

127 FERC ¶ 61,042  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.      Docket Nos. ER07-521-006,  
ER07-521-007 and  
ER07-521-008

ORDER ON COMPLIANCE FILINGS AND REQUEST FOR REHEARING

(Issued April 16, 2009)

1. In this order, the Commission accepts New York Independent System Operator, Inc.'s (NYISO) revisions to its Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff) to comply with the Commission's November 20, 2008 order,<sup>1</sup> which accepted and directed modifications to NYISO's long-term firm transmission rights proposal.<sup>2</sup> Specifically, the Commission accepts NYISO's December 22, 2008 and February 18, 2009 compliance filings (December 22 Compliance Filing and February 18 Compliance Filing, respectively) that were directed by the November 20, 2008 Order. The compliance filings ensure the

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<sup>1</sup> *New York Independent System Operator, Inc.*, 125 FERC ¶ 61,206 (November 20, 2008 Order). The November 20, 2008 Order reviewed changes directed in *New York Independent System Operator, Inc.*, 123 FERC ¶ 61,044 (2008) (April 16, 2008 Order). The OATT and Services Tariff are referred to collectively as "tariff."

<sup>2</sup> In this order, the Commission refers to NYISO's initial February 5, 2007 compliance filing in Docket No. ER07-521-000, as amended consistent with subsequent orders, as NYISO's "Long-Term Firm Transmission Rights Proposal." The April 16, 2008 Order directed NYISO to revise its Long-Term Firm Transmission Rights Proposal to be consistent with the Commission's Final Rule on long-term firm transmission rights. *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226, *reh'g denied*, Order No. 681-A, 117 FERC ¶ 61,201 (2006), *order on reh'g and clarification*, Order No. 681-B, 126 FERC ¶ 61,254 (2009).

ability of load serving entities to acquire long-term transmission rights<sup>3</sup> and modify credit requirements to address financial risks associated with long-term transmission rights.<sup>4</sup> In addition, the Commission denies the request for rehearing of the November 20, 2008 Order filed by Municipal Electric Utilities Association of New York State and New York Municipal Power Agency (collectively, New York Municipals).

## **I. Background**

2. On February 5, 2007, NYISO filed its Long-Term Firm Transmission Rights Proposal through which load serving entities operating in the New York control area may obtain long-term firm transmission rights. NYISO's Long-Term Firm Transmission Rights Proposal offered fixed-price long-term firm transmission rights for a 10-year term to load serving entities for existing or expired transmission agreements. The prices of 10-year fixed-price transmission congestion contracts (or TCCs) are based on past auction and congestion prices.<sup>5</sup> Specifically, NYISO proposed that the base price of the fixed-price transmission congestion contracts be calculated under section 2A.1(ii) by averaging the following components: (1) the historical auction prices for transmission congestion contracts with a duration of one year and the same point of injection and point of withdrawal over the four previous centralized transmission congestion contract auctions; and (2) congestion costs between those points over the four most recently concluded Capability Periods.<sup>6</sup> The Long-Term Firm Transmission Rights Proposal also provided

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<sup>3</sup> NYISO December 22 Compliance Filing, Docket No. ER07-521-007 (Dec. 22, 2008).

<sup>4</sup> NYISO February 18 Compliance Filing, Docket No. ER07-521-008 (Feb. 18, 2009).

<sup>5</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 a single megawatt of transmission between a point of injection and a point of withdrawal in the NYISO day-ahead market. *See New York Independent System Operator, Inc.*, 97 FERC ¶ 61,154, at 61,672 (2001). A transmission congestion contract allows a transmission customer to hedge its congestion costs. It does not establish any rights to, or guarantee the availability of, physical transmission service.

<sup>6</sup> NYISO Tariff, Attachment M, Original Sheet No. 565D, proposed section 2A.2 (ii). *See* April 16, 2008 Order, 123 FERC ¶ 61,044 at P 20, 127 (“the Commission finds that the [NYISO] proposal to use a combination of recent auction values for one-year TCCs and actual day-ahead congestion payouts to holders of TCCs to establish the basic value of the Fixed Price TCCs is just and reasonable.”).

load serving entities that have transmission agreements that have not yet expired with an annual right to obtain annual auction allocation rights, or AARs, for 10 years. A load serving entity could convert its auction allocation rights into one-year transmission congestion contracts at the annual auction price.

