

131 FERC ¶ 61,242
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

New York Independent System Operator, Inc.
and New York Transmission Owners

Docket No. ER04-449-021

ORDER ACCEPTING COMPLIANCE FILING

(Issued June 17, 2010)

1. In this order, we accept, effective November 13, 2009, revised tariff sheets included in the November 13, 2009 joint compliance filing (November 13, 2009 Filing) of the New York Independent System Operator, Inc. (NYISO) and the New York Transmission Owners¹ (NYTOs) (jointly, the Filing Parties) in compliance with the Commission's March 21, 2008 Guidance Order² and January 15, 2009 order on compliance filing³ in this proceeding. The Filing Parties propose a new Rate Schedule 12, *Rate Mechanism for the Recovery of the Highway Facility Charge* (Rate Schedule 12), to the NYISO Open Access Transmission Tariff (NYISO OATT)⁴ that implements a funding mechanism to recover, from load-serving entities, the cost of certain transmission upgrades that are constructed by the Transmission Owners (Funding Mechanism).

¹ The New York Transmission Owners include: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA, New York Power Authority, New York State Electric & Gas Corporation, Orange & Rockland Utilities, Inc., Rochester Gas and Electric Corporation, and Niagara Mohawk Power Corporation d/b/a National Grid.

² *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,267 (2008) (*Guidance Order*).

³ *York Independent System Operator, Inc. et al.*, 126 FERC ¶ 61,046 (2009) (January 15, 2009 Order).

⁴ FERC Electric Tariff, Original Volume No. 1.

I. Background

2. This proceeding involves compliance with the Commission's Order No. 2003.⁵ After a lengthy stakeholder process, the Filing Parties submitted a Consensus Deliverability Plan,⁶ which provided the conceptual framework for adding a second level of interconnection service with a deliverability component to the NYISO Open Access Transmission Tariff (OATT).⁷ Thus, the Consensus Deliverability Plan proposed a choice of interconnection service: Energy Resource Interconnection Service and Capacity Resource Interconnection Service. Energy Resource Interconnection Service is basic interconnection service and allows a generator to participate only in the NYISO's energy and ancillary services market. By contrast, Capacity Resource Interconnection Service provides not only basic interconnection service, but also allows the generator to participate in the NYISO's installed capacity market to the extent the generator's capacity is deliverable.⁸

3. In the *Guidance Order*, the Commission approved, in principle, the conceptual framework proposed in the Consensus Deliverability Plan and provided further guidance to NYISO and its members to facilitate the development and filing of appropriate revisions to the NYISO OATT.⁹ Accordingly, on August 5, 2008, the Filing Parties filed amendments to the NYISO OATT along with coordinating revisions to the NYISO Market Administration and Control Area Services Tariff (Services Tariff).¹⁰ In its

⁵ *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 (2004), *order on reh'g*, Order No. 2003-B, 70 FR 265 (January 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *affirmed sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

⁶ See Attachment I of Filing Parties' October 5, 2007 filing in Docket No. ER04-449-016.

⁷ For a detailed presentation of the background in this proceeding, see the January 15, 2009 Order at P 2-10.

⁸ NYISO defines deliverability as the ability of the New York Control Area (NYCA) to deliver the aggregate of NYCA capacity resources to the aggregate of the NYCA load under summer peak load conditions. See NYISO's FERC Electric Tariff, Original Volume No. 1, Attachment S, First Revised Sheet No. 679.05, section H.1.

⁹ Guidance Order, 122 FERC ¶ 61,267 at P 24.

¹⁰ FERC Electric Tariff, Original Volume No. 2.

