

121 FERC ¶ 61,001  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

330 Fund I, L.P.

v.

Docket No. EL07-78-000

New York Independent System Operator, Inc.

ORDER DENYING COMPLAINT

(Issued October 1, 2007)

1. This order denies the complaint (Complaint) of the 330 Fund I, L.P. (330 Fund) alleging that the New York Independent System Operator, Inc. (NYISO) violated its Open Access Transmission Tariff (OATT) when it failed to disclose details of a potential generator interconnection modification and associated transmission outages prior to certain Transmission Congestion Contract (TCC) auctions. As discussed below, the Commission finds that 330 Fund has not substantiated the OATT violations that it alleges impaired the value of its TCCs.

**I. Background**

**A. Interconnection History**

2. The facts underlying the Complaint center on a change in the point of interconnection of the “Seymour GTs,” two gas-fired generating units owned by the New York Power Authority (NYPA).<sup>1</sup> The Seymour GTs were originally interconnected to Consolidated Edison Company of New York, Inc. (Con Edison) transmission facilities

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<sup>1</sup> The Seymour GTs are also called the Gowanus GTs due to their proximity to the Gowanus substation.

under an interconnection agreement dated August 1, 2001.<sup>2</sup> The original point of interconnection was located on the Gowanus-Greenwood feeder line (known as “Line 42231”) adjacent to the congested Greenwood/Staten Island load pocket.

3. In March 2006, NYPA proposed to connect the Seymour GTs directly to the Greenwood/Staten Island load pocket via Con Edison’s Greenwood bus. NYPA requested that NYISO find the change not material and provided supporting power flow and short circuit data.<sup>3</sup> The change from Line 42231 to the Greenwood bus was reviewed by NYISO staff and also by the NYISO Transmission Planning Advisory Subcommittee (TPAS).<sup>4</sup> TPAS approved the proposed change as a non-material modification to the Seymour GTs’ existing interconnection.<sup>5</sup>

4. Outages to accommodate construction for the interconnection changes occurred in February, March and April 2007. Con Edison’s outage requests were approved and posted in the NYISO outage schedule reports of February 2 and 6, March 13, and April 2 and 6, 2007.<sup>6</sup> Con Edison and NYPA filed a revised interconnection agreement reflecting the change in the interconnection from Line 42231 to the Greenwood bus on April 26, 2007 in Docket No. ER07-803-000. 330 Fund intervened and protested the requested May 1, 2007 effective date, arguing that interested parties should receive more than five days notice to adjust to system changes caused by the modification.<sup>7</sup> The

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<sup>2</sup> The interconnection agreement is designated Service Agreement No. 315 under NYISO’s OATT, as accepted in *Consol. Edison Co. of New York, Inc.*, Docket No. ER02-46-000 (Nov. 29, 2001) and Docket No. ER02-46-001 (March 27, 2003) (unpublished letter orders). A revised interconnection agreement, discussed below, reflecting recent changes was accepted in *Consol. Edison Co. of New York, Inc.*, 119 FERC ¶ 61,206 (2007) (*Con Edison*).

<sup>3</sup> The Complaint, Exhibit 5 provides the request, and NYISO’s Answer, Exhibit B, Affidavit of Steven L. Corey, Attachment 3 (July 19, 2007) (Corey Affidavit) supplies the data.

<sup>4</sup> Corey Affidavit at 7.

<sup>5</sup> The TPAS meeting minutes are provided in the Complaint, Exhibit 6.

<sup>6</sup> Con Edison’s requests were made (i) on February 1, 2007 for February 5 through 8, 2007; (ii) on March 12, 2007 for March 15, 2007; and (iii) on April 2, 2007 for the period April 11 through 30, 2007. NYISO Answer, Exh. C, Affidavit of Allen Hargrave, at 2-3 (July 19, 2007) (Hargrave Affidavit).

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

Commission denied 330 Fund's request and accepted the revised interconnection agreement, effective May 1, 2007 as requested.

**B. TCC Auction History**

5. 330 Fund states that it participated in three TCC auctions that were affected by the failure to notify auction participants of the Seymour GTs' interconnection change and related transmission outages. First, in the Fall 2006 auction, 330 Fund was awarded 638 MW of "counterflow" TCCs on 88 paths with terms running from November 1, 2006 to either April 30, 2007 or October 31, 2007 (construction for the interconnection change occurred during these TCC terms) and a face value of \$7.6 million, which 330 Fund calls a "net position." These TCCs featured points of injection in or adjacent to the Greenwood/Staten Island load pocket. 330 Fund was also awarded 20 MW of paths having points of injection at the Seymour GTs. 330 Fund reports that counterflow TCCs obligate holders to pay the difference between day-ahead prices at each congested TCC point of injection and the uncongested price available at the point of withdrawal.<sup>8</sup> As a consequence, if congestion at the point of injection is greater than expected, a TCC holder is obligated to pay more.

