

126 FERC ¶ 61,151  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

330 Fund I, L.P.

Docket No. EL07-78-001

v.

New York Independent System Operator, Inc.

ORDER DENYING REHEARING

(Issued February 20, 2009)

1. In this order, the Commission denies 330 Fund I, L.P.'s (330 Fund) request for rehearing and affirms the October 1, 2007 Order denying a complaint against the New York Independent System Operator, Inc. (NYISO).<sup>1</sup> The October 1 Order rejected 330 Fund's claims that NYISO violated its open access transmission tariff (Tariff or OATT). Specifically, 330 Fund's complaint alleged that NYISO violated section 4.4.3 of its Standard Large Facilities Interconnection Procedures (Attachment X), its procedures for allocating congestion revenue shortfalls caused by transmission outages in Attachment N, and its Open Access Same-Time Information System (OASIS) posting requirements, by failing to provide information about a change in the point of interconnection for the "Seymour GTs," gas-turbine generating units owned by the New York Power Authority (Power Authority).

**I. Background**

2. The Seymour GTs were originally connected to Consolidated Edison Company of New York, Inc. (Con Edison) transmission facilities pursuant to an August 1, 2001

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<sup>1</sup> *330 Fund I, L.P. v. New York Indep. Sys. Op., Inc.*, 121 FERC ¶ 61,001 (2007) (October 1 Order).

interconnection agreement.<sup>2</sup> The original point of interconnection on the Gowanus-Greenwood feeder line (Line 42231) was adjacent to, and outside of, the congested Greenwood/Staten Island load pocket. In March 2006, Power Authority proposed a new point of interconnection inside of the load pocket and requested that NYISO find the change not material, based on supporting power flow and short circuit data.<sup>3</sup> NYISO staff and the NYISO Transmission Planning Advisory Subcommittee (Planning Committee) reviewed and approved the change as a non-material modification to the Seymour GTs' interconnection.<sup>4</sup> If the change were found to be a material modification, Power Authority would have needed a new Interconnection Request, subject to queue processing and posting requirements that could have alerted 330 Fund to the change.<sup>5</sup>

3. Construction for the change resulted in transmission outages on the Con Edison system in February, March and April 2007. Con Edison's related outage requests were approved and posted in the NYISO outage schedule reports of February 2 and 6, March 13, and April 2 and 6, 2007.<sup>6</sup> Con Edison and Power Authority's April 26, 2007 revised interconnection agreement, reflecting the new point of interconnection, was filed in Docket No. ER07-803-000. The Commission accepted the agreement over 330 Fund's

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<sup>2</sup> The interconnection agreement is designated Service Agreement No. 315 under NYISO's Tariff. *See Consol. Edison Co. of New York, Inc.*, 119 FERC ¶ 61,206 (2007) (accepting revised interconnection agreement reflecting the new point of interconnection) (*Con Edison*).

<sup>3</sup> The complaint (Exh. 5) provides the request, and NYISO's July 19, 2007 answer discusses the review and supplies the data (Exh. B, Affidavit of Steven Corey, at 7, and Attachment 3 (Corey Affidavit)).

<sup>4</sup> The complaint (Exh. 6) provides the Planning Committee meeting minutes.

<sup>5</sup> October 1 Order, 121 FERC ¶ 61,001 at P 32, 35. The NYISO Tariff, Attachment X, section 1 defines "Interconnection Request" as "Developer's request, in the form of Appendix 1 to the Standard Large Facility Interconnection Procedures, in accordance with the Tariff, to interconnect a new Large Generating Facility or Merchant Transmission Facility to the New York State Transmission System, or to increase the capacity of, or make a material modification to the operating characteristics of, an existing Large Generating Facility or Merchant Transmission Facility that is interconnected with the New York State Transmission System."

<sup>6</sup> Con Edison requested outages on: (a) Feb. 1, 2007 for Feb. 5 – 8, 2007; (b) Mar 12, 2007 for Mar. 15, 2007; and (c) Apr. 2, 2007 for Apr. 11 – 30, 2007. NYISO July 19, 2007 answer (Exh. C, Affidavit of Allen Hargrave, at 3-4 (Hargrave Affidavit)).

protest that the five days' notice provided by the May 1, 2007 effective date was inadequate for affected entities to adjust to the change.<sup>7</sup>

4. While the new point of interconnection was being reviewed, approved and constructed, 330 Fund participated in three transmission congestion contract (or TCC) auctions.<sup>8</sup> 330 Fund claims that it suffered financial loss due to NYISO's failure to disclose the interconnection change and related outages prior to the auctions.<sup>9</sup> 330 Fund claims losses due to the construction outages, which increased congestion over 330 Fund's spring predictions, and from the subsequent change in point of interconnection, which alleviated anticipated congestion in the load pocket prior to the summer peak. 330 Fund's complaint sought a determination that NYISO violated its Tariff and a prohibition on future violations.<sup>10</sup>

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<sup>7</sup> *Con Edison*, 119 FERC ¶ 61,206 at P 9-10.

<sup>8</sup> 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 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 Indep. Sys. Op., Inc.*, 125 FERC ¶ 61,184, at P 2 (2008). Financial investors, like 330 Fund, purchase transmission congestion contracts.

<sup>9</sup> As reflected in the October 1 Order, 330 Fund participated in the Fall 2006 auction in which it was awarded 638 MW of "counterflow" transmission congestion contracts on 88 paths with terms running from November 1, 2006 to either April 30 or October 31, 2007. These transmission congestion contracts featured points of injection in or adjacent to the Greenwood/Staten Island load pocket. 330 Fund was also awarded 20 MW of paths having points of injection at the Seymour GTs. Second, in the Spring 2007 auction, 330 Fund acquired 94 MW of "predominant-flow" transmission congestion contracts with points of withdrawal in or adjacent to the Greenwood/Staten Island load pocket having terms from May 1 to either October 31, 2007 or April 30, 2008. In addition, 330 Fund acquired a net transmission congestion contract position of 25 MW with a point of injection at the Seymour GTs expiring on either October 31, 2007 or April 30, 2008. Finally, 330 Fund argued that NYISO should have provided information on the Seymour GT interconnection changes prior to the April 2007 Reconfiguration Auction, which was held in March and involved transmission congestion contracts with terms running April 1 to 30, 2007. 121 FERC ¶ 61,001 at P 5-7.

<sup>10</sup> 330 Fund complaint at 7.

5. In addition to the complaint, 330 Fund filed New York state court claims alleging breach of tariff, breach of contract, and negligence and seeking damages against NYISO based on and arising from the alleged Tariff violations.<sup>11</sup>

6. The October 1 Order denied the complaint, finding that 330 Fund had failed to establish that NYISO was required: (1) to study and provide notice of the interconnection modification as a material modification to an existing generator interconnection under its Large Facilities Interconnection Procedures (Attachment X);<sup>12</sup> (2) to disclose the line outages in the uprate/derate table used to allocate outage charges to transmission owners for congestion revenue shortfalls (Attachment N);<sup>13</sup> and (3) to post on OASIS transmission-related information on the change in point of interconnection.<sup>14</sup>

## **II. Rehearing Request and NYISO's Answer**

7. 330 Fund's October 31, 2007 request for rehearing argues that the October 1 Order erred in rejecting its claims that NYISO violated its Tariff. Specifically, 330 Fund contends that the Commission should have found the NYISO violated its OATT requirements concerning interconnection requests, queue procedures and information disclosure (under Attachments X and N of the OATT) and "the purpose of the OATT," as expressed in the Commission's OASIS regulations (18 C.F.R. § 37.6). 330 Fund also argues that the October 1 Order failed to consider harm to the market arising from the order and that the Commission denied 330 Fund's due process rights by rejecting its answers.<sup>15</sup> On November 15, 2007, NYISO filed an answer.