January 15, 2009 Order, the Commission conditionally accepted these tariff revisions effective October 5, 2008, and directed further compliance. Among the issues requiring further compliance was the development of the Funding Mechanism.¹¹

4. Under the tariff provisions conditionally accepted by the January 15, 2009 order, in order to obtain Capacity Resource Interconnection Service, an interconnection customer's capacity request must be deliverable throughout the applicable NYISO capacity region, or it must fund or commit to fund required upgrades to the transmission system. To accommodate the addition of Capacity Resource Interconnection Service, the revised tariff included an additional type of interconnection upgrade: System Deliverability Upgrades. These upgrades are defined in Attachment S of the NYISO OATT as:

The least costly configuration of commercially available components of electrical equipment that can be used, consistent with Good Utility Practice and Applicable Reliability Requirements, to make the modifications or additions to Byways and Highways and Other Interfaces on the existing New York State Transmission System that are required for the proposed project to connect reliably to the system in a manner that meets the NYISO Deliverability Interconnection Standard at the requested level of Capacity Resource Interconnection Service.¹²

5. Allocation of these upgrade costs use a highway/byway approach. "Highways" are defined as 115 kV through 345 kV transmission facilities that comprise the interfaces between load zones within the NYISO control area.¹³ Highways do not include ties between the three NYISO capacity regions or to external control areas. Byways are defined as all other transmission facilities within the New York capacity region and are not addressed in the proposed tariff revisions. Should the smallest feasible highway upgrade exceed the minimum upgrade required to make the generator deliverable, the percentage of the upgrade cost that is allocated to the developer will be the cost associated with the minimum megawatt capacity required to achieve deliverability. If the

¹¹ January 15, 2009 Order, 126 FERC ¶ 61,046 at P 98.

¹² Section I.B, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, Sub Third Revised No. 658A.

¹³ Highway transmission facilities comprise the following NYCA load zone interfaces: Dysinger East, West Central, Volney East, Moses South, Central East/total East, UPNY-SENY, and UPNY-ConEd, and their immediately connected, in series, Bulk Power System facilities in New York State. *See also*, January 15, 2009 Order, 126 FERC ¶ 61,046 at Attachment A.

size of the Highway System Deliverability Upgrade required for deliverability equals 90 percent or more of the size of the actual upgrade, the developer would be allocated the entire cost.¹⁴ However, should the size of the upgrade needed for deliverability be less than the 90 percent threshold, the developer(s) will pay the proportion of the costs related its megawatt use of the upgrade and the remainder of the costs will be allocated to load-serving entities.¹⁵ The cost of Highway System Deliverability Upgrades that will be paid for by load-serving entities will be based upon their proportionate share of the installed capacity requirement in the statewide capacity market.¹⁶

6. However, the proposed tariff revisions included in the August 5, 2008 compliance filing contained no mechanism to collect the required funds from the appropriate load-serving entities or to distribute those funds to the appropriate transmission owners. Accordingly, in the January 15, 2009 Order, the Commission directed the Filing Parties to develop and file tariff revisions that provide sufficient detail to establish a funding mechanism applicable to load-serving entities.¹⁷

7. The Commission granted the Filing Parties six months additional time to complete and file an appropriate funding mechanism. Upon request, the Commission extended this compliance deadline an additional four months to November 15, 2009.¹⁸

II. November 13, 2009 Filing of Load Serving Entities Funding Mechanism

8. The Filing Parties' propose amendments to the NYISO OATT to implement a Funding Mechanism for recovery of the portion of the cost of Highway System Deliverability Upgrades that is allocated to load-serving entities and to distribute those revenues to the relevant transmission owners. Details of the Funding Mechanism are provided in proposed Rate Schedule 12 to the NYISO OATT, which describes the use of a new Highway Facility Charge (the major provisions of which are described below).

¹⁴ NYISO OATT, Attachment S, section VII.L.1., FERC Electric Tariff Original Volume No. 1, Original Sheet No. 679.11(j).

¹⁵ NYISO OATT, Attachment S, section VII.L.2., FERC Electric Tariff Original Volume No. 1, Original Sheet No. 679.11(j) and Second Revised Sheet No. 679.12.

¹⁶ NYISO OATT, Attachment S, section VII.L.3.b., FERC Electric Tariff Original Volume No. 1, First Revised Sheet No. 679.14.

¹⁷ January 15, 2009 Order, 126 FERC ¶ 61,046 at P 98.

¹⁸ *New York Independent System Operator, Inc.*, Docket Nos. ER04-449-018 and ER04-449-019 (July 9, 2009) (Notice of Extension of Time).