6. In the subsequent Spring 2007 auction, 330 Fund acquired 94 MW of "predominant-flow" TCCs with points of withdrawal in or adjacent to the Greenwood/Staten Island load pocket worth \$9.9 million and having terms from May 1 to either October 31, 2007 or April 30, 2008. In addition, 330 Fund acquired a net TCC position of 25 MW with a face value of \$935,000 with a point of injection at the Seymour GTs expiring on either October 31, 2007 or April 30, 2008. 330 Fund reports that increased congestion causes the holder of predominant-flow TCCs to collect greater congestion rents, while decreased congestion makes these TCCs less valuable.<sup>9</sup>

7. 330 Fund argues, as described more fully below, that NYISO should have provided information on the modification prior to the April 2007 Reconfiguration Auction. Reconfiguration Auctions are held monthly to permit auction participants to adjust to short-term changes in transmission capacity through the sale of TCCs having a term of one month. The April 2007 Reconfiguration Auction was held in March and involved TCCs with terms running April 1 to 30, 2007.

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<sup>8</sup> Complaint at 9 (describing the "day-ahead congestion component differential").

<sup>9</sup> *Id.* at 10-11.

### C. The State Court Proceeding

8. In addition to this Complaint, 330 Fund also filed a complaint in the New York courts (New York Complaint).<sup>10</sup> According to 330 Fund, the New York Complaint alleges claims against NYISO for breach of tariff, breach of contract and negligence based on allegations similar to those raised in this proceeding, with the state claims arising from the OATT violations alleged in this proceeding.

### II. 330 Fund Complaint and NYISO Answer

9. The Complaint alleges that NYISO violated its OATT when it failed to adequately notify TCC auction participants of the Seymour GTs' proposed interconnection modification and associated outages. The Complaint alleges three separate OATT violations, arguing that NYISO failed to (1) study and provide notice of the interconnection modification as a material modification to an existing generator interconnection,<sup>11</sup> (2) provide information on the impacts of line outages in the TCC auction settlements process,<sup>12</sup> and (3) post transmission-related information on its Open Access Same-Time Information System (OASIS).<sup>13</sup> As a result, 330 Fund alleges it was injured when the interconnection modification and associated transmission outages lowered the value of its TCCs.<sup>14</sup>

10. 330 Fund alleges two sources of economic injury caused by its failure to account for the potential for increased congestion from the outages and the drop in locational-based marginal prices (LMP) caused by the point of interconnection change.<sup>15</sup> First, 330

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<sup>10</sup> Exhibit A to the NYISO Answer includes 330 Fund's summons and complaint filed in the Supreme Court of the State of New York, *330 Fund I, L.P. v. New York Indep. Sys. Op., Inc.*, Index No. 07602180 (June 29, 2007); according to the New York court's website a Notice of Removal to Federal district court was filed July 27, 2007.

<sup>11</sup> Complaint at 15-22, *citing* OATT, Att. X, Standard Large Facility Interconnection Procedures, sections 1 (definitions) and 4.4.3.

<sup>12</sup> *Id.* at 22-23, *citing* OATT, Att. N, Congestion Settlements Related to the Day-Ahead Market and TCC Auction Settlements, section 3.6.6.1.

<sup>13</sup> *Id.* at 23-26, *citing* 18 C.F.R. § 37.6 (2007); *see also* *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

<sup>14</sup> Complaint at 1-4.

<sup>15</sup> *Id.* at 9-11.

Fund alleges that its counterflow TCCs lost value when the construction-related transmission outages increased congestion to the Greenwood/Staten Island load pocket and it had to pay the resulting increased price differential in the load pocket.<sup>16</sup> Second, 330 Fund alleges that moving the electrical location of the Seymour GTs inside the Greenwood/Staten Island load pocket decreased congestion and affected LMP calculations. According to 330 Fund, the resulting decrease in LMP for the load pocket decreased the value of its predominant flow TCCs.<sup>17</sup>

11. 330 Fund requests that this Commission issue (1) a determination that NYISO violated its OATT and (2) a prohibition on future violations. However, 330 Fund states that it is not seeking damages from this Commission, but will instead seek compensation in the New York court proceeding.<sup>18</sup>

12. NYISO filed a timely answer to the Complaint (Answer). NYISO counters that it conducted the TCC auctions in full compliance with its OATT. NYISO characterizes 330 Fund's Complaint as primarily alleging a failure to disclose information affecting the TCC auctions and arguing that the OATT establishes a duty to divulge such information.<sup>19</sup> NYISO counters that the OATT provisions cited by 330 Fund do not govern TCC auctions. In addition, NYISO argues that the Complaint fails to address the true governing provisions, found in Attachment M, "Sale of Transmission Congestion Contracts," the TCC Manual and the Outage Scheduling Manual.<sup>20</sup> NYISO argues that the Complaint's reliance on violations of Attachment N (governing auction settlements), the LGIP, and/or the OASIS regulations is misplaced.

13. NYISO objects to 330 Fund's request that the Commission permit the state courts to resolve issues relating to the claims, including damages. NYISO requests that this Commission take jurisdiction over the claims raised in the New York Complaint, if the Complaint is not denied, and argues that the *Arkla* factors justify such jurisdiction.<sup>21</sup>

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<sup>16</sup> *Id.* at 10.

