. Accordingly, we grant NYISO's request for a limited, temporary waiver of section 2.4 of the Agreement, effective October 20, 2016, as requested.

The Commission orders:

NYISO's request for waiver is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁷ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Servs., L.P.*, 154 FERC ¶ 61,082, at P 12 (2016); *N.Y. Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

¹⁸ Also, as NYISO states, we expect NYISO to file with the Commission any alternate agreement pursuant to which NYISO will invoice PJM if NYISO will not invoice PJM pursuant to the Agreement.