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<sup>11</sup> NYISO's July 19, 2007 answer includes 330 Fund's summons and complaint filed in the Supreme Court of the State of New York, *330 Fund I, L.P. v. New York Indep. Sys. Op., Inc.*, Index No. 07602180 (Jun. 29, 2007), the case was later removed to Federal court and subsequently suspended by order in Docket No. CV-06791 (S.D.N.Y. Oct. 29, 2007).

<sup>12</sup> October 1 Order, 121 FERC ¶ 61,001 at P 32-35

<sup>13</sup> *Id.* P 36-42.

<sup>14</sup> *Id.* P 43-46.

<sup>15</sup> 330 Fund request for rehearing at 5 (specifications of error).

### III. Discussion

#### A. Procedural Matters

8. Rule 713(d) of the Commission's Rules of Practice and Procedure prohibits answers to requests for rehearing unless otherwise ordered by the decisional authority.<sup>16</sup> We will accept NYISO's answer because it has provided information that assisted us in our decision-making process.

9. In its request for rehearing, 330 Fund provides several exhibits that it states demonstrate "a continuing lack of transparency in the NYISO transmission congestion contract markets," but 330 Fund concedes that they do not bear directly on the facts at issue in this proceeding.<sup>17</sup> We reject these exhibits. The Commission looks with disfavor on parties raising new issues on rehearing.<sup>18</sup> Furthermore, by 330 Fund's own admission, the materials do not relate to the issues in this proceeding.

#### B. Commission Determination

10. The Commission rejects the 330 Fund's arguments in its request for rehearing and affirms our findings in the October 1 Order.<sup>19</sup>

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<sup>16</sup> 18 C.F.R. § 385.713(d) (2008).

<sup>17</sup> 330 Fund request for rehearing at 35-36.

<sup>18</sup> *Calpine Oneta Power, L.P. v. American Electric Power Serv. Corp.*, 114 FERC ¶ 61,030, at P 7 (2006); *Baltimore Gas & Electric Co.*, 92 FERC ¶ 61,043, at 61,114 (2000).

<sup>19</sup> 330 Fund broadly claims that the Commission's October 1 Order is arbitrary and capricious and demonstrates a lack of reasoned decision making. 330 Fund faults the order because the Commission did not address certain arguments and inconsistencies in the pleadings. The Commission is not required to address every argument advanced by parties. The agency need only state the main reasons for its decision. *Simpson v. Young*, 854 F.2d 1429, 1434-35 (D.C. Cir. 1988). Many of the 330 Fund's arguments are disposed of by broader holdings in the October 1 Order. This order, like the October 1 Order, will present the central issues that dispose of the dispute, and will address the salient points raised in the request for rehearing.

**1. The Commission Properly Rejected 330 Fund's Answers to the NYISO's Answer to the Complaint**

11. 330 Fund argues that the Commission improperly ignored, via rejection, its August 3, 2007 answer responding to NYISO's answer and also its August 24, 2007 supplemental answer.<sup>20</sup> According to 330 Fund, its answers provided the only opportunity to respond to NYISO and Con Edison. 330 Fund also suggests that the Commission may not correct its procedural error by now accepting and addressing 330 Fund's arguments on rehearing.<sup>21</sup>

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure states that answers to answers are not permitted, unless ordered by the Commission. The Commission was within its authority to reject the answers of 330 Fund pursuant to this procedural rule. 330 Fund, as the complainant, has the burden of proof to establish the facts needed to support the claims in its section 206 complaint, rather than through subsequent unauthorized pleadings. In the October 1 Order, we determined that 330 Fund's unauthorized pleadings did not assist us in our decision-making process, so we properly rejected them. To the extent that 330 Fund attempted, in the rejected pleadings, to raise further issues and to supplement its complaint, it has no procedural right to do so, and the admission of such pleadings is subject to our discretion, which we properly exercised. Therefore, we reject rehearing on this issue.

**C. The October 1 Order Properly Rejected 330 Fund's Claims that NYISO Violated its Tariff**

**1. Alleged Duty to Post Information Regarding Existing Generator Interconnection Changes**

13. The October 1 Order rejected the claim that NYISO violated its Tariff by failing to apply section 4.4.3 of the Large Facility Interconnection Procedures of Attachment X. The October 1 Order found NYISO's determination that the change at issue was not material, and therefore did not require an Interconnection Request, to be reasonable and

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<sup>20</sup> The October 1 Order, at P 31, rejected these pleadings as inconsistent with our Rules of Practice and Procedure. Rule 213(a)(2); 18 C.F.R. § 385.213(a)(2).

<sup>21</sup> 330 Fund request for rehearing at 40.

adequately supported, and accepted NYISO's reliance on the criteria for reviewing the materiality of interconnection modifications (the 2001 Criteria).<sup>22</sup>

14. The October 1 Order explained that, under the Commission's interconnection policies, the issue of whether a proposed change in an interconnection for existing facilities is a material modification is determined by examining whether, to maintain reliability, a change would require additional facility upgrades that would affect the cost or timing to interconnect other facilities.<sup>23</sup> The Commission cited the NYISO's determination that the change in the point of interconnection did not have a material impact on reliability.<sup>24</sup> Thus, the Commission found that the change did not require facility upgrades which could delay other projects during construction.

15. The October 1 Order also found that NYISO was not otherwise required by the Large Facility Interconnection Procedures to provide market participants with details of the Seymour GTs' interconnection change.<sup>25</sup> In denying 330 Fund's claim, the October 1 Order found that section 4.4.3 of Attachment X applied to pending Interconnection Requests and new Interconnection Requests for material changes to the operating characteristics of existing facilities.<sup>26</sup> Section 4.4.3 does not apply to changes that do not require an Interconnection Request, such as the Seymour GTs' change in point of interconnection.

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<sup>22</sup> October 1 Order, 121 FERC ¶ 61,001 at P 32-35. NYISO's "Criteria for Defining A 'New Interconnection'" (2001 Criteria) are described in P 18 of the October 1 Order.

<sup>23</sup> *Id.* P33 (citing policies and pro forma interconnection agreement established in *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007)).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* P 34-35.

<sup>26</sup> *Id.* P 14. *Accord Midwest Indep. Transmission System Operator, Inc.*, 125 FERC ¶ 61,210, at P 12-14 (2008).

16. The October 1 Order also noted that although NYISO was not required to post information on materiality determinations, the request to consider the change to the Seymour GTs and the 2001 Criteria was nevertheless available to market participants.<sup>27</sup>

**a. Rehearing Request**

17. On rehearing, the 330 Fund continues to object to NYISO's determination that the Seymour GT's changes were not a material modification that required a new Interconnection Request and queue posting. In particular, 330 Fund objects to the Commission's policy that a materiality determination for existing generators should focus on whether a change would cause reliability problems that would necessitate interconnection studies and system modifications, which would, in turn, affect the timing or costs for other generators in the interconnection queue.

