

126 FERC ¶ 61,029
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

New York Independent System Operator, Inc.

Docket No. ER07-521-005

ORDER ON COMPLIANCE FILING
IMPLEMENTING LONG-TERM FIRM TRANSMISSION RIGHTS

(Issued January 15, 2009)

1. This order accepts New York Independent System Operator, Inc.'s (NYISO) October 16, 2008 revisions (October 16 Compliance Filing) to its Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff) to comply with Order No. 681, the Final Rule on long-term firm transmission rights.¹ The filing responds to the Commission's April 16, 2008 order, which accepted in part NYISO's long-term firm transmission rights proposal and directed NYISO to offer long-term firm transmission rights for incremental expansions and upgrades consistent with the Final Rule guidelines.²

¹ *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226, at P 210-14, *reh'g denied*, Order No. 681-A, 117 FERC ¶ 61,201 (2006). In this order, the Commission will refer to the NYISO February 5, 2007 compliance filing in Docket No. ER07-521-000, as amended and addressed in the April 16, 2008 Order, as NYISO's "Long-Term Firm Transmission Rights Proposal." The OATT and Services Tariff are referred to collectively as "tariff."

² *New York Independent System Operator, Inc.*, 123 FERC ¶ 61,044, at P 53 (2008) (April 16, 2008 Order).

2. The October 16 Compliance Filing proposes new tariff provisions offering transmission congestion contracts, or TCCs,³ to transmission owners and other developers that construct transmission facilities and improvements that increase the incremental transfer capability of the transmission system.

I. Background

3. On February 5, 2007, NYISO filed its Long-Term Firm Transmission Rights Proposal, making long-term firm transmission rights available to load serving entities operating in the New York control area. The filing explained that NYISO's tariff offered transmission congestion contracts for incremental capacity from transmission system expansions. However, NYISO had not yet developed specific procedures to award long-term firm transmission rights for transmission expansions, consistent with Order No. 681, Guideline (3).⁴ NYISO stated that it would initiate a stakeholder process to develop detailed rules for such awards in compliance with Guideline (3).

4. The April 16, 2008 Order accepted NYISO's Long-Term Firm Transmission Rights Proposal subject to modification. However, the Commission deferred review of compliance with Guideline (3), pending review of the new tariff provisions. The April 16, 2008 Order directed NYISO to submit a compliance filing providing for incremental long-term firm transmission rights for capacity increases from transmission upgrades or expansions, consistent with the Order No. 681 Guideline (3), 60 days prior to

³ A transmission congestion contract is a financial instrument that conveys a right to collect or an obligation to pay the difference in price for energy associated with a single megawatt of transmission between a point of injection and a point of withdrawal in the NYISO day-ahead market. A transmission congestion contract allows a transmission customer to hedge its congestion costs. A transmission congestion contract does not establish any rights to, or the availability of, physical transmission service. *New York Independent System Operator, Inc.*, 125 FERC ¶ 61,206 (2008). NYISO uses the term "incremental transmission congestion contracts" to refer to transmission congestion contracts awarded under the new provisions for incremental increases in transfer capacity from new transmission expansions and improvements.

⁴ Guideline (3) states: "Long-term transmission rights made feasible by transmission upgrades or expansions must be available upon request to any party that pays for such upgrades or expansions in accordance with the transmission organization's prevailing cost allocation methods for upgrades or expansions." Order No. 681 at P 210.

November 1, 2008, the initial date for awarding long-term firm transmission rights for existing capacity.⁵

II. Incremental Long-Term Firm Transmission Rights Proposal

A. Overview

5. NYISO proposes to include a new section 2C (Awards of Incremental TCCs) to be included in Attachment M of its OATT, which will contain the terms for awarding incremental transmission congestion contracts.⁶ The revisions replace and expand upon the existing provisions for incremental transmission congestion contracts in order to comply with Order No. 681. The introduction to section 2C clarifies that the proposed revisions apply prospectively, and will not apply to prior awards or to requests for incremental transmission congestion contracts submitted prior to November 1, 2008.