<sup>17</sup> *Id.* at 11.

<sup>18</sup> *Id.* at 7.

<sup>19</sup> Answer at 11.

<sup>20</sup> *Id.* at 11-12.

<sup>21</sup> *Id.* at 30, 31-36, citing *Arkansas Louisiana Gas Company v. Hall*, 7 FERC ¶ 61,175, *reh'g denied*, 8 FERC ¶ 61,031 (1979) (*Arkla*). Because we deny the Complaint, we do not address this request.

**A. Alleged Violations of the NYISO Standard Large Facility Interconnection Procedures**

14. 330 Fund alleges that NYISO violated its OATT by failing to treat the interconnection changes as a material modification under section 4.4.3 of the interconnection procedures. According to 330 Fund, if NYISO had properly determined that the interconnection change was a material modification, NYPA would have been required to file a new interconnection request with accompanying queue and study procedures, and such procedures would have notified 330 Fund of the proposed change.<sup>22</sup> According to 330 Fund, a material modification under section 4.4.3 includes any change to the point of interconnection, except under circumstances not present here.<sup>23</sup> Therefore, according to 330 Fund, NYISO should have recognized the change as material and required a new interconnection request from NYPA for the change in the point of interconnection.<sup>24</sup>

15. The Seymour GTs' initial interconnection was finalized prior to the effective date of section 4.4.3. Therefore, 330 Fund also examines NYISO's interconnection manual that was in effect prior to Order No. 2003 and argues that a new interconnection study is also required under those procedures.<sup>25</sup> In addition, 330 Fund anticipates and addresses other theories that 330 Fund believes might justify the modification without study and queue procedures.<sup>26</sup>

16. Based on its review of NYISO administrative materials, 330 Fund questions whether NYISO made the required determination. 330 Fund also argues that NYISO's failure to apply the same definition of material modification for existing generators as for new generators is discriminatory. 330 Fund argues that NYISO's failure to treat the Seymour GT changes as a material modification deprived it and other market participants

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<sup>22</sup> *Id.* at 16, *citing* OATT, Att. X, section 1 (defining interconnection request as a request "to increase the capacity of, or make a material modification to, the operating characteristics of an existing Large Generating Facility").

<sup>23</sup> *Id.* at 15-16, *citing* OATT, Att. X, section 4.4.1.

<sup>24</sup> *Id.* at 21 and Exhibit 1, Affidavit of Steven Garwood, at 7-8 (Garwood Affidavit).

<sup>25</sup> *Id.* at 18, *citing* NYISO Manual 23, Transmission Expansion and Interconnection Manual (Sept. 1999).

<sup>26</sup> *Id.* at 19-20.

of the ability to “pursue efficient market outcomes” in their TCC bidding strategies and caused the damages alleged in the Complaint.<sup>27</sup>

17. NYISO argues that the automatic determination under section 4.4.3 that a change in the point of interconnection is material does not apply because section 4.4.3 addresses changes to pending interconnection requests and only material modifications to existing generator interconnections, which would be the subject of a new interconnection request.<sup>28</sup> NYISO maintains that the change did not require a new interconnection request because there was no material modification to the operating characteristics of the Seymour GTs as required in Attachment X, section 1.<sup>29</sup> NYISO notes that its review procedures do not consider matters such as the impact of a proposed project on congestion or economic or commercial implications.<sup>30</sup> NYISO concludes that it had no duty to engage in additional queue or study procedures.

18. NYISO defends its determination that the interconnection modification for the Seymour GTs was not material, citing a 2001 internal procedure titled “Criteria for Defining a New Interconnection.” According to NYISO, this procedure defines a material modification as having an impact on short circuit and power flow analyses.<sup>31</sup> NYISO’s review of the proposed modification found that it would not increase the capacity of the Seymour GTs and would not have a material impact on short circuit or power flow analyses.<sup>32</sup> Based on these facts and NYPA’s supporting data, NYISO concluded that the change in the point of interconnection was not material and did not require a new interconnection request.

19. NYISO points out that the Commission reviewed the change in the point of interconnection when it accepted the revised Con Edison-NYPA interconnection agreement. NYISO notes that the order accepting the revised agreement acknowledged the TPAS finding that the change was not material.<sup>33</sup> According to NYISO, 330 Fund

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<sup>27</sup> *Id.* at 21-22.

<sup>28</sup> *Id.* at 16-17, 19.

<sup>29</sup> *Id.* at 15.

<sup>30</sup> *Id.* at 22-23.

<sup>31</sup> *Id.* at 18-20; *see also* Answer, Exh. B, Affidavit of Steven L. Corey, at 3 (Corey Affidavit) (providing the NYISO procedure as Attachment 1).

<sup>32</sup> Corey Affidavit at 7.

<sup>33</sup> Answer at 23-24, *citing Con Edison*, 119 FERC ¶ 61,206 at P 4.

should have contested the materiality determination in that proceeding, but did not.<sup>34</sup> Therefore, NYISO argues that 330 Fund's challenge to NYISO's materiality determination in this proceeding is an impermissible collateral attack on the order accepting the revised interconnection agreement.

