

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

New York State Electric & Gas Corporation

Docket Nos. ER97-2353-008
ER97-2353-009
ER97-2353-010
ER97-2353-011

Opinion No. 447-C

ORDER GRANTING REHEARING TO CORRECT MISSTATEMENT
IN OPINION NO. 447-B AND DIRECTING COMPLIANCE FILING

(Issued June 10, 2003)

1. In this order, we grant rehearing to correct a misstatement in Opinion No. 447-B,¹ identified by Municipal Electric Utilities Association of the New York State (NY Municipals). We also direct New York State Electric & Gas Corporation (NYSEG) to file a revised compliance filing to remove costs for "transmission by others" (i.e., costs under Niagara Mohawk Power Corporation's Rate Schedule No. 165 (RS 165)) from the rates NYSEG charges to NYSEG transmission customers under all grandfathered, pre-New York Independent System Operator (NYISO)-OATT² contracts (i.e., those entered before November 18, 1999), and to refund, with interest, amounts that these customers have paid for these costs. This order benefits customers because it will provide all NYSEG's transmission customers under grandfathered, pre-NYISO-OATT contracts with transmission service at just and reasonable rates.

¹New York State Electric & Gas Corporation, Opinion No. 447, 92 FERC ¶ 61,169 (2000), order on reh'g, Opinion No. 447-A, 100 FERC ¶ 61,021, reh'g denied, Opinion No. 447-B, 101 FERC ¶ 61,037 (2002).

²"OATT" stands for open access transmission tariff.

Background

2. NYSEG's service area includes isolated load pockets located in the midst of Niagara Mohawk Power Corporation's (Niagara Mohawk) and others' service areas. Prior to the startup of the New York Independent System Operator (NYISO) on November 18, 1999, NYSEG and Niagara Mohawk, for efficiency, entered arrangements under which each provided transmission to the isolated load pockets of the other. Prior to the operation of the NYISO, NYSEG's transmission customers took service under either NYSEG's open access transmission tariff or under bilateral agreements. Since the start-up of the NYISO, a number of customers continue to take service under pre-NYISO agreements (*i.e.*, grandfathered, pre-NYISO-OATT contracts),³ while others take service under the NYISO OATT. This opinion addresses only customers taking service under grandfathered, pre-NYISO-OATT contracts.

3. Among the issues addressed in Opinion No. 447 was the issue of how to treat NYSEG's costs for transmission provided to NYSEG by Niagara Mohawk. Based on our precedent in NU and NEPCO,⁴ we held that Niagara Mohawk's RS 165 charges may not be included in NYSEG's open access cost of service.⁵

4. NY Municipals and NYSEG both sought rehearing of the Opinion No. 447. These rehearing requests were addressed in Opinion No. 447-A, where the Commission found that under RS 165:

NYSEG was prohibited from providing third parties with access to Niagara Mohawk's transmission facilities. In sum, therefore, there was no basis to charge

³Customers grandfathered under the NYISO OATT are listed on Attachment L of the NYISO OATT.

⁴See Northeast Utilities Service Company, 62 FERC ¶ 61,294 at 62,908 (1993) (NU); New England Power Company, 65 FERC ¶ 61,153 at 61,756 (1993) (NEPCO), where, put briefly, we held that a utility is allowed to recover in its rates costs recorded in FERC Account No. 565, Transmission of Electricity by Others, if it shows that the transmission facilities at issue are integrated with its own transmission system or available for transmission customer use on a day-to-day basis.

⁵92 FERC at 61,587. We also found that these RS165 charges could be included in NYSEG's cost of service for customers taking service under the NYISO OATT after November 18, 1999, the effective date of the NYISO OATT. Id.

NYSEG's transmission customers the payments made by NYSEG for the use of Niagara Mohawk's transmission facilities.^[6]

Thus, we directed NYSEG:

to submit a compliance filing within thirty days of the date of issuance of this opinion and order that removes transmission by other costs from the cost of service for grandfathered transmission contracts as discussed in the body of this opinion and order.^[7]

5. NYSEG filed a request for rehearing of Opinion No. 447-A that the Commission addressed in Opinion No. 447-B, where we stated:

Although NYSEG's OATT gives customers taking transmission service under grandfathered contracts the option to convert from their grandfathered contracts to NYSEG's OATT, they are not compelled to do so. The availability of the NYISO's facilities to NYSEG's OATT customers does not warrant recovery of those costs from NYSEG's customers who are not obtaining transmission service under NYSEG's OATT. Thus, even after November 18, 1999, the start-up date of the NYISO, NYSEG should continue to exclude RS 165 costs from its customers under non-OATT grandfathered agreements.^[8]

NY Municipals' Request for Rehearing to Correct Misstatement in Opinion No. 447-B

6. On November 8, 2002, in Docket No. ER97-2353-008, NY Municipals filed a request for rehearing of Opinion No. 447-B. NY Municipals contend that the Commission erred in Opinion No. 447-B when in certain instances it mistakenly referred to transmission customers under "NYSEG's OATT" when in those instances it should have referred to customers under "NYISO's OATT." NY Municipals ask us to correct this error. On November 25, 2002, NYSEG filed an answer to NY Municipals' rehearing request.

Discussion

⁶Opinion No. 447-A, 100 FERC ¶ 61,021 at P 12.

⁷Opinion No. 447-A, 100 FERC ¶ 61,022, Ordering Paragraph (C).

⁸Opinion No. 447-B, 101 FERC ¶ 61,148 at P 6 (emphasis added).

