

138 FERC ¶ 61,195
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

New York Independent System Operator, Inc.

Docket No. ER08-1281-010

ORDER ON COMPLIANCE FILING

(Issued March 15, 2012)

1. On December 22, 2011, the New York Independent System Operator, Inc. (NYISO) submitted a compliance filing, in response to two Commission orders, requiring NYISO to implement a new interface pricing policy applicable to certain interregional transactions in, and around, the Lake Erie region (Interface Pricing Initiative).¹ For the reasons discussed below, we find NYISO's filing to be non-compliant and direct NYISO to make an additional compliance filing within 30 days of the date of this order, including proposed tariff changes and supporting documentation, addressing all relevant rates, terms, and/or conditions of its proposal.

Background

2. This proceeding was instituted by NYISO to address unscheduled flows around Lake Erie.² To address these market distortions, NYISO proposed certain short-term

¹ See *New York Independent System Operator, Inc.*, 133 FERC ¶ 61,276 (2010) (December 2010 Order) (requiring NYISO to submit its proposed Interface Pricing Initiative by the second quarter of 2011), *order on reh'g*, 136 FERC ¶ 61,011 (2011) (July 2011 Order) (extending NYISO's compliance deadline for implementation of its Interface Pricing Initiative until January 2012).

² The transactions at issue were scheduled by a small number of market participants, beginning in 2008, for the purpose of exporting power from NYISO to the PJM Interconnection, L.L.C. (PJM) regional transmission organization (RTO), by way of a circuitous flow around Lake Erie, utilizing a scheduled path through both the Ontario Independent Electricity System Operator (IESO) and the Midwest Independent Transmission system Operator, Inc. (Midwest ISO).

solutions, which the Commission accepted, subject to the requirement that NYISO work with its neighboring RTOs/ISOs to develop a comprehensive, long-term solution.³

3. In response, NYISO, in collaboration with PJM, the Midwest ISO and the IESO, proposed to develop and implement an Interface Pricing Initiative, among other proposals.⁴ As described in the NYISO Report, the Interface Pricing Initiative contemplated the development and implementation of interface pricing revisions to address existing seams that create incentives which exacerbate loop flows. NYISO stated that, under its proposal, the ISOs and RTOs in, and around, the Lake Erie region would be required to use similar methods to price inter-regional transactions.

4. In an order issued July 15, 2010, the Commission found that these initiatives appeared to represent a workable framework for minimizing the occurrence of Lake Erie region loop flows, but identified unanswered questions that remained.⁵ The parties' responses to these questions were addressed by the Commission in the December 2010 Order. In the December 2010 Order the Commission noted NYISO's acknowledgement that the method of pricing external transactions employed by NYISO created incentives for market participants to schedule circuitous transactions which can exacerbate Lake Erie loop flow.⁶ With respect to the Interface Pricing Initiative, the December 2010 Order directed NYISO to implement its initiative by the second quarter of 2011 and reminded the parties that any agreements and/or tariff provisions developed to implement this initiative must be filed with the Commission.⁷ On rehearing, at the request of NYISO, the Commission granted an extension of this deadline through the end of the fourth quarter 2011, for implementation by January 2012.⁸

³ See *New York Independent System Operator, Inc.*, 124 FERC ¶ 61,174 (2008); *New York Independent System Operator, Inc.*, 125 FERC ¶ 61,184, at P 20 (2008). In a subsequent order, the Commission established a deadline for NYISO to develop and file an implementation plan addressing its proposed long-term solutions. *New York Independent System Operator, Inc.*, 128 FERC ¶ 61,049 (2009).

⁴ See Report on Broader Regional Markets; Long-Term Solutions to Lake Erie Loop, Docket No. ER08-1281-004 (January 12, 2010) (NYISO Report).

⁵ *New York Independent System Operator, Inc.*, 132 FERC ¶ 61,031 (2010).

⁶ December 2010 Order, 133 FERC ¶ 61,276 at 27.

⁷ *Id.* at Ordering Paragraph (C).

⁸ July 2011 Order, 136 FERC ¶ 61,011 at P 15.