6. The introduction clarifies the availability of incremental transmission congestion contracts and establishes defined terms. NYISO proposes the term “Expander” to refer to an entity that builds a transmission upgrade or expansion that increases transfer capability and is thereby eligible to request incremental transmission congestion contracts.⁷ According to section 2C.6, incremental transmission congestion contracts have the same attributes as other NYISO transmission congestion contracts, except as provided in the tariff. NYISO cites differences in the manner in which the rights are awarded, duration, and transfer limitations under section 2C.7. Incremental transmission congestion contracts may feature terms from 20 to 50 years, limited to the expected operating life of the expansion.⁸

7. Section 2C states that NYISO will not award incremental transmission congestion contracts for expansions when it cannot calculate the effect on transfer capability with reasonable certainty. Instead, NYISO awards incremental transmission congestion

⁵ April 16, 2008 Order, 123 FERC ¶ 61,044 at P 53. On September 2, 2008, the Commission extended the original compliance date to October 16, 2008.

⁶ Similar changes are made to corresponding provisions of the Services Tariff, in particular, Attachment B, part IV. Revisions to other sections of the tariff are primarily conforming changes.

⁷ See OATT, Attachment M, section 2C (Second Revised Sheet No. 565P).

⁸ *Id.*, section 2C.5 (Second Revised Sheet No. 565X).

contracts for expansions where it identifies an increase in transfer capability based on its optimal power flow analysis. Also, NYISO will not award incremental transmission congestion contracts for transmission facilities that it does not control or for increased transfer capability that relies on generator operation. NYISO justifies the exclusions, explaining that, where it lacks operational control, it cannot ensure that the facilities will be operated in a manner that justifies an incremental transmission congestion contract award.

8. Section 2C.1 presents the application procedures for incremental transmission congestion contracts. To qualify, an applicant must seek incremental transmission congestion contracts before the commercial operation date of its expansion. NYISO states that additional technical details on the process are set forth in the “ISO Procedures,” i.e., in the NYISO’s manuals or related documentation.⁹

9. To permit an applicant to consider its options, NYISO will provide up to three non-binding estimates of possible incremental transmission congestion contracts for different combinations of points of injection and withdrawal chosen by the applicant.¹⁰ NYISO will provide non-binding estimates for expansions entering commercial operation in the current or next similar capability period. The non-binding estimates will confirm that the applicant’s expansion will increase transfer capability and, therefore, actually make additional incremental transmission congestion contracts feasible.¹¹ NYISO will award incremental transmission congestion contracts for expansions commencing commercial operation in the current or next like capability period.¹² This practice will allow NYISO to base its award determinations on the most recent and accurate data available. NYISO will use an optimal power flow analysis to determine increases in incremental transfer capability attributable to an expansion, and it will not award

⁹ NYISO October 16 Compliance Filing at 9. NYISO states that these materials are available on its website, but does not specify which document provides the technical details for incremental transmission congestion contract awards.

¹⁰ See OATT, section 2C.1 (Original Sheet No. 565R).

¹¹ *Id.*, section 2C.2 (Original Sheet Nos. 565R-565S).

¹² NYISO October 16 Compliance Filing at 12 & n.23 (explaining that NYISO will grant an award during a summer capability period for an expansion that is likely to enter commercial operation during that capability period or the next summer capability period, but not for one commencing commercial operation during the intervening winter capability period).

incremental transmission congestion contracts if the analysis determines that incremental transfer capability would exist without the applicants' expansion.

10. NYISO explains that Expanders may request the full set of incremental transmission congestion contracts analyzed in any of the non-binding estimates.¹³ The Expander must accept an award based on one of the estimates in its entirety and may not select combinations of points of injection and withdrawal from more than one estimate or select fewer than all of the combinations analyzed by an estimate.¹⁴ NYISO justifies these restrictions stating that it has limited ability to calculate feasible incremental transmission congestion contracts between numerous points of injection and points of withdrawal. NYISO further explains that its estimates and awards of feasible incremental transmission congestion contracts are interdependent, requiring the analysis of multiple points of injection and withdrawal combinations. NYISO asserts that use of combinations from different non-binding estimates could result in an award that included infeasible rights or did not accurately reflect an expansion's true impact on the transmission system. NYISO asserts that the proposed restrictions are consistent with Order No. 681 and provide for efficient use of NYISO's resources.¹⁵

11. Following NYISO's determination of actual incremental transmission congestion contract details, an Expander must meet deadlines to fulfill certain requirements in order to confirm acceptance of the award and establish the term of the long-term right (i.e., from 20-50 years). Otherwise, the Expander forfeits the right to collect congestion rents under the award until the requirements are met.¹⁶

12. Under section 2C.5, incremental transmission congestion contracts are effective on the first day of the capability period following the commercial operation date, if the date precedes the capability period by more than 90 days, or on the first day of the next like

¹³ *Id.* at 11 (discussing section 2C.4).