18. 330 Fund suggests that the Commission's interpretation of the materiality requirement for existing generators is overly narrow and not supported by precedent. 330 Fund questions the October 1 Order's reliance on prior holdings to conclude that Order No. 2003 does not apply to existing generators, because the cases cited did not involve physical changes to the generators in question, but only administrative changes to reflect a sale.<sup>28</sup> 330 Fund also claims that the holding in this proceeding is inconsistent with an "admonition" that the Commission made in another proceeding concerning removal of projects from the queue under Attachment X.<sup>29</sup> 330 Fund argues that section 4.4.3 of Attachment X applies to changes to existing facilities and provides that any change in point of interconnection is a material modification absent circumstances not present here.<sup>30</sup> 330 Fund argues that it is irrational and discriminatory to treat existing facilities differently from facilities that are subject to pending Interconnection Requests. 330 Fund

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<sup>27</sup> *Id.* P 34.

<sup>28</sup> 330 Fund request for rehearing at 19 (citing October 1 Order, 121 FERC ¶ 61,001 at P 32 n.60; *citing Midwest Indep. Transmission Sys. Op., Inc.*, 118 FERC ¶ 61,270, at P 12 (2007), *New England Power Co.*, 109 FERC ¶ 61,364, at P 13 (2004); *Entergy Services, Inc.*, 115 FERC ¶ 61,264, at P 4 (2006)).

<sup>29</sup> *Id.* at 12 & n. 24 (citing *Hudson Transmission Partners LLC v. New York ISO*, 120 FERC ¶ 61,179, at P 55, 59 (2007) (rejecting NYISO's proposal to require written notice for queue withdrawals)).

<sup>30</sup> *Id.* at 13.

also claims that an overriding purpose of the Tariff is to provide notice of major system modifications to market participants.<sup>31</sup>

19. According to 330 Fund, the October 1 Order failed to distinguish between use of the defined term “Material Modification” in section 4.4.3 of Attachment X and the phrase “material modification” (lower case) in the definition of Interconnection Request.<sup>32</sup>

20. 330 Fund claims that the October 1 Order “acknowledges that section 4.4.3 applies to an Interconnection Request for material changes to the operating characteristics of *existing* facilities.”<sup>33</sup> 330 Fund concludes that a change to the point of interconnection of an existing facility constitutes a material modification under the Tariff. 330 Fund claims that the October 1 Order adds an additional limitation on the definition of material modification by holding that only changes that impact the cost or timing of other projects in the interconnection queue are material.<sup>34</sup> 330 Fund suggests that the Commission considered only the defined term “Material Modification,” and thereby improperly limited its interpretation to impacts on other generators. 330 Fund states that, in so doing, the Commission fails to read the Tariff as a whole, contrary to common standards of interpretation.

21. 330 Fund further argues that the October 1 Order finding that a change in an existing generator’s point of interconnection does not require a new Interconnection Request absent a material modification, as provided for in the definition of Interconnection Request, makes section 4.4.3 a nullity.<sup>35</sup> According to 330 Fund, the Commission failed to require NYISO to “take into account” the generator’s location and the configuration of the NYISO transmission system. 330 Fund states that a change in the point of interconnection will change the “operating characteristics” of a generator, meaning “how often and at what level” the plant will run, and that these changes affect other market participants. 330 Fund faults the 2001 Criteria for addressing reliability concerns, rather than “operating characteristics,” and proposes certain operating statistics, such as run times and impact on congestion, that it states should have been considered in NYISO’s analysis. 330 Fund states that its rejected answers demonstrated that the

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<sup>31</sup> *Id.* at 15.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 16 (citing October 1 Order, 121 FERC ¶ 61,001 at P 32) (emphasis provided by 330 Fund, quotes omitted).

<sup>34</sup> *Id.* at 17.

<sup>35</sup> *Id.* at 20.

change in the Seymour GTs' point of interconnection would materially impact the capacity factor of the units and affect transmission flows, congestion and energy costs on the transmission system.<sup>36</sup>

22. 330 Fund faults the October 1 Order for failing to address its argument that NYISO improperly relied on the 2001 Criteria.<sup>37</sup> 330 Fund claims that these 2001 Criteria are not on file with the Commission and conflict with Attachment X, which is the filed rate. 330 Fund disputes the Commission's statement that information was available on the NYISO website concerning the interconnection, the materiality determination, the associated outages and the 2001 Criteria.<sup>38</sup> 330 Fund argues that the Planning Committee minutes were incomplete and inaccurate and claims that the 2001 Criteria were first posted in 2007, and were not available at the time of the auction. 330 Fund complains that materials provided in meeting minutes are voluminous and difficult to interpret. Therefore, 330 Fund argues that NYISO failed to provide the materials discussed in this proceeding, which could have provided notice of the proposed change, and thus failed to meet its notice obligations.

23. 330 Fund further alleges that NYISO did not in fact conduct a materiality analysis under Attachment X or consider any potential impacts on other projects in the interconnection queue. 330 Fund bases this claim on NYISO's statement that it reviewed "one-line diagrams, power flows and short circuit analysis data" and found that "the proposed reconfiguration had no material impact on short circuit and power flow."<sup>39</sup> 330 Fund also cites meeting minutes describing Power Authority's characterization of the proposal to change the point of interconnection, which 330 Fund views as inaccurate.

**b. Commission Determination**

24. The Commission affirms its findings in the October 1 Order and denies 330 Fund's rehearing request. According to 330 Fund, the NYISO tariff establishes a three prong materiality test under which a change to an existing facility is material if: "(a) there is *any* modification to a point of interconnection once the project is complete, *or* (b) it materially impacts the operating characteristics of the facility being modified, *or*

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<sup>36</sup> *Id.* at 21-22 (citing 330 Fund August 3, 2007 answer).

<sup>37</sup> *Id.* at 23.

<sup>38</sup> *See* October 1 Order, 121 FERC ¶ 61,001 at P 34.

<sup>39</sup> 330 Fund request for rehearing at 23-24 (citing NYISO July 19, 2007 answer at 8).

(c) it materially impacts other projects in the interconnection queue.”<sup>40</sup> For the reasons discussed below, we reject this contention.

i. **The October 1 Order Properly Found that Section 4.4.3 Does Not Apply**

25. 330 Fund’s first claim fails because the October 1 Order correctly reflected that the interconnection procedures set forth in section 4.4.3 of Attachment X of NYISO’s Tariff do not apply to changes to an existing facility absent a pending Interconnection Request. Section 2.1 of Attachment X states:

Sections 2 through 13 apply to processing an Interconnection Request pertaining to a Large Generating Facility or Merchant Transmission Facility proposing to interconnect to the New York State Transmission System.<sup>41</sup>

Because Power Authority does not propose an increase in the Seymour GTs’ capacity, the salient issue, under the definition of Interconnection Request, is whether the change represents a material modification to the operating characteristics of the units.

26. When Power Authority requested the change in interconnection points, NYISO first determined whether such change necessitated an Interconnection Request. According to NYISO’s Tariff (sections 1 and 2.1 of Attachment X), an Interconnection Request is required when a developer requests “a material modification to the operating characteristics of [its] existing Large Generating Facility.” The criteria NYISO used in determining whether there was a material modification to operating characteristics were the 2001 Criteria. The 2001 Criteria establish key factors to be considered in order to show that a proposed project is not material and thus does not require an Interconnection Request. Essentially, if the electrical characteristics of the currently interconnected generating resource do not differ materially after the change, the change will not be considered material and will not require an Interconnection Request.<sup>42</sup> NYISO examined factors such as stability and voltage and short circuit impacts in assessing whether the

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<sup>40</sup> *Id.* at 13 (emphasis in original).