**B. Alleged Violations of TCC Auction and Settlements Procedures**

20. 330 Fund alleges a second OATT violation, claiming that NYISO failed to post required information about the impact of the interconnection project prior to the auctions. 330 Fund cites the OATT, Attachment N, section 3.6.6.1 as requiring NYISO to prepare and post uprate/derate tables that reflect the estimated impact of transmission outages on service availability prior to every TCC auction.<sup>35</sup> 330 Fund argues that NYISO should have provided detailed information on the outages to participants in the 6-month and Reconfiguration Auctions, actively seeking the information if necessary, after it learned of the interconnection modification proposal in 2006. 330 Fund claims that it could have modified its bidding strategy if the impact of the outages was posted in the uprate/derate tables.<sup>36</sup>

21. NYISO counters the alleged violation of the OATT, Attachment N by arguing that it was not required to update the uprate/derate table to reflect outages related to the change in the interconnection of the Seymour GTs. NYISO argues that the uprate/derate table is a hypothetical tally of the predetermined impacts of transmission outages on interface transfer limits.<sup>37</sup> Therefore, the uprate/derate table is not intended to notify market participants of actual transmission outages. According to NYISO, market participants are to be notified of outages consistent with the Outage Scheduling Manual, and auction participants are to be notified of outages affecting the TCC auctions consistent with Attachment M, section 9.8 and the TCC Manual, section 4.5.6.<sup>38</sup> NYISO states that it met the Outage Scheduling Manual requirements. NYISO argues that the TCC auction process in Attachment M and the TCC Manual refers to the Outage Scheduling Manual to determine what outages must be considered in the TCC auction

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<sup>34</sup> *Id.* at 24. 330 Fund actively participated in the interconnection proceeding.

<sup>35</sup> Complaint at 22, *citing* OATT Att. N, section 3.6.6.1.

<sup>36</sup> *Id.* at 23.

<sup>37</sup> Answer at 25-26.

<sup>38</sup> *Id.* at 12-13, *citing* OATT, Att. M, "Sale of Transmission Congestion Contracts."



analysis.<sup>39</sup> NYISO concludes that because the scope of its auction reporting requirements is set by the Outage Scheduling Manual requirements, it had no obligation to account for additional outages as argued by 330 Fund. The uprate/derate tables, on the other hand, are compiled as part of the process to allocate the costs of congestion rent shortfalls to transmission owners who post outages that are not incorporated into prior auctions covering the time of the outage.<sup>40</sup> Therefore, NYISO argues that it has met the requirements of section 3.6.6.1, which was previously filed with and approved by the Commission.<sup>41</sup>

**C. Alleged Violations of Order No. 889 OASIS Posting Requirements and Order No. 890 Disclosure Requirements**

22. As a third OATT violation, 330 Fund alleges that NYISO failed to meet the Commission's OASIS posting requirements and the regulations promulgated in Order No. 889.<sup>42</sup> According to 330 Fund, Order No. 889 and the OASIS regulations obligate transmission providers to provide transmission customers with "information regarding the transmission system necessary to enable prudent business decision making" and information "pertinent to decisions" made by market participants. 330 Fund also cites Order No. 890 as providing that the transmission planning process must be "fair and efficient."<sup>43</sup> 330 Fund argues that the NYISO's approval of the Seymour GTs

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<sup>39</sup> *Id.* at 13; *see also* Hargrave Affidavit, Attachment 1 (providing the relevant pages of the Outage Scheduling Manual). The Outage Scheduling Manual requires notice 30 days in advance of the TCC month for outages that reduce interface transfer capability by 150 MW or more, but only two-days notice for Line 42231.

<sup>40</sup> *See* Answer at 6 & n. 6. *See also* *New York Independent System Operator, Inc.*, 106 FERC ¶ 61,095 at P 4 (2004) (*NYISO*) (noting that congestion payments to TCC holders should ideally equal congestion revenues collected from transmission customers, but that transmission outages that are not incorporated into the auction models cause the amount of congestion revenues to fall short).

<sup>41</sup> *NYISO*, 106 FERC ¶ 61,095 at P 4 (accepting revisions to Attachment N); *see also* NYISO's October 16, 2003 filing of the TCC revenue shortfall allocation methodology in Docket No. ER04-54-000 (accepted by Dec. 15, 2003 letter order), and March 17, 2006 filing of a revised methodology in Docket No. ER06-769-000 (accepted by April 14, 2006 letter order).

<sup>42</sup> Complaint at 23, *citing* *Open Access Same-time Information Systems*, Order No. 889, FERC Stats & Regs. ¶ 31,035 at 31,588 (1996), 18 C.F.R. § 37.6(a) (2007), and OATT, section 4.0 (obligating the ISO to maintain an OASIS).