3. In response to subsequent stakeholder negotiations, NYISO proposed to modify its Long-Term Firm Transmission Rights Proposal to provide both a five-year fixed-price transmission congestion contract, renewable upon its expiration for an additional five-year term, and a method for load serving entities served by long-term power contracts with the New York Power Authority to extend their transmission rights to match the terms of their underlying long-term grandfathered transmission agreements.<sup>7</sup> In the April 16, 2008 Order, the Commission accepted NYISO's Long-Term Firm Transmission Rights Proposal, including the proposed fixed-price transmission congestion contract price methodology that was subsequently used to establish the initial test period, with modifications.<sup>8</sup> The Commission also directed two subsequent compliance filings – the first to provide for long-term firm transmission rights for incremental expansions,<sup>9</sup> and the second to expand availability of long-term firm transmission rights to load serving entities using non-historical points of injection and withdrawal.<sup>10</sup>

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<sup>7</sup> See NYISO Initial Post Technical Conference Comments, Docket No. ER07-521-000, at 4-10 (Oct. 25, 2007).

<sup>8</sup> April 16, 2008 Order, 123 FERC ¶ 61,044 at 127; the order directed NYISO to: (i) implement the proposals to offer a fixed-price transmission congestion contract featuring a renewable five-year term and to provide fixed-price transmission congestion contracts for the terms of long-term grandfathered transmission service agreements supporting New York Power Authority contracts, P 62-65; (ii) establish a minimum price of zero dollars for fixed-price transmission congestion contracts, P 129; (iii) adopt explicit reassignment provisions, P 89; and (iv) remove the inflation adjustment and option premium components of the fixed-price transmission congestion contract pricing formula, P 128.

<sup>9</sup> NYISO's compliance filing to provide incremental transmission congestion contracts to entities funding transmission upgrades or expansions was accepted in *New York Independent System Operator, Inc.*, 126 FERC ¶ 61,029 (2009).

<sup>10</sup> April 16, 2008 Order, 123 FERC ¶ 61,044 at P 82. This second compliance filing is to be made within two years of the April 16, 2008 Order.

4. The November 20, 2008 Order evaluated the New York ISO's May 16, 2008 compliance filing (May 16 Compliance Filing), which consisted of tariff revisions to provide for five-year fixed-price transmission congestion contracts and to implement other proposals directed by the Commission. The November 20, 2008 Order noted that, in implementing the five-year renewable fixed-price transmission congestion contracts, NYISO reduced the initial terms of all fixed-price transmission congestion contracts from 10 years to five years (with an option to renew). In response, the Commission directed NYISO to make a compliance filing to reinstate the 10-year fixed-price transmission congestion contracts that were approved in the April 16, 2008 Order.<sup>11</sup> In addition, the Commission directed NYISO to file tariff provisions permitting load serving entities that obtained the five-year fixed-price transmission congestion contracts to convert them into 10-year fixed-price transmission congestion contracts, so that market participants would have an opportunity to obtain 10-year fixed-price transmission congestion contracts. The Commission also directed that the compliance filing provide a similar option to load serving entities that declined the five-year fixed-price transmission congestion contracts because they desired 10-year fixed-price transmission congestion contracts.<sup>12</sup> Finally, the Commission directed NYISO to remove other non-conforming tariff revisions that were not needed to implement changes reflected in the May 16, 2008 Compliance Filing and incorporate a specific inflation factor as agreed to in the pleadings.

5. Additionally, in the November 20, 2008 Order, the Commission rejected the New York Municipals' proffered evidence suggesting that certain transmission outages and scheduling activities affected the congestion component used in long-term fixed price transmission congestion contracts. New York Municipals proposed that NYISO should incorporate a screening mechanism in its price methodology to remove high congestion costs from its calculation methodology. The Commission found, consistent with its policies, that such issues were beyond the scope of the proceeding to review NYISO's compliance filing because the April 16, 2008 Order did not direct a change to the test period methodology for calculating the price of fixed-price transmission congestion contracts.<sup>13</sup>

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<sup>11</sup> November 20, 2008 Order, 125 FERC ¶ 61,206 at P 20.

<sup>12</sup> *Id.* P 21.

<sup>13</sup> *Id.* P 60 (citing *Acadia Power Partners, LLC*, 106 FERC ¶ 61,215 (2004) (collateral attacks on Commission orders may not be made through protests to compliance filings)).