NYISO's Compliance Notice

5. NYISO states that the purpose of its compliance notice is informational in nature, i.e., to provide notice of its timely development and deployment of the software required to implement its Interface Pricing Initiative. NYISO states that its software will permit NYISO to implement two alternative methods, or modes, of pricing and scheduling interface transactions. NYISO states that the first of these two modes (the Conforming Mode) would be used when actual power flows through the NYISO control area are expected to closely conform to scheduled power flows.⁹ NYISO states that, alternatively, a second mode (the Non-Conforming Mode) would be used when NYISO expects significant unscheduled power flows.¹⁰

6. NYISO asserts that, under either of these two modes, the resulting prices will be consistent with the expected location of power delivery and the value of delivery at these locations. NYISO further asserts that, when operating under the Non-Conforming Mode, the resulting pricing is expected to be similar to the results produced by the external interface pricing methods currently employed by PJM and the Midwest ISO. NYISO states that, in determining which mode is appropriate, it will review historical data on unscheduled power flows and take into consideration significant changes in system topology.¹¹

7. NYISO states that it will make public the mode it intends to employ, in advance of a new quarter, and that its determinations will generally remain in effect on a quarterly

⁹ NYISO states that, in this instance, NYISO will commit, dispatch and price generation and interchange transactions, in its day-ahead security constrained unit commitment, in real-time commitment, and real-time dispatch, by computing each resource's incremental impacts on its system.

¹⁰ NYISO states that, in this instance, day-ahead security constrained unit commitment, real-time commitment, and real-time dispatch will be configured to represent the incremental power distribution around Lake Erie when computing each resource's incremental impacts on NYISO's system. NYISO adds that all generator, load, and proxy bus generator bus shift factors and delivery (penalty) factors will be computed in a manner that reflects the expected deviation of scheduled flows from their contract path.

¹¹ NYISO notes, for example, that the introduction of phase angle regulators (PARs), an electrical device to help control power flows at the Michigan-Ontario interconnection, may result in a change in unscheduled power flows.

basis.¹² NYISO states that this approach is appropriate because more frequent transitions between its two pricing modes would produce inconsistent and unpredictable prices and schedules, to the detriment of the interconnected markets. NYISO adds that, instead of resolving seams, overly-frequent, intra-quarterly changes could create a new seam between the relevant markets.

Notice of Filing and Responsive Pleadings

8. Notice of NYISO's filing was published in the *Federal Register*, 77 Fed. Reg. 1,064 (2012), with interventions and protests due on or before January 12, 2012. Comments generally supportive of NYISO's filing were submitted by the New York Transmission Owners.¹³ A protest was filed by Monitoring Analytics, LLC, the independent market monitor for PJM (PJM IMM). On January 27, 2012, NYISO filed an answer to the PJM IMM's protest. On February 16, 2012, the PJM IMM filed an answer to NYISO's answer.

A. Protests and Comments

9. The New York Transmission Owners support NYISO's notice of intent to implement two distinct modes of pricing and scheduling as consistent with NYISO's compliance obligation and with NYISO's proposed compliance method, as described in NYISO's request for rehearing of the December 2010 Order.¹⁴

¹² NYISO notes, however, that if conditions change dramatically and have the potential of affecting prices and schedules to an inappropriate degree, NYISO would reserve the right to change modes on an intra-quarterly basis. NYISO adds that, were that to be required, NYISO would provide as much advance notice to its market participants neighboring balancing authorities as is practicable.

¹³ The New York Transmission Owners consist of: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Long Island Power Authority; New York Power Authority; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation.

¹⁴ The New York Transmission Owner's argument, in this regard, is unaccompanied by a page cite to NYISO's Rehearing Request. *But see* NYISO Request for Rehearing, Docket No. ER08-1281-007 at 7 (January 31, 2011) (asserting as error the Commission's decision, in the November 2010 Order, to require NYISO to implement its Interface Pricing Initiative by the end of the second quarter of 2011). As noted above, the Commission, in the July 2011 Order, granted rehearing on this issue (granting an extension of time), but did not otherwise address NYISO's method of compliance.