<sup>43</sup> *Id.* at 24, *citing* *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119 at P 51 (2007).

interconnection change was inconsistent with the Commission's transparency policies for transmission planning and operations and that, if NYISO had met its obligations, NYISO would have provided information on the potential interconnection modification to market participants. Because 330 Fund lacked information concerning the interconnection change, 330 Fund claims that its bids did not reflect true market conditions.<sup>44</sup>

23. NYISO argues that 330 Fund's allegation that it violated the Commission's OASIS posting requirements relies on an open ended and overly broad interpretation of those requirements.<sup>45</sup> NYISO counters that it is not required to post all relevant information desired by potential bidders and any such requirement would make it a guarantor of customers' bidding strategies. NYISO argues instead that the OASIS posting requirements are specific and that it has met those posting requirements.<sup>46</sup> NYISO contends that 330 Fund's reference to the general description of the OASIS reporting requirements found in section 37.6(a)(2) should be interpreted in light of the more specific instructions in sections 37.6(b)-(g). The specific instructions relate to postings of available transmission capacity (ATC) and the justifications for denials of transmission service. According to NYISO, 330 Fund did not allege any violation of those specific OASIS posting requirements. NYISO also notes that the information concerning the Seymour GTs' point of interconnection change was available to market participants through a Listserv and was posted on the NYISO website.<sup>47</sup>

### **III. Notice and Filings**

#### **A. Federal Register Notice**

24. Notice of the Complaint was published in the *Federal Register*, 72 Fed. Reg. 37,757 (2007), with responses and interventions due on or before July 19, 2007. NYPA filed a timely intervention concurring with NYISO's Answer. Timely interventions and comments in opposition to the Complaint were filed by DC Energy, LLC (DC Energy) and Con Edison and its affiliate Orange and Rockland Utilities, Inc. FPL Energy, LLC filed an intervention and comments expressing concern with the need for more open and transparent disclosure of information in electric markets. Independent Power Producers

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<sup>44</sup> *Id.* at 23-26.

<sup>45</sup> *Id.* at 27.

<sup>46</sup> *Id.* at 27-28.

<sup>47</sup> *Id.* at 5.

of New York, Inc. and the New York Transmission Owners (TOs)<sup>48</sup> filed timely interventions. CAM Energy Trading, LLC (CET) and EPIC Merchant Energy (EME) filed motions to intervene out-of-time and comments taking no position on the Complaint.

25. On August 3, 2007, 330 Fund filed an answer to NYISO's Answer. On August 17, 2007, NYISO filed an answer to 330 Fund's answer, and on August 24, 2007 330 Fund submitted a supplemental answer.

### **B. Intervenors' Comments**

26. Con Edison is the transmission owning counterparty to the interconnection agreement covering the Seymour GTs. Con Edison alleges that 330 Fund has failed to substantiate its claims and that the Complaint should be dismissed.<sup>49</sup> Con Edison argues that NYISO met all notice and posting requirements. Con Edison characterizes the Complaint as a request that NYISO notify market participants of all potential transmission modifications that may affect the TCC auction prices and settlements.<sup>50</sup> Therefore, according to Con Edison, 330 Fund is requesting a change to the NYISO OATT and any such change should be made only prospectively and through the stakeholder process.<sup>51</sup>

27. Con Edison notes that the focus of the interconnection queue is to protect later-queued projects from changes to earlier pending projects and not on the effect of possible interconnection changes on the New York energy markets.<sup>52</sup> Con Edison asserts that NYISO properly provided two days notice for the outages related to the Seymour GTs interconnection modification, consistent with the NYISO Outage Scheduling Manual.<sup>53</sup>

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<sup>48</sup> The New York TOs include Central Hudson Gas & Electric Corp., Long Island Power Authority, New York State Electric & Gas Corp., Niagara Mohawk Power Corp. d/b/a National Grid, and Rochester Gas and Electric Corp.

<sup>49</sup> Con Edison, Motion to Intervene and Comments, at 4 (July 19, 2007) (Con Edison Comments).

<sup>50</sup> *Id.* at 11.

<sup>51</sup> *Id.* at 6 (July 19, 2007), citing *Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 577 (1981) as establishing under FPA sections 205 and 206 the filed rate doctrine, which “forbids a regulated entity [from] charg[ing] rates for its services other than those properly filed with the appropriate regulatory authority.”

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

<sup>53</sup> *Id.* at 8, citing the NYISO Outage Scheduling Manual, section 1.2.3.

Con Edison notes that Order No. 889 was concerned with transmission owning utilities providing preferential access to transmission-related information to affiliates.<sup>54</sup> Con Edison argues that those policies do not apply in this case because NYISO has no affiliated market participants to benefit from the information.

28. DC Energy, an energy trading organization, filed comments opposing the Complaint and defending NYISO's determination that the change was not material.<sup>55</sup> DC Energy argues that NYISO met its disclosure requirements because it reviewed the interconnection modification request pursuant to its established process and posted the results of its determination on its website.<sup>56</sup> DC Energy defends the openness and transparency of TPAS process by noting that a wide variety of stakeholders participate in the subcommittee.<sup>57</sup> DC Energy defends the auction process arguing that NYISO's failure to post the Line 42231 outage information is explained by the fact that the transmission owner had not submitted notice of the outages in time to incorporate them into the auction models.<sup>58</sup>

29. CET and EPIC take no position on the Complaint. However, their comments express the opinion that stakeholder deliberations cannot take the place of disclosing the results of those deliberations to market participants.