**II. December 22 Compliance Filing – Docket No. ER07-521-007**

6. NYISO's December 22 Compliance Filing submits tariff revisions to respond to the Commission directives found in the November 20, 2008 Order. Specifically, NYISO revises section 2A.1 to its OATT, Attachment M, and Services Tariff, Attachment B, Part IV, to reintroduce the 10-year fixed-price transmission congestion contract product.<sup>14</sup> In addition, NYISO proposes new section 2.A.1.a to permit conversion of five-year fixed-price transmission congestion contracts to 10-year rights, and offer 10-year fixed-price transmission congestion contracts to load-serving entities that wish to purchase them.<sup>15</sup> NYISO states that section 2.A.1.a permits a load-serving entity to replace five-year fixed price transmission congestion contracts with the 10-year product at the same base price per MW per year.<sup>16</sup> In addition, NYISO proposes an additional opportunity for eligible load-serving entities that did not acquire five-year fixed-price transmission congestion contracts to acquire 10-year fixed-price transmission congestion contracts commencing on November 1, 2009.<sup>17</sup> NYISO proposes a term for 10-year fixed-price transmission congestion contracts that are obtained to replace a five-year product to commence November 1, 2008 (the same date that the five-year fixed-price product was made effective).

7. NYISO proposes revised section 2A.1 to establish an election period to be specified in the "ISO Procedures," that is, in the NYISO's manuals or related

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<sup>14</sup> NYISO December 22 Compliance Filing at 4.

<sup>15</sup> *Id.* (discussing section 2.A.1.a, OATT, revised Sheet No. 565C; Services Tariff revised Sheet No. 359.03).

<sup>16</sup> *Id.* at 5. The tariff section 2A.2 clarifies that the price for fixed-price transmission congestion contracts is established through a base price per MW per year. Therefore, while the base price will be the same for the reintroduced 10-year fixed-price transmission congestion contracts, the actual price will increase to correspond with the increase in term. *See* OATT Sheet No. 565C.00.

<sup>17</sup> NYISO also states that it will not make any price adjustment for load-serving entities that originally declined to purchase the five-year fixed-price transmission congestion contract to reflect the fact that such rights may actually be issued after Nov. 1, 2008, because adjusting the price would mean that purchasers would not be receiving the same product that they would have received had the 10-year product been available in the first place. NYISO December 22 Compliance Filing at 5.

documentation.<sup>18</sup> The NYISO anticipates that it will designate an election period occurring “a reasonable time in advance of the Autumn 2009 Centralized TCC auction.”<sup>19</sup>

8. NYISO proposes to delete additional references to auction allocation rights that should have been removed in the May 16 Compliance Filing, but were inadvertently left in place. NYISO states that it either deleted the references or replaced them with appropriate references to the fixed-price transmission congestion contract provisions of the OATT, Attachment M.<sup>20</sup>

9. NYISO indicates that its tariff contains an ambiguity concerning whether NYISO should examine Attachment L, table 1A to determine the quantity of fixed-price transmission congestion contracts that are available to a load-serving entity. NYISO states it has eliminated this ambiguity by revising section 2A.1.<sup>21</sup> Finally, NYISO states

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<sup>18</sup> *Id.* at 9. NYISO is required to electronically post all of the rules, standards and practices that relate to transmission service, but are not included in its OATT, on its public website and make them accessible via OASIS. *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 1652, *order on reh’g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261, at P 990 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008).

<sup>19</sup> December 22 Compliance Filing at 5 (introducing OATT Sheet No. 565C.00; Services Tariff Sheet No. 369.03A).

<sup>20</sup> *Id.* at 6.

<sup>21</sup> NYISO proposes to revise its tariff, section 2A.1 (OATT sheet 565B and Services Tariff sheet 359.02), to state:

An LSE that exercises its conversion rights under this Section 2A may elect to receive a number of Fixed Price TCCs up to one hundred percent of the MW quantity specified *for* the ETA [existing transmission agreement] in Table 1A of Attachment L as it may be amended. In the case of ETAs for which more than one MW quantity is listed *in Attachment L*, the LSE may elect to receive the higher quantity. [Emphasis added to show revised language.]

that it has made ministerial revisions to correct drafting errors and ensure consistency between the OATT and Services Tariff.<sup>22</sup>

10. NYISO requests a December 22, 2008 effective date for the proposed tariff revisions, the date of the filing.

### **Notices of Filings and Responsive Pleadings**

11. Notice of the December 22 Compliance Filing was published in the *Federal Register*, with interventions and protests due on or before January 12, 2009.<sup>23</sup> No comments or protests were received.