10. The PJM IMM argues, however, that NYISO's filing fails to comply with the Commission's compliance mandate, given NYISO's failure to propose market reforms (i.e., tariff changes) of the sort contemplated by the Commission's directives. The PJM IMM argues, as a threshold matter, that the December 2010 Order found that there are differences between the interface pricing methods used by PJM and NYISO, and that NYISO had acknowledged that these differences "create[] incentives for market participants to schedule circuitous transactions which can exacerbate loop flow."¹⁵ The PJM IMM argues that the Commission, based on this finding, and based further on the finding "that a change to [NYISO's] pricing methodology may reduce the incentives for scheduling these transactions. . .", required NYISO to reform its interface pricing rules.¹⁶ The PJM IMM adds that the market reforms the Commission contemplated, in issuing its compliance mandate, involved the adoption by NYISO of PJM's methodology, because PJM's approach "has been used by PJM and the Midwest ISO for years and [can] be implemented by other RTOs/ISOs at minimal cost."¹⁷

11. The PJM IMM asserts that NYISO's filing does not explain with sufficient detail how interface prices will be calculated but merely refers to a draft bulletin. The PJM IMM further asserts that, rather than utilize NERC tag information to determine the actual source and sink for a transaction, as PJM's method requires, NYISO proposes instead to utilize historical data to infer the future performance of the system and assign one of two scheduling modes to calculate interface prices. The PJM IMM adds that, under NYISO's proposal, the Conforming Mode will be utilized when the historical data shows that the actual hourly flows at the NYISO/IESO interface are within +/- 200 MW of the scheduled power in at least 65 percent of the hours.¹⁸

12. The PJM IMM argues that NYISO's approach ignores the power flows on the other NYISO interfaces and that, even if history were a perfect predictor of the future,

¹⁵ PJM IMM Protest at 2, *citing* December 2010 Order, 133 FERC ¶ 61,276 at P 27. The Commission noted that, while "PJM and Midwest ISO use [North American Electric Reliability Corporation (NERC)] tag information regarding the source and sink of a transaction to determine the price the transaction receives or pays[,] . . . the NYISO and IESO base the price on the path over which the external transaction is scheduled into their respective control areas."

¹⁶ *Id.*

¹⁷ PJM IMM Protest at 2, *citing* December 2010 Order, 133 FERC ¶ 61,276 at P 31.

¹⁸ *Id.* at 3, *citing* Draft NYISO Technical Bulletin 213 (attached to the PJM IMM's Protest).

NYISO's approach assures that prices will be wrong for 35 percent of the hours in a quarter. The PJM IMM adds that NYISO's filing fails to identify the historical data it intends to evaluate in determining which scheduling will be used and leaves in place the current, faulty methodology when actual power flows are expected to closely conform to scheduled power flows. The PJM IMM requests that NYISO be directed to implement an interface pricing method that matches the methods successfully implemented by PJM and the Midwest ISO.

B. NYISO's Answer

13. NYISO disputes the PJM IMM's characterization of the Commission's compliance mandate, in the December 2010 Order. NYISO argues that it was not required, by that order, to perfectly replicate the method or software that PJM and the Midwest ISO use to develop their interface prices. NYISO further argues that its compliance proposal, in relying on two distinct modes of pricing and scheduling, is within the scope of the Commission's compliance mandate, given that this proposal is consistent with: (i) the NYISO Report;¹⁹ (ii) the description of NYISO's intended implementation of its Interface Pricing Initiative, as discussed in the background section of NYISO's January 31, 2011 Request for Rehearing of the December 2010 Order;²⁰ and (iii) the interface pricing method summarized by the Commission in the background section of the July 2011 Order.²¹

14. NYISO acknowledges that its proposed Conforming Mode represents its *status quo* approach to interface scheduling and pricing, but argues that NYISO will not use this mode at times when actual power flows are not consistent with scheduled power flows. NYISO further argues that, while its proposed method of implementing its Non-Conforming Mode may differ, in implementation, from PJM's source-and-sink pricing method, the two methods will produce similar results. Specifically, NYISO states that PJM identifies pricing nodes and assigns weightings to the pricing nodes that align PJM's price calculations with expected locational power deliveries, while NYISO achieves this same objective through the combination of pricing node selection and weighting assignments applied to specific tie lines. NYISO adds that differences in implementation methods are necessary due to PJM's and NYISO's fundamentally different market systems, as produced by different software vendors.