<sup>41</sup> NYISO Tariff, Attachment X, section 2.1. The remaining section, section 1, contains only definitions used in the NYISO Large Facility Interconnection Procedures. As noted above, an Interconnection Request is defined in section 1 as a request to interconnect a new generator, or “to increase the capacity of, or make a material modification to the operating characteristics of,” an existing facility.

<sup>42</sup> NYISO July 19, 2007 answer at 19.

electrical characteristics of Power Authority's generator would be materially changed. NYISO concluded that they would not, and that the proposed reconfiguration had no material impact on reliability.<sup>43</sup>

27. Therefore we held in the October 1 Order and we affirm here, that 330 Fund's arguments do not support its claim that the NYISO violated either section 4.4.3 or any other section of Attachment X of its Tariff. NYISO correctly applied the materiality provisions of its 2001 Criteria in determining that Power Authority's proposed change in interconnection points did not require a formal Interconnection Request. Because no Interconnection Request was required, NYISO was not required to meet any OASIS posting requirement associated with Interconnection Requests.<sup>44</sup> Therefore, we properly concluded that NYISO did not fail to disclose details of the change in interconnection as alleged by the 330 Fund.

28. We also reject 330 Fund's claim that the October 1 Order's conclusion that the interconnection procedures of Order No. 2003 do not apply to existing facilities absent a pending interconnection request was unsupported. The Commission bases its finding on the language of the Attachment X, Large Facility Interconnection Procedures, which were previously accepted by the Commission,<sup>45</sup> and are consistent with Order No. 2003. The October 1 Order cited precedent holding that Order No. 2003's interconnection requirements do not apply where no increase in capacity or material modification of the characteristics of an existing facility are proposed.<sup>46</sup> These orders reflect the Commission's policy with respect to pre-existing generators.<sup>47</sup> In the instant case, there were no material modifications to the physical or operating characteristics of the generator; thus, the interconnection procedures promulgated by Order No. 2003 do not

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<sup>43</sup> *Id.* at 20.

<sup>44</sup> The NYISO Tariff, Attachment X, section 3.4 requires NYISO to "maintain on its OASIS a list of all valid Interconnection Requests." Power Authority's proposed change in interconnection points did not require an Interconnection Request.

<sup>45</sup> *New York Indep. Sys. Operator, Inc.*, 108 FERC ¶ 61,159 (2004).

<sup>46</sup> October 1 Order, 121 FERC ¶ 61,001 at P 32 n.60 (citing *Midwest Indep. Transmission Sys. Op., Inc.*, 118 FERC ¶ 61,270, at P 12 (2007); *New England Power Co.*, 109 FERC ¶ 61,364, at P 13 (2004); *Entergy Services, Inc.*, 115 FERC ¶ 61,264, at P 4 (2006)).

<sup>47</sup> See Order No. 2003 at P 911 ("The Commission is not requiring retroactive change to individual interconnection agreements filed with the Commission prior to the effective date of this Final Rule.").

apply. Although 330 Fund contends that the cited cases involve ownership changes of existing generators, rather than generator modifications,<sup>48</sup> 330 Fund does not explain how that fact supports a different policy, nor does it explain why the policy would not apply in the context of generator modifications. In Order No. 2003, the Commission determined that existing interconnections would continue to be governed by the terms of the existing agreements until a new Interconnection Request is required.<sup>49</sup> 330 Fund's proffered evidence, such as meeting minutes summarizing stakeholder discussions with a NYISO representative, does not establish the applicability of section 4.4.3.<sup>50</sup>

ii. **Failure to Apply Section 4.4.3 to Existing Generators Is Not Unduly Discriminatory**

29. 330 Fund argues that it is irrational and discriminatory to hold that a new request for a change in an interconnection point for an existing facility is not material, while the same change would be deemed material for a proposed facility that was not yet built.<sup>51</sup> We disagree. When it evaluated the proposed change to the Seymour GTs' point of interconnection, NYISO was properly concerned whether the electrical characteristics of the currently interconnected generating resource would materially change and thereby affect system reliability, and if so, whether such proposed change required an Interconnection Request.<sup>52</sup> However, a transmission provider's objective when it reviews proposed modifications to already pending Interconnection Requests under

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<sup>48</sup> 330 Fund request for rehearing at 19.

<sup>49</sup> See *American Transmission Co., LLC*, 107 FERC ¶ 61,261, at P 17 (2004) (ordering parties to adopt Order No. 2003 provisions when other changes are made to generator interconnection agreement) and *New England Power Co.*, 109 FERC ¶ 61,364, at P 13 & n.8 (2004) (finding where there are "no proposed increases in capacity or material modifications of the characteristics of an existing generating facility," revised interconnection agreements "are not new interconnection requests" and "Order No. 2003 does not apply").

<sup>50</sup> Under *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577 (1981) the applicable rate is the rate that is properly filed with the Commission. Furthermore, NYISO clarifies in its answer that the statement was part of an ongoing discussion about pending projects in the queue, and not existing generators.

<sup>51</sup> 330 Fund request for rehearing at 14.

<sup>52</sup> NYISO July 19, 2007 answer at 20. See *Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,183, at P 145 (2008) (noting that the "threshold concern" is whether the transmission system can accommodate the interconnection request).

section 4.4.3 is whether such modifications would have a material impact on the cost or timing of any Interconnection Request with a later queue priority date (in addition to ensuring that reliability issues are addressed through the study process).<sup>53</sup> The Order No. 2003 procedures for proposed interconnections reflected in section 4.4.3 are concerned with the need to allocate study resources and upgrade costs among the various entities that have a project in the queue.<sup>54</sup> In light of these different objectives, we reject 330 Fund's assertion that it is irrational and discriminatory to have different criteria for determining materiality.

**iii. The October 1 Order Properly Held that NYISO Met its Notice Requirements**

30. 330 Fund claims that the Commission's generator interconnection policies reflect an "overriding purpose" to provide notice of major system modifications and that the Commission's holding is inconsistent with the transparency elsewhere provided for. We do not agree. Order No. 2003 does not include notice as an overriding purpose:

Interconnection is a critical component of open access transmission service, and standard interconnection procedures and a standard agreement applicable to Large Generators will serve several important functions: they will (1) limit opportunities for Transmission Providers to favor their own generation, (2) facilitate market entry for generation competitors by reducing interconnection costs and time, and (3) encourage needed investment in generator and transmission infrastructure. The Commission expects that the Final Rule . . . will resolve most disputes, minimize opportunities for undue discrimination, foster increased development of economic generation, and protect system reliability.<sup>55</sup>

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<sup>53</sup> See the definition of Material Modification in Order No. 2003 Large Generator Interconnection Procedures, section 1; NYISO Tariff, Attachment X, section 1.

<sup>54</sup> See, e.g., *Neptune Regional Transmission System, LLP v. PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,455, at P 19 (2005) (finding under Order No. 2003 that a project's queue position forms the basis for an interconnection customer's cost responsibilities for system upgrades to accommodate its request). If such change is deemed a Material Modification under section 4.4.3, the developer would not retain its queue position

<sup>55</sup> Order No. 2003 at P 11.