### **Commission Determination**

12. The Commission accepts NYISO's tariff revisions proposed in the December 22 Compliance Filing. In the November 20, 2008 Order, the Commission directed NYISO to reinstate the 10-year fixed-price transmission congestion contract, finding that the removal of this product by NYISO was inconsistent with the April 16, 2008 Order that accepted the tariff provisions and directed the addition of the five-year option.<sup>24</sup> In addition to reinstating the 10-year product to the tariff, NYISO has added provisions that address the Commission's concern that load serving entities have an opportunity to acquire the 10-year product for periods previously addressed by the renewable five-year product.<sup>25</sup> As such, we find that the revisions comply with the November 20, 2008 Order or make ministerial changes that permit the effective implementation of NYISO's Long-Term Firm Transmission Rights Proposal. The revisions provided in the December 22 Compliance Filing are accepted effective December 22, 2008, as requested.

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<sup>22</sup> NYISO December 22 Compliance Filing at 7 (citing OATT Sheet No. 565A.00, and the equivalent Services Tariff sheet, namely Sheet No. 359.00B, which NYISO indicates is being revised consistent with changes directed for Sheet No. 565A).

<sup>23</sup> 74 Fed. Reg. 1,207 (2009).

<sup>24</sup> November 20, 2008 Order, 125 FERC ¶ 61,206 at P 20.

<sup>25</sup> *Id.* P 21.

**III. February 18 Compliance Filing – Docket No. ER07-521-008**

13. In the February 18 Compliance Filing, NYISO files proposed changes to its credit requirements, to comply with the Commission's directive in the November 20, 2008 Order that NYISO use its stakeholder process to revise its credit requirements to address financial risks associated with long-term financial transmission rights. In the November 20, 2008 Order, because the Commission had found NYISO's initial credit revision proposal to be outside the scope of the compliance filing, the Commission declined to act on the proposal.<sup>26</sup> However, the Commission recognized the importance of having appropriate credit requirements in place and directed NYISO to develop a proposal through the stakeholder process and make a compliance filing.

14. In response, NYISO filed the February 18 Compliance Filing, which includes revisions to its credit requirements that were vetted through the stakeholder process. After consultation with stakeholders, NYISO found its existing credit requirements adequate to address risks associated with fixed-price transmission congestion contracts, subject to the clarifying revisions that were previously proposed in the February 18 Compliance Filing. In the February 18 Compliance Filing, NYISO again proposes these limited changes to its credit requirements, found in Attachment W of the OATT and Attachment K of the Services Tariff, to reflect the new, more detailed fixed-price transmission congestion contracts rules, as well as the elimination of auction allocation right provisions. As reflected in the November 20, 2008 Order, NYISO previously stated that these revisions clarify that transmission congestion contracts auction prices will not be a component in calculating the holding requirements associated with fixed-price transmission congestion contracts, consistent with the fact that fixed-price transmission congestion contracts are not obtained through auctions.<sup>27</sup> Instead, NYISO proposes that the credit requirement associated with fixed-price transmission congestion contracts will be determined in accordance with the market-based valuation determined under section 2A.2 of its tariff, i.e., by taking into account the actual prices of the fixed-price transmission congestion contracts.

15. NYISO requests a February 19, 2009 effective date for these credit requirements revisions, the day after filing.

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<sup>26</sup> *Id.* P 58 (taking no action on NYISO's initial proposal to revise its credit requirements, as being outside of the scope of the May 16 Compliance Filing, but directing NYISO to consult with its stakeholders and file resulting tariff changes within 90 days).

<sup>27</sup> *Id.* P 52.

### **Notices of Filings and Responsive Pleadings**

16. Notice of the February 18 Compliance Filing was published in the *Federal Register*, with interventions and protests due March 11, 2009.<sup>28</sup> No comments or protests were received.

### **Commission Determination**

17. The Commission directed NYISO to use its stakeholder process to develop and revise its credit requirements to address financial risks associated with the implementation of long-term financial transmission rights. We find that NYISO has used its stakeholder process as directed and that the proposed revisions to the credit requirements adequately incorporate fixed-price transmission congestion contracts. The Commission accepts NYISO's tariff revisions proposed in the February 18 Compliance Filing effective February 19, 2009, as requested.

### **IV. Rehearing of the November 20, 2008 Order – Docket No. ER07-521-006**

18. In their December 22, 2008 request for rehearing, New York Municipals object to the Commission's finding in the November 20, 2008 Order that the price calculation issues raised in their protests were beyond the scope of the proceeding to review the May 16 Compliance Filing and, consequently, rejecting those protests. New York Municipals also seek rehearing of the Commission's rejection of evidence indicating that fixed-price transmission congestion contracts prices may not accurately reflect actual historical congestion costs because the test year that established the prices reflected atypical congestion costs. Finally, New York Municipals seek on rehearing to submit additional evidence to support their underlying claims.