¹⁴ OATT, Attachment M, section 2C.4 (Original Sheet No. 565U).

¹⁵ October 16 Compliance Filing at 11.

¹⁶ *Id.* at 13 & n.27 (discussing acceptance requirements under section 2C.5). NYISO intends to establish award acceptance procedures in its ISO Procedures to permit flexibility to adjust to practical experience.

capability period.¹⁷ NYISO may allocate incremental transmission congestion contracts to multiple expansions for increased transfer capability in a capability period.¹⁸

13. Although incremental transmission congestion contracts may be sold in a NYISO auction, section 2C.7 prohibits bilateral, i.e., non-auction, transfers of fewer than all of the incremental transmission congestion contracts awarded for an expansion. NYISO established this restriction to ensure that the incremental transmission congestion contracts awarded for an expansion would continue to be feasible. By contrast, sales through auctions will only occur if the NYISO's optimal power flow analysis confirms that all transmission congestion contracts sold through an auction are feasible and do not render existing transmission congestion contracts infeasible.¹⁹ Transfers of incremental transmission congestion contracts are subject to existing NYISO credit requirements and to future credit requirements to be developed for longer term transmission rights.²⁰

14. NYISO states that, although the incremental long-term congestion contract procedures satisfy comparability requirements, they do not necessarily provide for identical treatment of transmission owners and non-transmission owner developers, because there are many ways in which non-transmission owner Expanders are not similarly situated with transmission owners, e.g., they do not have extensive transmission systems, defined service territories, or retail customers.²¹ NYISO reports that, in the past, only transmission owners paid facility outage charges to cover congestion revenue shortfalls caused by outages, because they were the only entities that owned transmission facilities in New York State (with the exception of certain direct current interconnections).²² However, NYISO has determined that with the award of incremental

¹⁷ *Id.* at 12. NYISO will award temporary incremental transmission congestion contracts effective between the commercial operation date and the effective date of the award, i.e., there will always be a temporary award if the expansion enters commercial operation during a capability period and will expire at the start of the next capability period when the final award become effective. *See also* OATT, Attachment M, section 2C.4(a) (Original Sheet No. 565V).

¹⁸ *Id.* at 13. Priority is established by commercial operation date.

¹⁹ *Id.* at 14. Due to administrative burden, a temporary award is not transferrable.

²⁰ OATT, Attachment M, section 2C.7 (Original Sheet No. 565Y).

²¹ October 16 Compliance Filing at 15.

²² *Id.* (discussing the NYISO OATT, Attachment N, and proposed section 2C.8).

transmission congestion contracts to non-transmission owner Expanders, it is appropriate to make the non-transmission owner recipients responsible for congestion revenue shortfalls caused by outages. Therefore, NYISO proposes to make non-transmission owners subject to outage charges for congestion rent shortfalls caused by outages of their expansion facilities. According to NYISO, congestion revenue shortfalls will be allocated to non-transmission owner Expanders on a basis comparable to transmission owners, under section 2C.8.

15. To respect differences in the size of systems and scope of services offered, NYISO chose not to make non-transmission owners subject to the full panoply of Attachment N outage charge rules. Instead, NYISO proposes that only a limited system of outage charges, provided in section 2C.8, apply to non-transmission owners. Non-transmission owners would be subject to outage charges for any hour in the day-ahead market in which the expansion was wholly or partially out-of-service.²³ Finally, section 2C.8 provides for reduced outage charges for partial outages on an expansion featuring multiple transmission elements, where the expansion will continue to support incremental transfer capability despite the outage of one or more elements.²⁴ Transmission owners' outage charges will continue to be governed by existing rules.

16. NYISO also proposes various corresponding changes to Attachment M to reflect the establishment of new section 2C.²⁵ NYISO proposes to expand Services Tariff reporting requirements to apply to non-transmission owners that are awarded incremental transmission congestion contracts.

²³ *Id.* at 16 & n.30.