The Filing Parties also propose conforming revisions to Attachment S of the NYISO OATT.¹⁹

9. Section 1.0 of proposed Rate Schedule 12 provides that this rate mechanism establishes the Highway Facilities Charge for recovery of the portion of the costs related to Highway System Deliverability Upgrades required for deliverability under section VII.L of Attachment S of the NYISO OATT that are allocated to load-serving entities. It also generally establishes the manner in which the Highway Facilities Charge will be developed, filed at the Commission by the transmission owner, and charged to load-serving entities. Section 2.0 of proposed Rate Schedule 12 provides that each Transmission Owner shall file with the FERC the rate treatment for recovery of their costs of Highway System Deliverability Upgrades prior to the implementation of any Highway Facilities Charge. Under section 2.1 of proposed Rate Schedule 12, construction of the Highway System Deliverability Upgrade will begin upon receipt of all necessary regulatory approvals, including FERC acceptance of the rate treatment. Section 2.2 also requires that the load-serving entities' share of the costs of Highway System Deliverability Upgrades be reduced by any headroom payments made to the constructing transmission owner by subsequent developers. Section 2.3 provides that, when a project is complete, the constructing transmission owner will make an informational filing to the Commission providing the final project cost as well as the revenue requirement to be recovered from the load-serving entities.

10. Proposed section 3.0 of Rate Schedule 12 provides for recovery of the Highway Facilities Charge revenue requirement from load-serving entities. Proposed section 3.1 provides that the revenue requirement will be based on each load-serving entity's proportionate share of the Installed Capacity (ICAP) requirement in the statewide capacity market as adjusted to subtract locational capacity requirements.²⁰ Specifically, proposed section 3.6.3 of Rate Schedule 12 provides that each load-serving entity's (LSE) share of the monthly Highway Facilities Charge (HFC) shall be allocated in accordance with the following formula:

¹⁹ NYISO OATT, Attachment S, *Rules to Allocate Responsibility for the Cost of New Interconnection Facilities*.

²⁰ Proposed section 3.6.1 provides that, for Year 1, the load serving entity's ICAP requirement will be for the most recent NYISO Capability Year. Proposed section 3.6.2 provides that, for subsequent years, the billing cycle will be adjusted, if necessary, to start following the establishment of the load serving entity's Installed Capacity requirement for the Current Capability Year.

LSE Monthly HFC Allocation =

$$\frac{\text{Monthly HFC} \times (\text{LSE ICAP Requirement} - \text{LSE Locational ICAP Requirement})}{(\text{Statewide ICAP Requirement} - \text{Sum of Locational ICAP Requirements})}$$

11. Section 3.6.4 provides that monthly billing true-ups to account for load shifting between load-serving entities will be based upon the existing Installed Capacity methodology, as appropriate and revenue shortfalls, if any, will be allocated to the remaining load-serving entities in proportion to their Installed Capacity requirements for the Capability Year.

12. The Filing Parties state that, under current section VII.K.5 of Attachment S, Developers and load-serving entities could potentially obtain Incremental Transmission Congestion Contracts for their funding of Highway System Deliverability Upgrades. The Filing Parties state that NYISO is not able to track fractional transmission congestion charges among the numerous load-serving entities that may receive an allocation. As such, section 3.4 of proposed Rate Schedule 12 provides that, to the extent that Incremental Transmission Congestion Contracts are created as a result of a Highway System Deliverability Upgrade, NYISO will sell the Incremental Transmission Congestion Contracts and disburse or credit the associated transmission congestion charge revenues to the load-serving entities for as long as load-serving entities are responsible for funding the Highway System Deliverability Upgrade through a Highway Facilities Charge.

13. According to the Filing Parties, section 4 of proposed Rate Schedule 12 provides an accounting process for headroom that is created where a Highway System Deliverability Upgrade creates electrical capacity in excess of what is required by the project. Under that provision, as new generators and merchant transmission projects come on line and use the headroom created by a prior Highway System Deliverability Upgrade, the Developer of the new project will reimburse prior Developers or will compensate the load-serving entities who funded the upgrade in accordance with sections VIII.G and VIII.H of the Attachment S of the NYISO OATT. Pursuant to section 4.1, the payment will be based on the new developer's electrical use of Headroom and on the depreciated cost of the Highway System Deliverability Upgrade. In turn, pursuant to section 4.1.3, the Transmission Owner's revenue requirements for the Highway System Deliverability Upgrade will be adjusted to account for the new developer's payment, which will lower the Highway Facility Charge for the load-serving entities going forward. NYISO also will credit the new developer with its proportional shares of revenues from the incremental transmission congestion charges created by the headroom and proportionally reduce the allocations to the load-serving entities.