19. On rehearing, New York Municipals suggest that their challenges to NYISO's May 16 Compliance Filing are not improper because the May 16 Compliance Filing proposed a calculation process to determine the price of fixed-price transmission congestion contracts or because the May 16 Compliance Filing applied the pricing methodology for long-term fixed-price transmission congestion contracts that was approved in the Commission's April 16, 2008 Order.<sup>29</sup> The New York Municipals state that they do not oppose the concept of a pricing methodology based on 24 months of congestion costs and auction prices. However, New York Municipals renew their

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<sup>28</sup> 74 Fed. Reg. 9,236 (2009).

<sup>29</sup> New York Municipals request for rehearing at 1.

objection raised in their protest to the May 16 Compliance Filing to NYISO's use of high congestion cost data, which the New York Municipals contend is not representative of historic congestion costs. New York Municipals object to the methodology because it fails to calculate prices that more closely reflect pre-2008 historic congestion costs (as opposed to the costs from the test year provided for in the approved methodology). New York Municipals state that this result arises "principally because NYISO does not employ a screening mechanism that would ensure that the calculated price for [fixed-price transmission congestion contracts] is based on historically-accurate congestion costs."<sup>30</sup> New York Municipals describe various ways in which the cost data may be "corrupt."<sup>31</sup>

20. New York Municipals also seek to introduce on rehearing new evidence that the congestion costs may have been overstated, based on a NYISO December 11, 2008 filing in Docket No. ER09-405-000, where, according to New York Municipals, NYISO reported interface modeling errors that raised energy prices in Western New York and also occurred coincident with the high congestion costs to which the New York Municipals object.<sup>32</sup> New York Municipals provide Attachment 1 describing congestion costs in the years reflected in the NYISO price calculation and prior years.

21. Specifically, they claim that the pricing methodology results in prices for fixed-price transmission congestion contracts that are not just and reasonable (because they are not reflective of the historic congestion costs from the time frame selected by New York Municipals). New York Municipals object to the accepted price methodology because it lacks any mechanism to eliminate "clearly anomalous" data.<sup>33</sup> As such, the New York Municipals state that the resulting price offered by NYISO is so significantly greater than the historic average congestion cost that it makes the transmission congestion credits as essentially "worthless" as congestion hedges for its members.<sup>34</sup>

22. Also on rehearing, New York Municipals respond to the Commission's finding in the November 20, 2008 Order that New York Municipals' objections represented an impermissible collateral attack on the orders accepting the NYISO long-term fixed-price

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<sup>30</sup> *Id.* at 17, 23.

<sup>31</sup> *Id.* at 3, *passim*.

<sup>32</sup> *Id.* at 19.

<sup>33</sup> *Id.* at 13.

<sup>34</sup> *Id.* at 21.

transmission congestion contract price methodology. New York Municipals counter that they did not launch a collateral attack on the orders approving the price methodology, but instead are asking the Commission to review the data used to calculate the prices and to direct NYISO not to use data from certain months that would otherwise be reflected in the price according to the approved methodology. New York Municipals also state that they do not protest the calculation methodology, but instead protest “the use of outlier data in the calculation.”<sup>35</sup> New York Municipals suggest that they could not have anticipated the prices that would result from the application of the approved price methodology; therefore, they argue that their protests following receipt of the price calculations from NYISO were proper and appropriately timed.<sup>36</sup> According to New York Municipals, NYISO’s price methodology “serves as a formula rate” and parties may protest rates calculated under a formula rate “at any time.”<sup>37</sup> New York Municipals claim that they would have protested use of the data earlier, had they been aware of difficulties with the data.

23. New York Municipals propose on rehearing an alternate price methodology using, not the two most recent years of cost data called for in the approved methodology, but two other years that feature lower congestion costs.<sup>38</sup>

24. New York Municipals argue that the Commission’s rejection of their motion to lodge was improper, because the motion included facts supporting their position that high congestion costs were due in part to abnormal scheduling.<sup>39</sup> New York Municipals state that the Commission should use this proceeding to address the effects of the scheduling

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<sup>35</sup> *Id.* at 4, 21-22 (citing *PPL Electric Utilities Corp.*, 125 FERC ¶ 61,121 (2008) (parties have the right to challenge the inputs to or the implementation of a formula rate at whatever time they discover errors)).