²⁴ *Id.* at 10 (discussing section 2C.3, establishing "Partial Outage Incremental TCCs"). Partial Outage Incremental TCCs are not actually transmission congestion contracts and do not entitle the bearer to congestion revenues or otherwise hedge against congestion. Instead, they prevent the imposition of outage charges which would otherwise be levied on non-transmission owners under section 2C.8.

²⁵ *Id.* at 17 & n.32. Specifically, the NYISO is proposing changes to OATT, Attachment M, Sheet Nos. 561, 565P, 567 and 571D, with corresponding changes to Services Tariff, Attachment B, Sheet Nos. 355.01, 355A, 359.15, 361 and 364E. NYISO revises OATT, section 1.14i and Services Tariff, section 2.69a, to reflect section 2C in the definition of incremental transmission congestion contract, and revises the definition of Primary Owner in OATT, section 1.36b to clarify that incremental transmission congestion contracts are awarded by the transmission organization. Finally, NYISO revises OATT, sections 19.4 and 32.4, to eliminate language superseded by section 2C.

17. NYISO states that its proposed tariff revisions were developed through extensive stakeholder discussions over many months and the key features enjoy broad stakeholder support. NYISO shared draft revisions with stakeholders and addressed stakeholder suggestions in the final proposal.

B. Compliance with Order No. 681 Guidelines

18. NYISO states that its proposal fully satisfies Guideline (3) because it ensures that feasible long-term firm transmission rights are available to persons or entities building transmission expansions that increase incremental transfer capability and does not impinge on existing transmission rights.²⁶ In addition, NYISO explains that the October 16 Compliance Filing satisfies the remaining Order No. 681 guidelines, in part, because the incremental transmission congestion contracts meet the criteria for transmission congestion contracts as a whole, which comply with the guidelines based on prior holdings.²⁷ In addition, NYISO states that Guideline (5) (priority for existing load serving entities) does not apply because Guideline (5) is concerned with existing capacity rights, not incremental transmission congestion contracts for new capacity. NYISO states that Guideline (6) (re-assignable to follow load) does not apply because it refers to the assignment of transmission rights allocated preferentially to load-serving entities, whereas incremental transmission congestion contracts are not preferentially assigned based on load. NYISO notes that it has addressed assignment (discussed above).²⁸ Finally, NYISO states that its incremental transmission congestion contracts comply with Guideline (7) (participation in an auction) because the initial allocation does not require auction participation.

C. Proposed Effective Date

19. NYISO requests a November 1, 2008 effective date for the proposed tariff revisions. NYISO states that this date is consistent with the Commission's instruction that long-term firm transmission rights be available for transmission upgrades and expansions before a transmission organization's initial awards of rights for existing

²⁶ October 16 Compliance Filing at 5.

²⁷ *Id.* at 6-7 (discussing Guidelines (1), (2) and (4); citing April 16, 2008 Order and Order No. 681).

²⁸ *Id.* at 7; *see also* OATT, Attachment M, proposed section 2C.7.

transmission capacity.²⁹ NYISO explains that initial awards of long-term firm transmission rights for existing capacity are scheduled to take effect November 1, 2008.

III. Notices of Filings and Responsive Pleadings

20. Notice of the October 16 Compliance Filing was published in the *Federal Register*, with interventions and protests due on or before November 6, 2008.³⁰ New York Transmission Owners filed comments describing their view of the appropriate rate treatment for revenues from incremental transmission congestion contracts for facilities that are “constructed on a regulated basis,” where customers fund the investment.³¹

IV. Discussion

A. Transmission Owner Comments

21. New York Transmission Owners propose a tariff revision related to the rate treatment for revenues from incremental transmission congestion contracts for investments in regulated transmission facilities. According to New York Transmission Owners, where customers are required to fund the cost of a regulated transmission investment, the revenues from the resulting incremental transmission congestion contracts should be credited to the regulated rates, “consistent with existing tariff provisions dealing with rates for existing regulated transmission investments.”³² The New York Transmission Owners state that such a clarification is necessary and appropriate and request the Commission to direct NYISO to revise the OATT, Attachment M, section 2C.6 to address the issue.

²⁹ Order No. 681 at P 214.

³⁰ 73 Fed. Reg. 63,956 (2008).

³¹ The New York Transmission Owners include: Central Hudson Gas & Electric Corp., Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corp., Niagara Mohawk Power Corp. d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corp.

³² New York Transmission Owners comments at 4.