#### IV. Discussion

##### A. Procedural Matters

30. The timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.214(d) (2007), the Commission will grant CET's and EME's late-filed motions to intervene given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

31. The Commission's Rules of Practice and Procedure generally prohibit answers to answers, 18 C.F.R. § 385.213(a)(2) (2007), unless authorized by the decisional authority.

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<sup>54</sup> *Id.* at 10.

<sup>55</sup> DC Energy, Motion to Intervene and Comments (July 19, 2007) (DC Energy Comments).

<sup>56</sup> DC Energy Comments at 7.

<sup>57</sup> *Id.* at 10.

<sup>58</sup> *Id.* at 12-13.

We are not persuaded to allow 330 Fund's answer to NYISO's answer; accordingly, we reject it. Similarly, we reject NYISO's and 330 Fund's subsequent answers.

**B. Alleged OATT Violations**

**1. Allegations Concerning NYISO Interconnection Procedures and Materiality Determination**

32. We deny 330 Fund's claim that NYISO violated its OATT section 4.4.3 by failing to treat the interconnection changes as a material modification. We agree with NYISO that section 4.4.3 applies to pending interconnection requests and new interconnection requests for material changes to the operating characteristics of existing facilities.<sup>59</sup> As we recently explained:

Order No. 2003 provides for the interconnection of new generators and expansion of existing generators, not to existing generators already interconnected to the transmission grid where there is no proposed increase in output or material modifications to physical or operating characteristics.<sup>60</sup>

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<sup>59</sup> Section 4.4.3 states:

Prior to making any modification other than those specifically permitted by sections 4.4.1, 4.4.2, and 4.4.5, Developer may first request that the NYISO evaluate whether such modification is a Material Modification. In response to Developer's request, the NYISO shall evaluate the proposed modifications prior to making them and inform the Developer in writing of whether the modifications would constitute a Material Modification. Any change to the Point of Interconnection except those deemed acceptable under section 4.4.1, 6.1, 7.2 or so allowed elsewhere shall constitute a Material Modification. The Developer may then withdraw the proposed modification or proceed with a new Interconnection Request for such modification.

<sup>60</sup> *Midwest Independent Transmission System Operator, Inc.*, 118 FERC ¶ 61,270 at P 12 (2007), citing *New England Power Company*, 109 FERC ¶ 61,364 at P 13 (2004), and *Entergy Services, Inc.*, 115 FERC ¶ 61,294 at P 4 (2006).

33. We also find that NYISO's determination that the interconnection changes did not constitute a material change to the Seymour GTs' (an existing generator's) operating characteristics was reasonable and adequately supported.<sup>61</sup> In determining whether a proposed change in an interconnection for existing facilities is a material modification, a transmission provider examines the impact of a change on the cost to interconnect other facilities.<sup>62</sup> That is, the transmission provider assesses the impact of the interconnection change to see if the change will require system modifications that will increase the costs to generators attempting to interconnect as posted in the queue or otherwise delay those projects. The NYISO determined that the change in the point of interconnection did not have a material impact on reliability.<sup>63</sup> Thus, the change did not result in reliability problems that would require the installation of additional facility upgrades, there were no additional costs to allocate to other customers and no facility upgrades which could delay other projects during construction. In Order No. 2003, we declined to adopt in the proposed interconnection procedures a precise definition of a material modification, and instead left the definition to transmission providers.<sup>64</sup> These facts, which are uncontested, further support NYISO's determination that the change was not material.

34. There are no NYISO interconnection procedure provisions requiring NYISO to post its materiality determinations. Under section 4.4.3, NYISO is required to notify the generator developer whether a proposed change is material at which point the generator

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<sup>61</sup> In another proceeding, we set for hearing the issue of whether a change in the point of interconnection was material. *Haviland Holdings, Inc. v. Pub. Serv. Co. of New Mexico*, 107 FERC ¶ 61,034 (2004). However, that proceeding concerned a change to a pending interconnection request rather than an existing generator. The current proceeding is further distinguishable because, in *Haviland*, another party alleged that the change would have a material impact on its lower-queued project. No such claim has been made here.

<sup>62</sup> The Order No. 2003, *pro forma* Large Generator Interconnection Agreement (LGIA), which applies to existing generators that are subject to Order No. 2003, supports this finding. See the LGIA, Article 1, definitions, "Material Modification shall mean those modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date."

<sup>63</sup> See Answer at 20.

<sup>64</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 138 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

may withdraw the modification or submit a new interconnection request.<sup>65</sup> 330 Fund is not contesting the lack of such posting requirements. Nevertheless, we find that details concerning the interconnection, the materiality determination and the associated outages were available to market participants on the NYISO website.<sup>66</sup> The Seymour GTs' interconnection modification information is available with the TPAS meeting materials for April 10, 2006,<sup>67</sup> and NYISO's internal protocols defining a material modification and new interconnection are also available. NYISO has consolidated the information related to its materiality determinations on its interconnection queue website.<sup>68</sup>

35. We find that 330 Fund failed to establish that NYISO violated its OATT by failing to treat the Seymour GTs change in point of interconnection as a material modification. We further find that NYISO did not violate any other requirement in the interconnection procedures that would have required posting details of the interconnection change. Therefore, we reject 330 Fund's allegations that NYISO violated its OATT interconnection procedures.