<sup>36</sup> *Id.* at 4, 22.

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

<sup>38</sup> *Id.* at 23.

<sup>39</sup> After they filed their protests, the New York Municipals filed a motion to lodge NYISO’s “Exigent Circumstances” filing in Docket No. ER08-1281-000, amending its tariff to prevent the scheduling of transactions between NYISO and PJM Interconnection, L.L.C. in a circuitous route through Ontario IESO and the Midwest ISO when there are more direct routes available, thus, according to the filing, creating loop flows that raise real-time congestion costs within NYISO.

practices that were prevented by the Exigent Circumstances filing, because otherwise such effects may not be remedied.<sup>40</sup> New York Municipals claim that the proceeding to review the Exigent Circumstances filing may address issues that are distinct from the impact of scheduling practices on fixed-price transmission congestion contract prices.

25. New York Municipals state that the Commission is evaluating in this docket whether NYISO's fixed-price transmission congestion contract proposal is just and reasonable. New York Municipals claim that the proposal cannot be just and reasonable if it incorporates congestion costs that are not representative of earlier, historic costs. New York Municipals claim that the Exigent Circumstances filing establishes that reverse loop flows improperly increased congestion costs and caused abnormally high prices for fixed-price transmission congestion contracts. They conclude that issues concerning the use of the approved methodology based on the historic data should be resolved in this proceeding.

### **Commission Determination**

26. The Commission denies New York Municipals request for rehearing. The November 20, 2008 Order explained the Commission's rationale for concluding that New York Municipals' arguments went beyond the scope of the compliance filing:

Protests regarding price calculation are beyond the scope of this proceeding. The April 16, 2008 Order did not direct a change to the test period methodology for calculating the price of Fixed Price TCCs, and this is not the proper juncture in this proceeding to raise such a challenge. Rather, the protests on pricing are an impermissible collateral attack on the April 16, 2008 Order accepting the pricing provisions.

Given that we reject the challenges to the pricing methodology that [New York Municipals] attempt to support through the motion to lodge, we also reject the motion to lodge. [New York Municipals] state that the motion to lodge is intended to provide additional evidence that the congestion costs occurring in December 2007 through February 2008 were anomalous and should be excluded from the test year used in the Fixed Price TCC price calculation. Because the pricing of the Fixed Price TCCs is outside the scope of the

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<sup>40</sup> New York Municipals request for rehearing at 25.

compliance filing, we reject the motion to lodge evidence on pricing.<sup>[41]</sup>

27. Although New York Municipals take pains to state that they are not contesting the approved pricing methodology, and thus are not presenting an impermissible collateral attack on the orders accepting the pricing methodology, the request for rehearing contradicts that position. New York Municipals request modifications to the pricing methodology and/or propose alternative test years to establish historical prices that are inconsistent with the accepted pricing methodology. Specifically, the New York Municipals propose that the tariff could be modified to incorporate a “screen” to eliminate anomalous cost data, and suggest that this could be achieved by eliminating data from the capability period featuring the high congestion costs to which the New York Municipals object (namely, November 2007 through April 2008).<sup>42</sup> New York Municipals propose that NYISO calculate transmission congestion contract prices using congestion data from November 2005 through October 2007, instead of the four most recent capability periods called for in the tariff (May 2006 through April 2008).<sup>43</sup> Thus, New York Municipals challenge the price methodology that was approved in the April 16, 2008 Order. New York Municipals did not seek rehearing of the April 16, 2008 Order. As explained in the November 20, 2008 Order, the Commission does not permit such a challenge in a proceeding to review a subsequent compliance filing.

28. The Commission’s focus in reviewing a compliance filing is to determine whether the changes proposed comply with the Commission’s previously stated directives.<sup>44</sup> The New York Municipals’ request for rehearing fails to provide adequate support for their

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<sup>41</sup> November 20, 2008 Order, 125 FERC ¶ 61,206 at P 60 (citing April 16, 2008 Order, 123 FERC ¶ 61,044 at P 124; *California Independent System Operator, Corp.*, 120 FERC ¶ 61,023, at P 155-58 (2007), *reh’g denied*, 124 FERC ¶ 61,094, at P 28 (2008)) (other cites omitted).

<sup>42</sup> New York Municipals request for rehearing at 10-11.

<sup>43</sup> *Id.* at 11.