B. Commission Determination

22. In Order No. 681, the Commission explained that all transmission organizations must allow transmission customers that fund capacity expansions the opportunity to receive the transmission rights that are made feasible by those expansions. Furthermore, Order No. 681 indicated that explicit rules for awarding such rights must be in place.³³ The April 16, 2008 Order directed NYISO to revise its tariff and make long-term firm transmission rights available to entities that build transmission upgrades and expansions prior to initial awards of long-term firm transmission rights for existing capacity.³⁴

23. Through its stakeholder process, NYISO developed new tariff provisions to award incremental transmission congestion contracts. These provisions are presented in the OATT, Attachment M, in new section 2C, as well as in the Services Tariff, Attachment B, Part IC, section 2C. To meet the requirements of Order No. 681, NYISO developed new comprehensive rules that incorporate and substantially modify its existing rules for awarding incremental transmission congestion contracts.

24. The Commission accepts NYISO's tariff provisions establishing terms for proposing and awarding incremental long-term firm transmission rights for expansions that increase transfer capability on its transmission system as consistent with the Order No. 681 guidelines and the April 16, 2008 Order. No party has protested the tariff provisions establishing the incremental transmission congestion contracts.

25. We find that NYISO's proposal for incremental long-term firm transmission rights contains the attributes required by Order No. 681.³⁵ These include the specification of a source (point of injection), sink (point of withdrawal), and megawatt quantity, as well as provision for comparable treatment compared with existing transmission congestion contracts and other long-term firm transmission rights. The proposed tariff revisions also ensure feasibility of transmission rights and provide for assignment. We also find that

³³ Order No. 681 at P 211.

³⁴ April 16, 2008 Order, 123 FERC ¶ 61,044 at P 53.

³⁵ Order No. 681 at P 103.

the proposed 20 to 50 year terms for these rights based on the operating life of the upgrade, is reasonable and consistent with Order No. 681.³⁶

26. The Commission rejects New York Transmission Owners' request to direct NYISO to revise its tariff to clarify the rate treatment for incremental transmission congestion contract revenues for regulated facilities. Proposed section 2C.6 reads:

Incremental TCCs, but not partial outage Incremental TCCs, shall have the same attributes as other [transmission congestion contracts] and shall be subject to the same rules under the ISO Tariffs, except as specifically provided in this Section 2C.³⁷

The New York Transmission Owners propose appending the following language: "including with respect to the requirements that transmission congestion contract revenues be credited to the rates of customers that pay for the facilities on a regulated (non-merchant) basis."

27. The issue the New York Transmission Owners raise is beyond the scope of this proceeding. Rate treatment for regulated transmission investments is not addressed in this section of the tariff. Furthermore, the New York Transmission Owners have not provided evidence of any specific rate issue that requires their proposed language or that would be resolved by this language. As such, the Commission is not able to determine what would be resolved by this request or what other tariff provisions may be affected. It is not apparent that the rate treatment for regulated transmission investments requires this additional language.

28. The April 16, 2008 Order directed NYISO to incorporate tariff provisions offering incremental transmission congestion contracts for transmission upgrades and expansions that increase transfer capability, consistent with Order No. 681. The April 16, 2008 Order did not direct NYISO to establish rate treatment for congestion revenues. In fact, Order No. 681 explained that Guideline (3) applies to transmission rights awarded to entities that fund transmission upgrades and expansions through direct cost assignment and not to rights for upgrades subject to rolled-in rate treatment.³⁸ Therefore, rate-

³⁶ *Id.* P 212. Due to the difficulty in defining the life of a facility, Order No. 681 anticipated that transmission organizations would determine appropriate terms for the long-term firm transmission rights awarded for incremental upgrades.

³⁷ OATT, Attachment M, section 2C.6 (Original Sheet No. 565X).

³⁸ Order No. 681 at P 211.

treatment for regulated transmission investments is beyond the scope of the compliance filing and beyond the scope of this proceeding. The issue of whether incremental congestion contract revenues should be credited against other rate determinants (or otherwise constitute an offset to costs reflected in rates) is more appropriately considered in a separate proceeding or a proceeding to review the affected transmission owner rates. Therefore, we reject the proposal without prejudice.

The Commission orders:

NYISO's tariff revisions are accepted as consistent with the April 16, 2008 Order, effective November 1, 2008, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.