31. The purpose of the interconnection procedures is to provide a single set of procedures for resolving interconnection feasibility, cost, and cost responsibility issues, and thereby minimize the opportunities for undue discrimination, while protecting reliability.<sup>56</sup> Although this process requires some degree of transparency, such transparency is not an overriding purpose of the interconnection procedures. Instead, the interconnection procedures balance the need to provide for an open process with concern for keeping generator business plans confidential.<sup>57</sup> In short, Order No. 2003 provided for transparency to ensure openness in the timing and allocation of costs of generator interconnections and the justifications for denials of interconnection service.<sup>58</sup> The only interconnection-related disclosure obligation under NYISO's Tariff that is at issue in this proceeding relates to an Interconnection Request, which NYISO correctly determined was not necessary for the subject change in interconnection point.<sup>59</sup> 330 Fund's arguments that NYISO should have made disclosures - which we find were not required by its Tariff - are simply beyond the scope of this proceeding. Creating such an obligation would require a revision to NYISO's Tariff, which 330 Fund concedes that it does not seek.<sup>60</sup>

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<sup>56</sup> *Id.*; see also *Midwest Indep. Transmission Sys. Op., Inc.*, 124 FERC ¶ 61,183, at P 2, 4 (2008); see also *Tennessee Power Co.*, 90 FERC ¶ 61,238, at 61,761 n.5 (2000) (transmission provider is to review interconnection request to determine "whether system upgrades are needed to accept power into the grid at the interconnection point").

<sup>57</sup> See Order No. 2003, at P 34 n.39, and 269-73 (emphasizing that transmission providers must maintain confidentiality of interconnection customer information, the disclosure of which could cause harm or prejudice, and incorporating confidentiality measures in the interconnection procedures, section 13.1); see also Order No. 2003-C, Large Generator Interconnection Agreement, article 5.19.1, Modifications (information on modifications, including timing and affect on electricity flow, is confidential); NYISO Attachment X, Large Facility Interconnection Agreement, article 5.17.1 (following Order No. 2003 language).

<sup>58</sup> The other disclosure requirements, which are not at issue in this proceeding, establish uniform queue procedures to resolve cost allocation disputes among interconnecting generators, make study criteria and determinations available to interconnecting generators, and add the interconnection processes to transmission provider tariffs. See, e.g., Attachment X, section 2.3 (Base Case Data), section 3.4 (OASIS Posting), section 3.6 (Withdrawal), and 8.4 (Study Report Meeting).

<sup>59</sup> See NYISO Tariff, Attachment X, section 3.4.

<sup>60</sup> 330 Fund complaint at 2.

iv. **NYISO's Application of the 2001 Criteria Was Reasonable**

32. 330 Fund argues that NYISO should have considered additional factors that were not included in the 2001 Criteria. 330 Fund objects to the October 1 Order's approval of NYISO's review under the 2001 Criteria and determination that the change to the Seymour GTs was not material. 330 Fund argues variously that NYISO's review was incomplete (or even non-existent), inconsistent with Attachment X, violated the filed rate doctrine, or ignored factors that the 330 Fund views as critical. In particular, 330 Fund faults the Commission and NYISO for focusing on the issue of whether the proposed change would result in reliability impacts. 330 Fund would have the Commission require transmission operators to consider changes to generator run times and effects on grid congestion when making materiality determinations, and it attempts to demonstrate that such changes, resulting from the change in the Seymour GTs' point of interconnection, were substantial.

33. The October 1 Order found the NYISO's review procedures reasonable and adequately supported.<sup>61</sup> The Commission's interconnection procedures do not require the provider to examine changes in grid congestion and generator run times.<sup>62</sup> Neither Order No. 2003 nor the Commission's pre-Order No. 2003 policies require a transmission provider to review a generator's impact on congestion or examine a generator's availability.<sup>63</sup> Further, transmission providers do not consider congestion or other economic impacts faced by market participants when reviewing an Interconnection

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<sup>61</sup> October 1 Order, 121 FERC ¶ 61,001 at P 17-18, 33 (noting that NYISO's analysis does not consider congestion, economic or commercial issues and approving of NYISO's determination).

<sup>62</sup> See, e.g., Order No. 2003-A at P 558 (“[W]e clarify that the Interconnection Feasibility Study must consider transmission contingencies, but not generation redispatch. Generation redispatch refers to decisions the system operator makes to manage congestion.”); see also *Entergy Servs. v. FERC*, 319 F.3d 536, 545 (D.C. Cir. 2003) (reviewing Commission's interconnection policies concerning allocation of short circuit and stability upgrade costs and distinguishing congestion management costs as not involving generator interconnection issues).

<sup>63</sup> *Midwest Indep. Sys. Op., Inc.*, 108 FERC ¶ 61,027, at P 109 (2004) (rejecting incorporation of operating limits into interconnection procedures).

Request.<sup>64</sup> Instead, congestion is specifically considered in NYISO's comprehensive planning process, consistent with the Commission's system planning policies.<sup>65</sup> The fact that the transmission provider need not review such factors before interconnecting a generator supports the conclusion that a change in such factors is not relevant to a subsequent determination of the materiality of modifications and whether such modifications require an Interconnection Request. Therefore, we re-affirm that the October 1 Order properly rejected the inclusion of those factors in NYISO's materiality determination.

34. The Commission does not agree with 330 Fund's assertion that NYISO's reliance on the 2001 Criteria violated the filed rate doctrine. The Commission has elsewhere approved the omission of similar operations documents from the Tariff. In *KeySpan-Ravenswood, LLC v. New York Indep. Sys. Op., Inc.*,<sup>66</sup> the Commission found no violation of the filed rate doctrine when procedures in an operations manual were applied, where the tariff did not expressly specify the appropriate methodology. Further, the

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<sup>64</sup> See *New England Power Pool*, 85 FERC ¶ 61,141, at 61,552 (1998) (permitting system operator to discard the assumption, prevailing under a power pool arrangement, that the transmission system be designed so that all interconnected generators can serve a designated load without intervening congestion and permitting the system operator to instead "limit its analysis to the system reliability, stability and operating considerations of the actual interconnection"), *reh'g denied*, 87 FERC ¶ 61,043, at 61,184 (1999) (rejecting consideration of congestion management issues in the interconnection process, upholding elimination of full integration requirement, and finding that interconnection evaluations need not address transmission constraints and economic impacts on existing generators, because such issues would be addressed through location-based marginal pricing and congestion management proposals); see also *Entergy Servs. Inc.*, 108 FERC ¶ 61,029, at P 22-26 (2004) (interconnection review must be conducted without regard to the efficiency or economic viability of previously interconnected generating resources).

<sup>65</sup> See NYISO OATT, Attachment Y (Comprehensive Planning Process for Reliability Needs), *adopted in compliance with Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 488, 549, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g and clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008) (noting that new planning procedures, providing for studies to alleviate congestion or expanding the regional transmission grid through transmission upgrades to connect new generation, do not extend to or supplant the interconnection procedures used to process interconnection requests).

<sup>66</sup> 111 FERC ¶ 61,336, at P 19 (2005).