14. The Filing Parties propose an effective date for the subject tariff revisions of November 13, 2009, and state that, because this is a compliance filing, they do not believe that the prior notice requirements under Section 205 are applicable but request

waiver to the extent the Commission deems it necessary to allow the requested effective date.²¹

III. Notice of Filing and Responsive Pleadings

15. Notice of the Filing Parties' November 13, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 61,669 (2009), with protests or motions to intervene due on or before December 4, 2009. The New York Municipal Power Agency filed a timely motion to intervene. Consolidated Edison Solutions, Inc. (CES) filed a timely motion to intervene and comments. The New York Association of Public Power (NYAPP) filed a timely protest. NYISO filed an answer to this protest on December 22, 2009.

A. Comments

16. CES expresses concern that the proposed tariff revisions do not specify a timetable that the NYISO must follow to identify and post Highway Facility Charges. CES asserts that, ideally, the Highway Facilities Charge should remain at a steady predictable rate, comparable to other transmission charges, so that upgrade costs can be included in the Energy Service Companies' contracts with its end-user customers. CES comments that, if structured as a monthly allocation, there is the potential for Highway Facility Charges to increase dramatically month to month without any advanced notice. CES contends that this would be harmful to retail energy service companies, such as CES, because they are unable to defer unanticipated charges and typically do not have the ability to simply pass the Highway Facility Charge cost through to their customers but must predict such costs and include them in their retail contract prices.

17. CES states that, if the Highway Facility Charge were to change monthly, the NYISO should post both the current rate as well as a forecast of future rates, based on approved projects, so that energy service companies can incorporate the Highway Facility Charge costs into their retail prices. CES contends that the NYISO is uniquely positioned to track the transmission projects, forecast the anticipated Rate Schedule 12 charges and convert them into a posted schedule of rates on a kW-month basis for Energy Service Companies. Accordingly, CES asks the Commission to direct NYISO to develop procedures to forecast future Highway Facility Charges for load-serving entities, such as Energy Service Companies, and post those forecasts in a timely manner.

18. NYAPP states that the proposed load-serving entity funding mechanism appears to be intended to be a formula rate and that the Commission should reject it as unjust and unreasonable. NYAPP contends that the proposed revision that would require a

²¹ *Citing Southern Co. Servs., Inc.*, 61 FERC ¶ 61,339, at 62,328-331 (1992) (*Southern*).

constructing transmission owner to make an informational filing to the Commission, proving the full project costs as well as the revenue requirement to be recovered from load-serving entities, is not just and reasonable. Citing to various Commission statements on formula rates, NYAPP points out that the Commission has historically required additional evidence before it can determine whether a formula rate should be approved.²²

19. NYAPP also opposes the Filing Parties' request for waiver of the 60-day notice requirement for new rate schedules stating that the precedent cited in the November 13, 2009 Filing provides no justification for the waiver. NYAPP contends that the Commission's explanation in *Southern* that it did not need to act on a tariff revision within 60 days because the revision was, in fact, a compliance filing was an attempt to deflect an attack on the letter order approving the tariff revisions, which issued after the statutory sixty-day period.²³

B. NYISO Answer

20. In response to CES and NYAPP, NYISO states that proposed Rate Schedule 12 establishes the Highway Facilities Charge as a mechanism to collect funds for the recovery of Highway System Deliverability Upgrades from each load-serving entity and to distribute the funds to the applicable transmission owner. As such, NYISO contends that Rate Schedule 12 does not set a rate.