<sup>44</sup> *AES Huntington Beach, LLC.*, 111 FERC ¶ 61,079, at P 60 (2005) (citing *Pacific Gas and Electric Company*, 109 FERC ¶ 61,336, at P 5 (2004)); *Midwest Independent Transmission System Operator, Inc.*, 99 FERC ¶ 61,302, at 62,264 (2002); *ISO New England, Inc.*, 91 FERC ¶ 61,016, at 61,060 (2000); *Sierra Pacific Power Company*, 80 FERC ¶ 61,376, at 62,271 (1997); *Delmarva Power & Light Company*, 63 FERC ¶ 61,321, at 63,160 (1993).

claim that the exclusion of unusually high congestion costs is an issue that relates to the changes directed in the April 16, 2008 Order.<sup>45</sup> Consequently, New York Municipals fail to establish on rehearing that their protests are issues within the scope of the proceeding to review the May 16 Compliance Filing, rather than impermissible attempts to seek, in the compliance phase of this proceeding, review of the earlier order accepting the price methodology – an order for which the New York Municipals did not request rehearing.<sup>46</sup>

29. Likewise, verification of the accuracy or legitimacy of cost data is not a subject ordered to be addressed in the May 16 Compliance Filing. Therefore, issues concerning the application of the approved methodology are beyond the scope of the proceeding to review the May 16 Compliance Filing.<sup>47</sup> As New York Municipals confirm in their request for rehearing, the motion to lodge also addressed the issue whether the costs used in the fixed-price transmission congestion contract price calculation were proper. Therefore, the motion sought to raise issues that are outside the scope of this proceeding and was properly rejected.

30. New York Municipals claim the proper place to address issues relating to the loop flow and scheduling issues reflected in the Exigent Circumstances filing is in this proceeding, rather than in the non-public investigation being conducted by the

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<sup>45</sup>As noted above, the only changes to the fixed-price transmission congestion contract pricing methodology reflected in the April 16, 2008 Order were in response to the Commission's directives that NYISO remove the inflation adjustment and option premium factors from the methodology. April 16, 2008 Order, 123 FERC ¶ 61,044 at P 128. In the November 20, 2008 Order, the Commission accepted NYISO's compliance filing making the changes. 125 FERC ¶ 61,206 at P 30.

<sup>46</sup> See FPA § 313; 16 U.S.C. § 8251 (2006). New York Municipal Power Agency intervened and protested at the initial stage of this proceeding to review the NYISO Long-Term Firm Transmission Rights Proposal, as reflected in the April 16, 2008 Order; certain Municipal Electric Utilities Association members participated via New York Association of Public Power's intervention and protest, Docket No. ER07-521-000, at 5 (Feb. 26, 2007). The April 16, 2008 Order addressed these protests, but no request for rehearing was filed.

<sup>47</sup> *Accord Ameren Services Corp.*, 119 FERC ¶ 61,098, at P 21 (2007) (resolution of issues concerning cost pass-through is beyond the scope of proceeding to review compliance filing, and represents an impermissible collateral attack on the order accepting formula rate).

Commission's Office of Enforcement.<sup>48</sup> In its initial order addressing the Exigent Circumstances filing, the Commission stated that it "will determine what further action may be appropriate . . . after it considers the results of the staff investigation."<sup>49</sup> In response to a subsequent request by the New York Municipals asking the Commission to clarify whether a particular remedy would be considered, the Commission stated that it "sees no reason to opine at this time as to what remedies, if any, may ultimately be appropriate."<sup>50</sup>

31. In response to New York Municipals' suggestion in their request for rehearing that this is the proper proceeding to review their claims, we find that the request for rehearing fails to provide adequate support on the record to convince the Commission to abandon its procedural policies against reviewing accepted tariff provisions in a proceeding to review a subsequent compliance filing and open an investigation *sua sponte* into the issues raised in the protests and motion to lodge.<sup>51</sup> The Commission is sensitive to the suggestion that a rate under our review is the product of manipulation or is otherwise not just and reasonable. In this phase of the proceeding, however, the only issue under review is whether the revisions NYISO proposed in the May 16 Compliance Filing complied with our directives in the April 16, 2008 Order. The Commission's rejection of New York Municipals protests, affirmed on rehearing, is without prejudice to New York Municipals right to present their claims to the Commission in a proper forum and with adequate evidentiary support, or to seek a solution through tariff revisions developed through the NYISO stakeholder process. Consequently, we affirm the Commission's rejection of New York Municipals' protests and supporting motion in the November 20, 2008 Order.