¹⁹ See *supra* note 4.

²⁰ See NYISO Request for Rehearing, Docket No. ER08-1281-007 (January 31, 2011) at 3-4.

²¹ See July 2011 Order, 136 FERC ¶ 61,011 at P 3.

C. PJM IMM's Answer

15. The PJM IMM argues that NYISO's proposed Conforming Mode, for pricing and scheduling external transactions, is unnecessary to meet NYISO's stated objectives of reducing Lake Erie region loop flow. The PJM IMM asserts that NYISO's approach will not ensure accurate price signals, given that it requires advance notice of any changes to a previously announced scheduling mode, a process that has a three-month lag.

16. The PJM IMM adds that NYISO's proposed Non-Conforming Mode may be workable, but is not described in enough detail to reach a conclusion about whether this proposal: (i) is sufficiently consistent with PJM's method, as the December 2010 Order requires, (ii) uses NERC tag information in interface price calculations, or (iii) explains the calculation of interface prices at different scheduling modes. The PJM IMM requests that NYISO be required to implement an interface pricing method that consistently reflects actual power flows, regardless of whether scheduled and actual flows are equal. The PJM IMM notes that market participants should have confidence that the formulation of interface prices in NYISO will accurately reflect the economics of the system.

Discussion**A. Procedural Matters**

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest, or an answer to an answer, unless otherwise ordered by the decisional authority. We will accept NYISO's January 27, 2012 answer to the PJM IMM's protest, and the PPM IMM's February 16, 2012 answer to NYISO's answer, because they have provided information that assisted us in our decision making process.

B. Commission Determination

18. For the reasons discussed below, we find that NYISO has failed to comply with the December 2010 Order and July 2011 Order. We begin with an issue in dispute: whether, as NYISO asserts, the Commission's compliance mandate contemplates NYISO's implementation of two distinct modes of pricing and scheduling of the sort outlined by NYISO in its compliance notice, or whether, instead, as the PJM IMM asserts, the Commission's compliance mandate requires NYISO to adopt a pricing initiative consistent with PJM's methodology.

19. Both NYISO and the PJM IMM acknowledge²² that the resolution of the issue here turns on a reading of paragraphs 27 and 31 of the December 2010 Order, which found in relevant part:

[P 27] The NYISO's response [to the questions set forth by the Commission in the July 15, 2010 Order] indicates that there are differences between the interface pricing methods used in PJM and the NYISO. PJM and Midwest ISO use NERC tag information regarding the source and sink of a transaction to determine the price the transaction receives or pays. In contrast, the NYISO and IESO base the price on the path over which the external transaction is scheduled into their respective control areas. The NYISO acknowledges that this difference creates incentives for market participants to schedule circuitous transactions which can exacerbate loop flow. The NYISO's comments indicate that a change to their pricing methodology may reduce the incentives for scheduling these transactions, and has agreed to evaluate what changes are necessary. Further, the analysis by the NYISO IMM states that changes to market rules regarding the interfaces would address most of the problems associated with Lake Erie loop flow.[footnote omitted] Similarly, the PJM IMM states that interface pricing reform could be implemented immediately and at minimal cost. We concur with the two IMM's and will thus make revisions to interface pricing a heightened priority, as outlined in our compliance directives below. . . .