## **2. The NYISO TCC Auction Provisions and Integrity of the TCC Auctions**

36. 330 Fund has failed to substantiate its claim that NYISO violated the Attachment N, section 3.6.6.1 TCC procedures by failing to post information about the line outages and change in generator location before the auctions. 330 Fund claims that NYISO should have updated the uprate/derate tables used in the TCC settlements to reflect the Seymour GTs' interconnection change, "including all information available on

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<sup>65</sup> Att. X, section 4.4.3, quoted *supra* note 59.

<sup>66</sup> The outages were posted on the NYISO website following Con Edison's outage requests, and 330 Fund acknowledges that it was able to obtain NYPA's interconnection modification request and the TPAS meeting minutes once it began investigating the outages. Complaint at 13.

<sup>67</sup> NYPA also posted information concerning the plan to modify its interconnection in its regular meeting minutes, available at <http://www.nypa.gov/trustees/2006%20Minutes/06june/06jun.htm> and [http://www.nypa.gov/trustees/2006 minutes/06sept/september 26 2006.doc](http://www.nypa.gov/trustees/2006%20Minutes/06sept/september%2026%202006.doc) .

<sup>68</sup> See NYISO's "List of Project/Facility Changes Submitted to NYISO and Determined to Be Non-Material Changes Under the NYISO Interconnection Procedures" (May 3, 2007), "Criteria for Defining a Material Change in a Previously Proposed New Interconnection Project" (2001) and "Criteria for Defining A 'New Interconnection'" (2001), available at: [http://www.nyiso.com/public/services/planning/interconnection\\_studies\\_process.jsp](http://www.nyiso.com/public/services/planning/interconnection_studies_process.jsp) .

the outages” related to the change.<sup>69</sup> 330 Fund states that it would have changed its bidding position in the Fall 2006 Auction or the April Reconfiguration Auction had it known of the outage impacts.<sup>70</sup> NYISO counters that it could not have provided advance notice of the outages, because it did not receive notification of the outages through the outage scheduling process before it had completed the TCC auction models.<sup>71</sup>

37. We agree with NYISO that section 3.6.6.1 does not, and could not, require NYISO to notify auction participants of outages before it learns of those outages. Furthermore, we find that section 3.6.6.1 does not require NYISO to notify auction participants of potential interconnection modifications. Section 3.6.6.1 provides:

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

38. Because Con Edison’s outage requests were not received by NYISO until after each auction for TCCs having terms affected by the outages, we conclude that NYISO had no duty under section 3.6.6.1 to notify 330 Fund of these outages. The Complaint alleges that three auctions were affected by Line 42231 outages occurring during the terms of the TCCs to be sold: the Fall 2006 Auction, the April Reconfiguration Auction, and the Spring 2007 Auction. 330 Fund fails to allege that NYISO knew prior to any of these auctions of an outage occurring in the period for which TCCs were to be sold. NYPA’s request for a materiality determination did not specify a construction or outage date, which is not unusual for such requests.<sup>72</sup> NYISO learned of the outages at issue in

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<sup>69</sup> Complaint at 22.

<sup>70</sup> *Id.* at 23. 330 Fund does not allege that it would have changed its Spring 2007 bidding strategy with the additional outage information.

<sup>71</sup> *See* Answer at 11, noting that market participants were not notified of the April outage prior to the April 2007 Reconfiguration Auction because NYISO did not receive notification of the outage until after it had completed the auction model.

<sup>72</sup> It is not uncommon for construction projects to have open time frames. *Cf.* OATT, Att. X, section 4.4.5 (noting that Commercial Operation Dates for pending interconnection projects may be extended up to three years).



this proceeding on February 1, March 12 and April 2, 2007. 330 Fund originally acquired TCCs affected by those outages in the Fall 2006 Auction, which closed in October 2006. Therefore, NYISO did not receive notice prior to the Fall 2006 Auction and could not have provided notice of those outages to auction participants.

39. In its statement of facts, 330 Fund alleges:

NYISO did not satisfy its OATT requirements to notice the Line 42231 outage in its reporting preceding the April 2007 TCC Reconfiguration Auction even though the line was to be out for more than half of April 2007.