21. Regarding the concerns of CES, NYISO states that it is not in a position to forecast specific rates, the approval of which is subject to filing by the constructing Transmission Owner(s) and is the sole determination of the Commission and not set by Rate Schedule 12. The NYISO further explains that the actual Highway Facilities Charge for any individual load-serving entity will result from several factors: (1) the rate treatment that the constructing transmission owner files with the Commission in advance of a filing for a specific Highway System Deliverability Upgrade project; (2) the final constructed cost of the Highway System Deliverability Upgrade; (3) the informational filing for recovery of the cost for a specific project made by the constructing transmission owner; and (4) the New York Control Area installed capacity share of the load-serving entity.²⁴ NYISO states that CES is mistaken that NYISO has the ability to forecast the Highway Facilities Charge and post a schedule of rates.

²² Citing *New England Power Pool*, 83 FERC ¶ 61,045 (1998); *Pacific Gas & Electric Co.*, 100 FERC ¶ 61,160, at P 22 (2002); *San Diego Gas & Elec. Co.*, 103 FERC ¶ 61,115, at P 18 (2003).

²³ NYAPP December 4, 2009 Protest at 2.

²⁴ NYISO December 22, 2009 Answer at 5.

22. Moreover, NYISO contends that load-serving entities will be provided with sufficient information from which they can forecast their own individual Highway Facility Charges. First, NYISO explains, the constructing transmission owner will make a section 205 filing, to propose its rate treatment for Highway System Deliverability Upgrades that will have information on the costs in advance of the actual recovery. Second, NYISO states that load-serving entities will be able to refer to each Class Year Interconnection Facilities Study, to find a published NYISO estimate of the cost of any Highway System Deliverability Upgrade identified in the study including the percentage of the costs that are to be allocated to the project developer.²⁵ Third, NYISO states that load-serving entities also will have information regarding the actual cost of each particular Highway System Deliverability Upgrade to be recovered from the load-serving entity group well before the implementation of the Highway Facilities Charge for the particular upgrade when the informational filing is made with the Commission after construction of the upgrade is completed. NYISO explains that any load-serving entity, such as CES, can intervene in any proceeding to submit comments or protests regarding the actual Highway System Deliverability Upgrade costs to be included in the Highway Facilities Charge.

23. NYISO explains that, under the cost allocation rules of Attachment S of the NYISO OATT,²⁶ the total Highway System Deliverability Cost to be recovered from load-serving entities as a group is to be allocated to individual load-serving entities based upon their individual New York control area installed capacity share, adjusted to subtract any locational capacity requirements. In addition, NYISO states that it provides annual notification of the total New York control area installed capacity requirement, as well as any locational requirements, following the establishment of the installed reserve margin by the New York State Reliability Council. Additionally, NYISO notes that installed capacity shares of individual load-serving entities routinely change as a result of retail load shifting and changes in the overall load-serving entity population and that individual load-serving entities have managed the uncertainties associated with these changes since the formation of the NYISO installed capacity markets.

24. In response to NYAPP's protest, NYISO states that the rate treatment filed by each transmission owner will vary, and will not necessarily be based on a formula rate. NYISO states, however, that a transmission owner could file with the Commission a proposed formula rate for the recovery of Highway System Deliverability Upgrades under proposed Rate Schedule 12. NYISO points out that load-serving entities and other interested parties will have two opportunities to intervene in a Commission proceeding if

²⁵ *Citing* NYISO OATT, Attachment S, section VII.L.

²⁶ *Citing* NYISO OATT, Attachment S, section VII.L.3.b and proposed Rate Schedule 12, section 3.6.3.

they have concerns about, or objections to, the Highway Facilities Charge for any particular Highway System Deliverability upgrade—when the transmission owner proposes its general rate treatment for Highway System Deliverability Upgrades prior to construction and, when the transmission owner proposes recovery of actual costs for a particular Highway System Deliverability Upgrade. NYISO also states that the Commission accepted a similar rate filing requirement for the Reliability Service Charge in Rate Schedule 10 of the NYISO OATT.²⁷

25. NYISO also contends that NYAPP erroneously asserts that the 60-day prior notice requirement in Section 205(d) of the Federal Power Act (FPA) applies to the November 13, 2009 Filing. NYISO states that its November 13, 2009 filing was prepared to comply with the Commission's directives that the NYISO file required tariff sheets related to the funding of certain deliverability upgrades to the transmission system. NYISO contends that, as evidenced by Commission precedent in this and other proceedings, the prior notice requirements applicable to filings made pursuant to Section 205 do not apply to compliance filings.²⁸ NYISO also states that, if the Commission finds that the prior notice requirements apply, the NYISO has already explicitly requested waiver in its filing.