Commission recently affirmed that certain details of the interconnection procedures need not be included in a system operator's tariff.<sup>67</sup> Order No. 2003 itself stated that transmission providers need not incorporate a precise definition of material modification in their tariffs, instead leaving the definition to the transmission providers.<sup>68</sup> Therefore, it was not necessary for NYISO to include the 2001 Criteria in its Tariff in order to rely on them in determining materiality.

35. Finally, 330 Fund argues that NYISO did not make a materiality determination consistent with section 4.4.3 of Attachment X. However, this argument carries no weight, given our determination, under section 2.1, that section 4.4.3 does not apply to the instant change in interconnection point. 330 Fund's attempts to prove its case by after the fact and out of context interpretations of NYISO's statements are unconvincing, and refuted by NYISO.<sup>69</sup> Because we find that NYISO properly determined that it was unnecessary to require an Interconnection Request for the change in interconnection point for the Seymour GTs, it was unnecessary for NYISO to include such change in its interconnection queue. Therefore, we need not address 330 Fund's claim that NYISO failed to properly manage its queue.<sup>70</sup>

**2. The October 1 Order Properly Found that the Uprate/Derate Tables Required by Attachment N Need Not Have Included Outages Related to the Seymour GTs' Change in Point of Interconnection**

36. The October 1 Order rejected 330 Fund's claim that section 3.6.6.1 of Attachment N, "Congestion Settlements Related to the Day-Ahead Market and TCC Auction Settlements"<sup>71</sup> required NYISO to post information about potential line outages

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<sup>67</sup> *Midwest Indep. Transmission Sys. Op., Inc.*, 124 FERC ¶ 61,183 at P 145 (declining to order independent system operator to incorporate details of the interconnection process in its tariff in order to provide flexibility in queue management). NYISO affirms in its November 15, 2007 answer, at 6, that the 2001 Criteria were available on its website to market participants.

<sup>68</sup> Order No. 2003 at P 168.

<sup>69</sup> See NYISO November 15, 2007 answer at 7.

<sup>70</sup> 330 Fund request for rehearing at 12 & n.24.

<sup>71</sup> October 1 Order, 121 FERC ¶ 61,001 at P 37-41 (rejecting 330 Fund's interpretation, and finding that nothing in section 3.6.6.1 required NYISO to disclose the possibility of outages or disclose the potential for outages before they are processed through its outage scheduling manual procedures).

associated with the Seymour GTs' change in interconnection points, prior to receipt of notice of the outages from the transmission owner. The October 1 Order also found that section 3.6.6.1 does not require NYISO to notify auction participants of potential interconnection modifications, or to attempt to predict when associated outages may occur. Further, the October 1 Order found that section 3.6.6.1 only requires disclosure of the expected impacts of all transmission facility outages and returns to service for the period for which transmission congestion contracts are to be sold.<sup>72</sup>

**a. Rehearing Request**

37. 330 Fund asserts that the October 1 Order failed to adequately address the parties' different descriptions of the requirements of section 3.6.6.1. 330 Fund renews its claim that section 3.6.6.1 required NYISO to post information regarding Line 42231 outages in an uprate/derate table once it learned from Con Edison that such outage was possible given the upcoming change in point of interconnection, regardless of whether it knew the actual date(s) such outage would occur.<sup>73</sup> 330 Fund argues that the table functions as a hypothetical tally or a contingency analysis providing the potential impacts on particular interface outages, when the timing of such impacts is unknown.<sup>74</sup> 330 Fund notes however that Con Edison asserts that section 3.6.6.1 requires the posting of the expected impacts of transmission outages, while notification of outages is determined pursuant to the NYISO Outage Manual. 330 Fund objects to the Commission's holding, which it characterizes as stating that NYISO "could not have notified market participants of *hypothetical* outages for the particular [transmission congestion contract] auction period, through section 3.6.6.1 because it [NYISO] was not aware of the timing of such outages prior to the auctions."<sup>75</sup> 330 Fund claims that the undisputed purpose of the uprate/derate table is to alert transmission owners and market participants of potential outages and that incorporating all outages that might occur for the period in which the transmission congestion contracts are to be sold is consistent with that purpose.

38. According to 330 Fund, the October 1 Order also failed to address facts referenced in its pleadings. 330 Fund contends that the fact that the uprate/derate table rarely changes demonstrates that the information is not correlated with the actual outages anticipated to occur during the auction periods. According to 330 Fund, given that the

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<sup>72</sup> *Id.* P 37.

<sup>73</sup> Line 42231 is the line containing the original point of interconnection that was the subject of the spring outages at issue in this proceeding.

<sup>74</sup> 330 Fund request for rehearing at 28 (citing NYISO July 19, 2007 answer at 25).

<sup>75</sup> *Id.* at 28-29 (emphasis in original).

purpose of the uprate/derate table is to alert market participants of potential outages, it is far more consistent to incorporate all outages that might occur for the period in which the transmission congestion contracts are to be sold.<sup>76</sup> Further, 330 Fund asserts that including potential outages is consistent with the actual content of the uprate/derate table, which includes many outages that are listed without change from one auction period to the next. 330 Fund also argues that the Commission erred when it interpreted section 3.6.6.1 in light of other Attachment N provisions, including the definition section (that defines uprate/derate tables as being limited to Qualifying day-ahead market outages and Returns-to-Service), and states that the Commission failed to explain how these provisions support its interpretation. 330 Fund states that NYISO's practice with respect to the uprate/derate table implies that it does not take into account outages and returns to service from one auction period to another because the table does not change frequently.

**b. Answer**

39. NYISO states that section 3.6.6.1 does not require posting of an outage schedule and notes that the table does not provide information concerning the timing of outages or which facilities will be out, contrary to 330 Fund's position.<sup>77</sup> NYISO quotes its answer to the complaint to the effect that "[t]he purpose of the table is to provide the predetermined impacts that each transmission facility outage would have on interface transfer limits, if a transmission facility is ultimately scheduled out-of-service, and is not meant to reflect transmission facility outages that are actually expected to be scheduled."

40. NYISO maintains that the uprate/derate table is not intended to notify market participants of outages, since the information does not change from period to period. NYISO also explains that Line 42231 would not have been included on the uprate/derate table in any case. According to NYISO, due to the technical characteristics of the line, an

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<sup>76</sup> *Id.* at 29. 330 Fund claims this purpose is undisputed; *but see* NYISO November 15, 2007 answer at 9.

<sup>77</sup> Section 3.6.6.1 provides:

Prior to each [Reconfiguration/Centralized TCC] Auction, the ISO shall post on its website the [Reconfiguration/Centralized TCC] Auction Interface Uprate/Derate Table, which table shall specify the expected impact (at the time of the [Reconfiguration/Centralized TCC] Auction based on all information available to the ISO) of all transmission facility outages and returns-to-service on interface transfer limits for the period for which TCCs are to be sold in the [Reconfiguration/Centralized TCC] Auction.

outage on Line 42231 would not affect the interface transfer limits,<sup>78</sup> but would only cause a limitation on the thermal limit of individual transmission facilities.<sup>79</sup>

**c. Commission Determination**

41. The Commission denies rehearing. The October 1 Order properly found that section 3.6.6.1 did not require NYISO to report outages associated with the Seymour GTs' change in interconnection points in the uprate/derate table. Contrary to 330 Fund's assertions, and as NYISO has repeatedly made clear, the uprate/derate table is not intended to include actual transmission outage information; instead such outage information is required to be posted by NYISO on its OASIS by Attachment M<sup>80</sup> and NYISO's Outage Scheduling Manual.<sup>81</sup> Further, as explained below, because section 3.6.6.1 requires that NYISO only include the expected impact on interface transfer limits in the uprate/derate table, and the Seymour GTs' change in interconnection points would not affect transfer limits, such outage information was not appropriate for inclusion in the uprate/derate table.