Only the April outage affected the April Reconfiguration Auction, which involved monthly TCCs with terms from April 1 to 30, 2007. Contrary to 330 Fund's suggestion that NYISO knew that the line was to be out prior to the auction, NYISO did not receive an outage request for the period addressed in the April Reconfiguration Auction until April 2, 2007. Because the April Reconfiguration Auction closed March 28, 2007, NYISO lacked notice of the April outage prior to the auction.<sup>73</sup>

40. Finally, in the Spring 2007 TCC Auction 330 Fund acquired TCCs with terms beginning May 1, 2007. 330 Fund reports that the Spring 2007 TCC Auction was "substantially complete" by April 2, 2007.<sup>74</sup> However, Con Edison's April 2 outage request did not report an outage extending into May, nor did its April 6, 2007 revised request. Therefore, NYISO did not receive an outage request affecting the TCCs awarded in the Spring 2007 Auction until some time after April 6, 2007, after the auction closed.<sup>75</sup>

41. 330 Fund argues for a broader reading of section 3.6.6.1, claiming that section 3.6.6.1 requires the NYISO to "reflect" in the uprate/derate tables "all information available" on the Seymour GTs interconnection change once "NYPA placed the NYISO on notice" of the proposed change in March 2006.<sup>76</sup> We reject 330 Fund's interpretation

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<sup>73</sup> See "Initial Spring 2007 Auction Time Line," at 6 (Jan. 30, 2007), available at <http://www.nyiso.com/public/products/tcc/manual.jsp>.

<sup>74</sup> Complaint at 9.

<sup>75</sup> See *id.* at 12; Answer at 9.

<sup>76</sup> Complaint at 22-23, stating:

The NYISO should have reflected the Interconnection Project, including all information available on the Outage(s) related to the Interconnection Project, in its uprate/derate

of section 3.6.6.1. Section 3.6.6.1 requires the NYISO to report the expected impacts of “all transmission facility outages and returns to service . . . *for the period for which TCCs are to be sold*” in a one-month Reconfiguration Auction or six-month sub-auction.<sup>77</sup> Section 3.6.6.1 requires notice of the impacts of outages; it is not a general requirement to disclose information on interconnection projects. Furthermore, section 3.6.6.1 does not obligate NYISO to attempt to predict when outages may occur. While section 3.6.6.1 does not clearly describe the outages that are associated with a “period for which TCCs are to be sold,” elsewhere Attachment N clarifies that the uprate/derate table is to reflect “Qualifying DAM Outages,” which are outages that affect facilities that are out of service in the day-ahead market, but were “modeled as in-service in the last auction held for TCCs valid” for the outage timeframe.<sup>78</sup> The table does not provide notice of outages any earlier than the Outage Scheduling Manual procedures. 330 Fund’s claim fails because NYISO could not have notified the market participants of the outages before it received and processed the related outage requests.

42. Therefore, we find that 330 Fund has failed to establish that NYISO breached its OATT obligations governing the TCC auctions in relation to the Line 42231 outages.

### **3. The OASIS Regulations and Transparency Policies**

43. 330 Fund has failed to establish that NYISO violated its OATT or the OASIS regulations by failing to post details about the interconnection modification or the associated outages on its OASIS. 330 Fund cites only to section 37.6(a)(2) of the Commission’s regulations, which provides a general list of how transmission customers may use OASIS information. The specific posting obligations for OASIS operators are contained in sections 37.6(b)-(g), and 330 Fund did not allege any failure to meet those specific posting obligations. Furthermore, none of those posting obligations includes the obligation to post information about potential interconnection reconfigurations or transmission outages that do not affect grants or denials of transmission service.

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tables prior to TCC auctions [after NYPA’s Spring 2006 materiality request]. If the NYISO did not have specific data regarding the timing of the outage, the NYISO should have obtained information concerning the Interconnection Project and its timing so the NYISO could update its assumptions.

<sup>77</sup> OATT, Att. N, section 3.6.6.1 (emphasis added).

<sup>78</sup> OATT, Att. N, sections 1.2 and 2.4.2.1. Attachment N also allocates congestion surpluses caused by returning facilities to service, supporting our finding that the Attachment N process incorporates timely, not forward looking, information.

44. 330 Fund's references to Order No. 890, likewise, do not establish any specific disclosure requirement that NYISO should have met, but did not, in this instance. The discussion in Order No. 890 reflects the fact that, when asked to expand the OASIS reporting requirements, we chose only to require transmission providers to post information concerning changes to TTC and ATC after they occurred.<sup>79</sup> The Order Nos. 889 and 890 posting requirements do not require posting of potential changes.<sup>80</sup>

45. NYISO's OATT sets forth information posting and distribution requirements that are relevant to this proceeding. We find that NYISO has met those requirements.<sup>81</sup> Any attempts to revise the auction reporting requirements should begin with stakeholder negotiations, as the stakeholder process is the proper forum in the first instance to identify what information (including market information, business plans and sales strategies) is necessary for the functioning of the TCC markets and whether additional information should be made available and when.

46. 330 Fund argues that NYISO's failure to provide information hindered it from making prudent business decisions, and consequently, its bids did not reflect true market conditions. The issue in this proceeding, however, is whether a tariff violation occurred. We conclude that NYISO did not violate its tariff. Accordingly, we deny 330 Fund's Complaint.

The Commission orders:

330 Fund's complaint is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Acting Deputy Secretary.

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<sup>79</sup> Order No. 890 at P 369.

<sup>80</sup> In any event, the OASIS changes required by Order No. 890 became effective July 13, 2007 and were not in effect while the events complained of were occurring. *Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,037 (2007).

<sup>81</sup> See Answer at 13.