IV. Discussion

A. Procedural Matters

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motion to intervene serves to make the entity that filed it a party to the proceeding.

27. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept NYISO's answer because it has provided information that has assisted us in our decision-making process.

B. Commission Determination

28. As discussed below, the Commission accepts Rate Schedule 12 and the other related proposed amendments to the NYISO OATT effective November 13, 2009.

²⁷ NYISO December 22, 2009 Answer at 10, *citing New York Independent System Operator, Inc.*, 125 FERC ¶ 61,068, at P 93 (2008).

²⁸ NYISO cites to numerous compliance filings accepted by the Commission effective on or before the filing date. NYISO December 22, 2009 Answer at n.9.

1. Highway Facility Charge

29. The Commission finds that the proposed tariff revisions implementing the Highway Facility Charge provide a just and reasonable mechanism for NYISO to collect funds for Highway System Deliverability Upgrades from the appropriate load-serving entities and to distribute those funds to the appropriate transmission owners who have constructed or funded construction of the relevant Highway System Deliverability Upgrades. Accordingly, we find that the proposed tariff revisions fulfill the Commission's directives in its January 15, 2009 Order by establishing the proposed load-serving entity Funding Mechanism, which is a necessary provision to effectuate the deliverability plan regarding the cost allocation of Highway System Deliverability Upgrades. We find that the load-serving entity Funding Mechanism proposed by the Filing Parties is consistent with the October 5, 2007 Consensus Deliverability Plan as generally approved by the Commission in its Guidance Order, including specifically paragraphs 10(f), 10(h), and 10(i) of the Consensus Deliverability Plan which the August 5, 2008 compliance filing did not resolve.²⁹ Furthermore, parties have not taken issue with any of the specific language of the tariff revisions proposed in the Filing Parties' November 13, 2009 Filing.

30. In response to CES's comments, the Commission finds that, upon acceptance of these tariff revisions, load-serving entities should have access to all the same information available to NYISO that they can use to try to forecast their own monthly cost allocation for Highway System Deliverability Upgrades. The procedural requirements embedded in this mechanism by which the transmission owner will make two separate filings with the Commission will provide load serving entities with advance information from which to make their own estimates of applicable monthly Highway Facilities Charges allocations. Further, as NYISO states, the estimated cost of each Highway System Deliverability Upgrades, as well as the percentage allocation to each developer, is published by NYISO as part of the Class Year interconnection study and NYISO updates the estimates as part of each Class Year study until construction begins, at which point load serving entities will know their estimated allocation.³⁰ Additionally, the initial section 205 filing proposing a rate treatment pursuant to section 2.1 of proposed Rate Schedule 12 must be made prior to construction of the upgrade, well in advance of the actual recovery of the charge which will not take place until after construction is complete pursuant to section 2.3 of Rate Schedule 12. As to the NYCA ICAP share, these are set for each load-

²⁹ These components of the Consensus Deliverability Plan outline parameters for LSEs to fund System Deliverability Upgrades, based on ICAP requirement share, that do not meet the 90 percent threshold; the distribution to LSEs of incremental transmission congestion contracts; and the accounting of headroom created by the upgrade.

³⁰ NYISO December 22, 2009 Answer at 5-6.

serving entity at the start of each capability year in May. The only variable that could change on a monthly basis would be ICAP ratios of individual load-serving entities to the extent there is retail load shifting. As NYISO points out, it is not in a position to forecast these changes and individual load-serving entities have managed this uncertainty since the formation of the NYISO capacity market.³¹ Thus, we find that there will be sufficient information available to or directly provided to load-serving entities on a timely basis to enable them to make reasonably accurate forecasts of their monthly Highway Facilities Charges allocations and that the instant tariff filing does not introduce provisions that would compromise their ability to manage their individual business strategies. As such, there is no reason to require NYISO to go through the time and expense needed to provide such individual monthly forecasts to each load-serving entity, to the extent that is even possible.