32. New York Municipals argue that their challenges are proper because they only learned the effect of the approved pricing methodology after it was applied. Also, New

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<sup>48</sup> See *New York Independent System Operator, Inc.*, 124 FERC ¶ 61,174 (2008), *order on clarification*, 126 FERC ¶ 61,068, at P 11 (2009).

<sup>49</sup> *New York Independent System Operator, Inc.*, 124 FERC ¶ 61,174 at P 32.

<sup>50</sup> *New York Independent System Operator, Inc.*, 126 FERC ¶ 61,068 at P 11.

<sup>51</sup> The Commission is master of its own calendar and procedures. *Stowers Oil and Gas Co.*, 27 FERC ¶ 61,001 (1984) ("It is within the Commission's purview to determine how best to allocate its resources for the most efficient resolution of matters before it."), citing *Mobil Oil Corp. v. F.P.C.*, 483 F.2d 1238, 1252 (D.C. Cir. 1973) ("the Commission should realistically tailor the proceedings to fit the issues before it").

York Municipals cite the Commission's formula rate policies to the effect that a challenge may be made to the inputs to a formula rate at any time.<sup>52</sup> However, these points go to the timeliness of the New York Municipals' protests. In the November 20, 2008 Order, however, the Commission did not reject the New York Municipals protests because they were untimely. Instead, the Commission based its rejection on the fact that the issues raised in the New York Municipals' protests were beyond the scope of the proceeding to review NYISO's May 16 Compliance Filing, and thus were impermissible collateral attacks on the Commission's prior orders approving the price methodology. Because New York Municipals fail to establish that their protests relate to any revision that was to have been made in the May 16 Compliance Filing, the protests were properly rejected. Furthermore, as reflected in the November 20, 2008 Order, NYISO's Long-Term Firm Transmission Rights Proposal has been the subject of extensive stakeholder discussions, including a technical conference and settlement proceedings, in which New York Municipals, or representatives of their members, participated.<sup>53</sup> The Commission notes that, contrary to New York Municipals' claims that they could not have foreseen the issues raised in their protests, issues relating to changing system conditions and price certainty were extensively discussed in the earlier phase of the proceeding that resulted in the April 16, 2008 Order.<sup>54</sup>

33. Finally, New York Municipals seek to introduce new evidence and an exhibit to support their claims on rehearing. We reject these exhibits. The Commission looks with

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<sup>52</sup> *But see California Independent System Operator, Corp.*, 120 FERC ¶ 61,023, at P 155-58, 157 (2007), *reh'g denied*, 124 FERC ¶ 61,094, at P 928 (2008) (finding that use of the historical test period ensures that market participants could not strategically alter their supply decisions, supports bilateral contracting and guards against cherry picking the most valuable long-term firm transmission rights), cited in November 20, 2008 Order, 125 FERC ¶ 61,206 at P 60 n. 68.

<sup>53</sup> The November 20, 2008 Order, 125 FERC ¶ 61,206 at P 4, provides a summary of the NYISO Long-Term Firm Transmission Rights Proposal development and review processes.

<sup>54</sup> *See, e.g., New York Independent System Operator, Inc.*, Order Establishing Technical Conference, 120 FERC ¶ 61,099, at P 8-10 (2007) (noting two proposals to address price certainty issues, including NYISO proposal to use auction prices or congestion prices and an alternative proposal by New York Association of Public Power). *See also* April 16, 2008 Order, 123 FERC ¶ 61,044 at P 128 (discussing possibility that congestion could decline over a given path due to shifting flow patterns or the construction of network upgrades).

disfavor on parties raising new issues on rehearing.<sup>55</sup> Furthermore, New York Municipals suggestion that the modeling errors, discussed in Docket No. ER09-405-000, were coincident with abnormally high congestion costs also raises issues that are beyond the scope of a proceeding to review the May 16 Compliance Filing.

The Commission orders:

(A) NYISO's December 22, 2008 compliance filing to reintroduce tariff provisions to offer 10-year long-term firm transmission rights, provide a one-time option to eligible load-serving entities to obtain such rights and make other changes is accepted as discussed in the body of this order.

(B) NYISO's February 18, 2009 compliance filing to revise its credit requirements to address financial risks associated with the implementation of long-term financial transmission rights is accepted, as discussed in the body of this order.

(C) The New York Municipals' request for rehearing is denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>55</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), *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,548 (1994) (“The Commission generally will not consider new evidence on rehearing, as we cannot resolve issues finally and with any efficiency if parties attempt to have us chase a moving target”).