7. As a preliminary matter, we will reject NYSEG's answer to NY Municipals' rehearing request as an impermissible answer to a request for rehearing.⁹

8. We will grant NY Municipals' request for rehearing. The reference in Opinion No. 447-B to NYSEG's OATT customers was a misstatement.¹⁰ We intended to refer, as we did in Opinion No. 447-A, to customers taking service under NYISO's OATT.¹¹ Now, as then, our consistent intent has been for customers taking service under any grandfathered, pre-NYISO-OATT agreement to not pay Niagara Mohawk's RS 165 charges. These costs (transmission by others) should only be paid for by NYSEG's customers that have access to Niagara Mohawk's transmission facilities on a day-to-day basis under the NYISO OATT.

NYSEG's Refund Report and Compliance Filing

9. On November 7, 2002, NYSEG filed a refund report and revisions to Rate Schedule Nos. 110 and 229 in Docket Nos. ER97-2353-009 and ER97-2353-010 purportedly to comply with Opinion No. 447-B. NYSEG's compliance filing states that it issued approximately \$2 million in rate refunds to customers under NYSEG's Rate Schedule Nos. 110 and 229 (bilateral agreements) and that Niagara Mohawk's RS 165 charges would be removed from Rate Schedule Nos. 110 and 229.¹² On December 27, 2002, NYSEG filed corrections to the refund report.

10. Notice of NYSEG's November 7, 2002 filing was published in the Federal Register, 67 Fed. Reg. 77487 (2002), with comments, protests and interventions due on or before December 20, 2002. Notice of NYSEG's December 27, 2002 filing was published in the Federal Register, 68 Fed. Reg. 4771 (2003), with comments, protests and interventions due on or before February 3, 2003.

11. On December 20, 2002, NY Municipals filed a protest to NYSEG's compliance filing. NY Municipals explain that while all twelve of its members take service under

⁹See 18 C.F.R. § 385.713(d)(1) (2003).

¹⁰See, e.g., Opinion No. 447-B, 101 FERC ¶ 61,037 at P 1, 5-6.

¹¹See, e.g., Opinion No. 447-A, 100 FERC ¶ 61,021 at P 17-18.

¹²On September 18, 2000, in Docket No. ER97-2353-005, NYSEG filed rate refunds applicable to Opinion No. 447 for the period through November 17, 1999.

grandfathered, pre-NYISO-OATT agreements,¹³ NYSEG has only made refunds to its members taking service under Rate Schedule No. 229. NY Municipals urge the Commission to require NYSEG to remove RS 165 charges from the rates charged to all of its members under grandfathered, pre-NYISO-OATT agreements.

12. On January 14, 2003, NYSEG filed a motion to strike the protest. On January 29, 2003, NY Municipals filed an answer to the motion to strike.

Discussion

13. NYSEG made rate refunds and removed the RS 165 charges from grandfathered Rate Schedule Nos. 110 and 229, but as noted above, did not make refunds to NYSEG's other transmission customers under grandfathered agreements. Contrary to our findings in this opinion, NYSEG argues that the Commission made no error in Opinion No. 447-B and that its compliance filing should be accepted as is. In response, NY Municipals request that the Commission require NYSEG to make refunds to all customers under grandfathered agreements and not just those under Rate Schedule Nos. 110 and 229.

14. Given our finding that our reference to the NYSEG OATT in Opinion No. 447-B was a misstatement and that NYSEG's transmission customers under grandfathered, pre-NYISO-OATT agreements should not be required to pay for NYSEG's use of Niagara Mohawk's transmission facilities, we will require NYSEG to file an additional compliance filing and refund report, consistent with the discussion above, within 30 days of the date of issuance of this order. Specifically, NYSEG must remove RS 165 charges from all grandfathered, pre-NYISO-OATT contracts and make refunds, with interest, of all RS 165 charges collected from customers taking service under these contracts since November 18, 1999.¹⁴

15. In addition, NYSEG's November 7, 2002 compliance filing includes an amendment to its Rate Schedule No. 110 that fails to comply with the requirements of Order No. 614.¹⁵ Accordingly, we will direct NYSEG to re-file Rate Schedule No. 110, in

¹³Some of NY Municipals' members continue to take service under bilateral agreements (i.e., Rate Schedule No. 229), while others continue to take service pursuant to contracts entered into under NYSEG's OATT.

¹⁴NYSEG reports that refunds of RS 165 charges for the period preceding November 18, 1999 have already been made.

¹⁵See Designation of Electric Rate Schedule Sheets, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000). In brief, Order No. 614 no longer allows the filing of rate schedule

accordance with the requirements of Order No. 614, in the compliance filing that we order below.

The Commission orders:

(A) NY Municipals' request for rehearing of Opinion No. 447-B to correct a misstatement in Opinion No. 447-B is hereby granted, as discussed in the body of this order.

(B) NYSEG is hereby directed, within thirty days of the date of issuance of this order, to submit a compliance filing that removes costs for "transmission by others" from NYSEG's cost of service for customers under grandfathered, pre-NYISO-OATT agreements for the period after November 18, 1999.

(C) NYSEG is hereby directed to make refunds, with interest, to customers under grandfathered, pre-NYISO-OATT agreements for the period after November 18, 1999, as discussed in the body of this order.

(D) NYSEG is hereby directed to include, in the compliance filing that it submits in compliance with Ordering Paragraph (B) above, revisions to Rate Schedule No. 110 to comply with Order No. 614.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁵(...continued)

supplements; NYSEG's filing indicates that the amendment to Rate Schedule No. 110 is a supplement to a supplement that was filed as part of Docket No. ER97-2353-000 on March 28, 1997.

No refiling of Rate Schedule No. 229 is needed as the Commission determined, in *New York State Electric and Gas Corporation*, 97 FERC ¶ 61,073 (2001), that NYSEG's Rate Schedule No. 229 complies with the requirements of Order No. 614.