[P 31] [W]e require that interface pricing revisions be completed concurrently for the Commission-jurisdictional RTO/ISOs by the second quarter of 2011.[FN omitted] As noted by the PJM IMM, this method has been used by PJM and the Midwest ISO for years and could be implemented by other RTOs/ISOs at minimal cost.[footnote omitted]

20. NYISO, in interpreting this compliance requirement, relies on its own prior description of its Interface Pricing Initiative, as represented by: (i) excerpts from the NYISO Report (a working paper, issued in January 2010, for discussion purposes only); (ii) the background section to its request for rehearing of the December 2010 Order, in which NYISO sought rehearing on an unrelated matter (i.e., a request for extension of its filing deadline); and (iii) the background section of the July 2011 Order (in which the Commission provided a brief summary of the NYISO Report, as represented by NYISO, without any accompanying findings or guidance). This evidence, however, fails to support, or even address, NYISO's claim regarding meaning of paragraphs 27 and 31 of the December 2010 Order. Moreover, the representations on which NYISO relies were

²² See PJM IMM Protest at 2; NYISO Answer at 4

never presented to the Commission, in the form of a concrete proposal and a request for action, were never accepted, for implementation, by the Commission, and did not otherwise factor into the Commission's analysis in the December 2010 Order in either paragraphs 27 or 31.²³

21. To the extent our compliance directive in the December 2010 Order was unclear, we clarify here that NYISO is required to submit a further compliance filing that includes an interface pricing methodology consistent with PJM's methodology, i.e., an interface pricing methodology that uses NERC tag information to determine actual source and sink for a transaction and calculates prices based on the actual energy flows at all times. Such a compliance directive is consistent with our December 2010 Order for the following reasons.

22. We agree with the PJM IMM that the Commission's compliance analysis in the December 2010 Order began with the finding that there are differences between the interface pricing methods used by PJM and NYISO and that these differences have created incentives for market participants to schedule circuitous transactions which can exacerbate loop flow. We further agree with the PJM IMM that the Commission, based on this finding and the corollary determination that a change to NYISO's pricing methodology may reduce the incentives for scheduling these transactions, required NYISO to reform its interface pricing rules consistent with PJM's methodology.

23. PJM's methodology, as noted above, utilizes NERC tag information to determine the actual source and sink for a transaction and calculates prices based on the actual energy flows. Because at least certain elements of the methodology outlined by NYISO in its compliance notice (namely, the Conforming Mode, which relies on NYISO's *status quo* pricing and scheduling policy), are inconsistent with the PJM methodology, we find that NYISO's filing is non-compliant with the December 2010 Order and July 2011 Order.

24. We also find that NYISO's proposal will affect the rates, terms and conditions of its jurisdictional services and therefore must be made a part of its tariff. NYISO's proposal must also be fully supported. We note, in this regard, that NYISO's filing, a brief summary transmittal accompanied by an attached slide presentation, falls well short of this standard -- failing to include tariff language and a discussion of anticipated manual provisions, failing to define a number of key terms, failing to provide the necessary market context, and failing to otherwise explain and support NYISO's compliance proposal proposal, as the Commission's orders in this proceeding contemplate and require. We further note that the Commission should not be required to rely on the

²³ We further note that NYISO did not seek rehearing, or clarification, regarding this aspect of its compliance obligation.

submission of a protest, or an answer, to receive NYISO-prepared documents relevant to NYISO's compliance obligation. This type of material should be a part of the applicant's case-in-chief, when responding to a Commission order requiring its compliance. Further, the proposal should be reflected in its entirety in proposed tariff language filed with the Commission and not merely in its bulletins or manuals.²⁴

25. Accordingly, we direct NYISO to submit an additional compliance filing, within 30 days of the date of this order, including tariff sheets and all necessary support, addressing its Interface Pricing Initiative, as clarified herein. Specifically, we direct NYISO to submit detailed tariff provisions specifying a revised pricing methodology for all interface transactions, based on NERC tag information and actual energy flows, i.e., consistent with PJM's methodology, that it proposes to utilize to determine prices, including but not limited to tariff provisions identifying all relevant terms and their definitions and identifying all relevant buses to be included in its calculations. In its filing, NYISO should include full explanations and support for its proposals, including examples.

The Commission orders:

NYISO is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁴ See *Keyspan-Ravenswood, LLC v. FERC*, 474 F.3d 804, 810 (D.C. Cir. 2007).