31. In response to NYAPP's protest, the Commission finds that Rate Schedule 12 does not establish a formula rate. Accordingly, this provision is not comparable to the formula rates provisions addressed in the cases cited by NYAPP. For example, the New England Power Pool case cited by NYAPP concerned the application of a proposed formula rate for a revenue requirement requiring the determination of cost-of-service inputs including return-on-equity for inclusion into a specific rate formula.³² The Commission set the reasonableness of that formula rate proposal for evidentiary hearing.³³ In contrast, Rate Schedule 12 establishes a procedural mechanism for seeking recovery of the cost of System Deliverability Upgrades through Highway Facilities Charges established in separate, individual section 205 proceedings. Like the procedural mechanism for the Reliability Facilities Charge contained in Schedule 10 of the NYISO OATT, Rate Schedule 12 provides a mechanism by which NYISO will bill a charge that is developed in these separate proceedings at the Commission. In those proceedings, and similar to the procedural mechanisms approved for Rate Schedule 10, parties will have the opportunity to challenge the rate proposals prior to NYISO's authorization to charge the Highway Facilities Charge.³⁴ Regarding the specific provisions relating to the calculation of those charges, Rate Schedule 12 only provides general guidance on what the Highway Facilities Charges mechanism is and what such charges should recover, e.g., "the revenue requirements related to each Highway SDU filed with FERC by a

³¹ *Id.* at 7.

³² *See New England Power Pool, et al.*, 83 FERC ¶ 61,045, at 61,233 (1998).

³³ *Id.* at 61,264.

³⁴ *See New York Independent System Operator, Inc.*, 125 FERC ¶ 61,068, at P 92 (2008).

Transmission Owner pursuant to the provisions of this Schedule.”³⁵ Such provisions are too general to constitute a rate “formula.” To the extent Schedule 12 does include a formula in section 3.6.3, that formula only establishes the monthly allocation of the Highway Facilities Charges, which as noted above are separately established in the individual section 205 proceedings; it is not a formula that can be used by itself to actually calculate a rate, i.e., a Highway Facilities Charge. Finally, NYAPP only makes a general objection to the entire Rate Schedule 12 on the unfounded generalization that it establishes a rate formula without making any specific objections to the section 3.6.3 allocation formula. We find that the section 3.6.3 allocation formula is just and reasonable as it is consistent with the methodology set forth in the Consensus Deliverability Plan as conceptually approved in the Guidance Order.³⁶ We also note that NYAPP did not take issue with these provisions, specifically the ICAP ratio share proposal, of the Consensus Deliverability Plan at that time. It is reasonably based on ICAP requirements similar to, but more simplified than, the allocation formulas in Schedule 10 of NYISO’s OATT.

2. Effective Date of Filing

32. The Commission accepts the revised tariff sheets, effective November 13, 2009, as requested by the Filing Parties. The Filing Parties prepared and filed the proposed tariff sheets in compliance with the Commission’s March 21, 2008 Guidance Order and January 15, 2009 order on compliance filing in this proceeding. Contrary to NYAPP’s arguments, the Commission has always treated compliance filings differently than a company-initiated rate change application filed pursuant to section 205 of the FPA.³⁷ Relevant to the arguments raised here, the instant tariff revisions are not subject to the 60-day prior notice requirement under section 205(d) of the FPA since they were filed to comply with a Commission order. Accordingly, the Commission accepts the proposed tariff sheets with an effective date of November 13, 2009, as requested.

³⁵ Schedule 12, section 1.0, Second Revised Sheet No. 327, NYISO Electric tariff, Original Volume No. 1.

³⁶ Guidance Order at P 42 - 47.

³⁷ See *e.g.*, *Cambridge Electric Light Company*, 83 FERC ¶ 61,222 (1998). The Commission dismisses the requested waiver as moot.

The Commission orders:

The Filing Parties' revised tariff sheets are hereby accepted, effective November 13, 2009, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.