42. 330 Fund misinterprets the function of the uprate/derate table in asserting that it should incorporate all outages that might occur for the period in which the transmission congestion contracts are to be sold. As 330 Fund repeatedly admits, the information on the uprate/derate table does not change in response to outage scheduling; rather the

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<sup>78</sup> That is, the transfer limits in and out of NYISO transmission owner systems. See NYISO OATT, sections 1.14p, 1.44d.

<sup>79</sup> NYISO witness Allen Hargrave explained that because the purpose of the uprate/derate table, as defined in section 3.6.6.1, is to identify the impact on interface transfer limits that are more restrictive than the thermal limits of individual transmission facilities, the table lists those transmission facilities that, if out of service, would impact an interface transfer limit. The uprate/derate table does not include transmission facilities in southeastern New York – including Line 42231 – because outages on the underground cable system would only result in thermal limitations. Any and all transmission facilities not listed on the uprate/derate table simply have no interface transfer limits that are more restrictive than the thermal limits of individual transmission facilities, so there would be no reason to include them on the table.

<sup>80</sup> NYISO Tariff, Attachment M, Sale of Transmission Congestion Contracts. 330 Fund does not challenge NYISO's assertion that it properly posted outage information related to the Seymour GTs' change of point of interconnection on its OASIS.

<sup>81</sup> NYISO July 19, 2007 answer at 13-14 and Exhibit C.

information in the table rarely changes.<sup>82</sup> In order for it to report on actual outages expected to occur during the transmission congestion contract auction period, the information would have to change from period to period. Therefore, even assuming for the sake of argument that NYISO were required to list any Seymour GT-related impacts on the uprate/derate table, the listing would not alert market participants of impending outages, because the information on the table would not change. The table is not meant to reflect transmission facility outages that are actually expected to be scheduled; rather, it is meant to provide the predetermined impacts that each transmission facility outage would have on interface transfer limits, if a transmission facility is ultimately scheduled to be out-of-service.

43. In its answer, NYISO explains that the reason that the uprate/derate table did not reflect the Seymour GTs' outages is because an outage on the line in question would not affect interface transfer limits between Con Edison and neighboring systems.<sup>83</sup> Not only was the uprate/derate table not updated to reflect Line 42231-related outages, but the line is not even listed on the table, because there is no anticipated impact on interface transfer limits from a Line 42231 outage. In the October 1 Order, the Commission found that NYISO had no general duty to notify market participants of all hypothetical outages through the uprate/derate table.<sup>84</sup> On rehearing, we affirm that holding, and note that, in particular, the uprate/derate table would not have provided notice of the Line 42231 outages, since the line outage did not affect interface transfer limits.

### **3. Policy Implications of 18 C.F.R. § 37.6(a)(2)**

44. The October 1 Order found that 330 Fund failed to support its claim that the general purpose provision of the Commission's OASIS regulations required NYISO to post information about the interconnection project and related outages. 330 Fund did not allege a violation of any specific OASIS posting requirement under the Commission's regulations and incorporated by reference in NYISO's Tariff. In addition, the October 1 Order found no specific OASIS obligation that required posting information about

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<sup>82</sup> 330 Fund request for rehearing at 30; NYISO November 15, 2007 answer at 11-12.

<sup>83</sup> NYISO November 15, 2007 answer at 11 & n.36.

<sup>84</sup> The Commission based its findings on the language of Attachment N, including the definitions implicated in section 3.6.6.1. October 1 Order, 121 FERC ¶ 61,001 at P 41.

potential interconnection reconfigurations or transmission outages that do not affect grants or denials of transmission service.<sup>85</sup>

**a. Rehearing Request**

45. In its request for rehearing, 330 Fund argues that the October 1 Order erred because it failed to find that the NYISO violated “the purpose of the OATT,” as expressed in 18 C.F.R. § 37.6,<sup>86</sup> the Commission’s transmission information disclosure regulations, specifically 18 C.F.R. § 37.6(a)(2), which requires a transmission owner to make information available to transmission customers to enable them to make prudent business decisions. 330 Fund claims that the Commission should have addressed its arguments on this issue in the October 1 Order.<sup>87</sup> 330 Fund suggests that as a consequence of the Commission’s holding, independent system operators and utilities may treat modifications to generator interconnections “casually” and without a “public and transparent posting process.”<sup>88</sup> 330 Fund states that the operation of the transmission congestion contract market demands that market participants have up-to-date and accurate information on the status of the transmission system, and alleges that it could have avoided its difficulties if it had known that outages would have affected the positions that it took in the transmission congestion contract auctions. 330 Fund suggests that a similar lack of information could affect prices in other markets, such as forward energy markets, and locational-based marginal prices.

46. 330 Fund contends that, as a result of the Commission’s decision, unnamed “insiders,” specifically those who choose to attend the Planning Committee meetings, will have preferential access to critical information. 330 Fund states that stakeholder

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<sup>85</sup> October 1 Order, 121 FERC ¶ 61,001 at P 43. The Commission granted waiver of specific OASIS posting requirements to NYISO in *Central Hudson Gas & Electric Corporation*, 88 FERC ¶ 61,253, at 61,803 (1999). Otherwise, the OASIS posting requirements are incorporated in the OATT, section 4.0: “Terms and conditions regarding [OASIS] and Standards of Conduct are set forth in Part 37 of the Commission’s regulations[.] [NYISO] will maintain an OASIS, including a Bid/Post system, for purposes of scheduling Transmission Service.”

<sup>86</sup> 330 Fund request for rehearing at 5 (specifications of error).

<sup>87</sup> *Id.* at 31-32.

<sup>88</sup> *Id.* at 32.

groups should not be relied upon to provide notice of information, and notes that other parties raise similar concerns.<sup>89</sup>

#### 4. Commission Determination

47. As noted in the October 1 Order, OASIS operators must meet the specific posting obligations contained in sections 37.6(b)-(g).<sup>90</sup> On rehearing, 330 Fund continues to rely on the precatory language found in section 37.6(a).<sup>91</sup> However, 330 Fund does not allege a failure to meet the specific OASIS posting obligations established in the Commission's

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<sup>89</sup> *Id.* at 34 & n.75 (citing CAM Energy Trading, Inc. comments stating stakeholder discussions do not provide adequate notice).

<sup>90</sup> *See Open Access Same-Time Information System (formerly Real-Time Information Networks) and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035, at 31,604 (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).

<sup>91</sup> *See id.* (describing section 37.6(a) as listing the OASIS objectives, while sections 37.6(b) – (h) set forth posting and auditing requirements). Section 37.6(a) states:

The information posted on the OASIS must be in such detail and the OASIS must have such capabilities as to allow Transmission Customers to: (1) Make requests for transmission services offered by Transmission Providers, Resellers and other providers of ancillary services, request the designation of a network resource, and request the termination of the designation of a network resource; (2) View and download in standard formats, using standard protocols, information regarding the transmission system necessary to enable prudent business decision making; (3) Post, view, upload and download information regarding available products and desired services; (4) Clearly identify the degree to which transmission service requests or schedules were denied or interrupted; (5) Obtain access, in electronic format, to information to support available transmission capability calculations and historical transmission service requests and schedules for various audit purposes; and (6) Make file transfers and automated computer-to-computer file transfers and queries as defined by the Standards and Communications Protocols Document.

orders<sup>92</sup> nor identify an OASIS posting obligation for the potential interconnection reconfigurations at issue in this proceeding.

48. Since the October 1 Order found that NYISO was not required under the Commission's OASIS regulations to notify auction participants of the interconnection modifications, it was not necessary for the Commission to address what type of notification would be appropriate, such as whether meeting minutes would be sufficient to meet an OASIS posting requirement or cure a failure to post. Additionally, 330 Fund does not dispute that NYISO complied with the OASIS posting requirements of Attachment M of its Tariff (section 9.8).<sup>93</sup> 330 Fund's suggestions of undesirable results arising from the Commission's action are more appropriate in a rulemaking proceeding or other Commission proceeding that addresses changes to the Commission's interconnection policies. As such, 330 Fund's policy-based arguments do not support its allegations that NYISO violated its Tariff.

49. Likewise, we reject 330 Fund's reliance on the positions of those intervenors who argue that notice through stakeholder proceedings is inadequate. Because the October 1 Order found no duty to notify market participants of the Seymour GTs' interconnection project, we do not need to address the issue whether notice was adequate.

50. 330 Fund also relies on 18 C.F.R. § 37.6(a)(2) as requiring a transmission owner to make information available to transmission customers to enable them to make prudent business decisions concerning their power purchase transactions.<sup>94</sup> 330 Fund proposes that such a requirement includes the obligation for transmission operators to provide information to auction participants about future, potential grid changes.

51. We do not construe section 37.6 so broadly. Although section 37.6 states the Commission goal that transmission owners and operators are to provide information to transmission customers to enable them to make prudent business decisions, based on the

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<sup>92</sup> The Commission has over several orders established explicit posting requirements under its OASIS regulations. *See, e.g.*, Order No. 889 (establishing the OASIS regulations); *see also Open Access Same-Time Information System and Standards of Conduct*, Order No. 638, FERC Stats. & Regs. ¶ 31,093 (2000) (adopting business practice standards for OASIS transactions); *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676, FERC Stats. & Regs. ¶ 31,216 (2006) (updating OASIS posting requirements consistent with industry practice and to address Order No. 2003); and Order No. 890.

<sup>93</sup> *See* NYISO's July 19, 2007 answer at 4.

<sup>94</sup> *See also* 18 C.F.R. § 37.2 (describing purpose of OASIS regulations).

availability of transmission services, this goal did not translate into any specific disclosure requirement applicable to the Seymour GTs' change in point of interconnection. Moreover, 330 Fund has not alleged that it is a transmission customer. Because section 37.6 was established by Order No. 889, and preceded transmission congestion contract auctions by several years, any policy established under section 37.6 would not have focused on the need for disclosures to transmission congestion contract auction participants.<sup>95</sup> More generally, we reiterate that information regarding the Seymour GTs' interconnection modification, as well as a copy of the Power Authority request for the materiality determination, was available in advance of the Fall 2006 and Spring 2007 auctions, which were held in August to October 2006 and March and April 2007.<sup>96</sup>

52. In conclusion, we find that 330 Fund's arguments fail to support rehearing of the October 1 Order.

**D. Reasonable Expectations of the Market**

53. As part of its rehearing request, 330 Fund argues that it relied on the NYISO's depiction of the transmission system when it purchased its transmission congestion contracts.<sup>97</sup> According to 330 Fund, NYISO sold it a product that reflected the location of the Seymour GTs as being interconnected outside the load pocket, but delivered a different product, presumably reflecting subsequent outages and change in point of interconnection.<sup>98</sup>

54. 330 Fund argues that, as a matter of policy, the Commission favors transparency and equal access to information, and asserts that if it had known about the outages, it would have adjusted its financial position and avoided losses. 330 Fund suggests that the Commission's holding will adversely affect market efficiency and investment practice and permit disparate access to critical information.

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<sup>95</sup> As stated above, the Commission developed OASIS disclosure requirements to address Order No. 2003 in Order No. 676.

<sup>96</sup> October 1 Order, 121 FERC ¶ 61,001 at P 34.

<sup>97</sup> 330 Fund request for rehearing at 9 (citing NYISO transmission congestion contracts webpage).

<sup>98</sup> *Id.* at 10.

### Commission Determination

55. 330 Fund's arguments fail to persuade us that we erred. Furthermore, 330 Fund fails to state how these arguments relate to the allegations in its complaint that the NYISO violated Attachment X, Attachment N, or its OASIS posting obligations under its Tariff.

56. The October 1 Order found that 330 Fund had not supported its claims that NYISO violated its Tariff, specifically, Attachment X, Attachment N, or its OASIS posting requirements. Although 330 Fund now suggests that it received transmission congestion contracts that were not in conformance with its expectations in the auction process, 330 Fund failed to raise this issue in its complaint.<sup>99</sup> Therefore, insofar as 330 Fund now raises claims that were not presented in its complaint, we reject them as untimely and improperly raised on rehearing.<sup>100</sup> We do not allow complainants to amend their complaint to seek an alternative form of relief on rehearing because such a submission does not allow interested parties sufficient notice of the new relief requested, nor permit an opportunity to respond.<sup>101</sup>

57. In addition, the Commission rejects 330 Fund's suggestion that the Commission inappropriately exercised discretion by declining to find NYISO in violation, in spite of the available evidence. Rather, the Commission found that 330 Fund had failed to meet its burden of proof to provide sufficient evidence to find NYISO in violation of its Tariff.

58. Finally, the Commission notes that another auction participant intervened in this proceeding to defend NYISO's auction and notice procedures. DC Energy defends the openness and transparency of Planning Committee process by noting that a wide variety of stakeholders participate in the subcommittee.<sup>102</sup> Therefore, 330 Fund's predictions of

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<sup>99</sup> Instead, 330 Fund suggests NYISO's knowledge of the change is evidence that NYISO should have disclosed information about the changes at the auction. 330 Fund complaint at 25. Furthermore, 330 Fund did not allege a violation of Attachment M, which governs the issuance of congestion contracts (*see* October 1 Order, 121 FERC ¶ 61,001 at P 12; 330 Fund complaint at 27) nor provide copies of the congestion contracts at issue in its complaint.

<sup>100</sup> *Baltimore Gas and Electric Co.*, 91 FERC ¶ 61,270, at 61,922 (2000); *Baltimore Gas and Electric Co.*, 92 FERC ¶ 61,043, at 61,114 (2000).

<sup>101</sup> *Transmission Agency of Northern California v. Pacific Gas & Electric Co.*, 85 FERC ¶ 61,320, at 62,257 & nn.5-6 (1998).

<sup>102</sup> *See* October 1 Order, 121 FERC ¶ 61,001 at P 28; DC Energy comments at 10-13.

adverse market consequences are not universally shared by other market participants and auction bidders, and may simply reflect differences in market positions that are inevitable when resolving disputes in a complex financial market.

The Commission orders:

The 330 Fund's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Kelliher is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.