

126 FERC ¶ 61,046
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.

New York Independent System Operator, Inc. and New York Transmission Owners	Docket Nos. ER04-449-005 ER04-449-006 ER04-449-009 ER04-449-010 ER04-449-011 ER04-449-012 ER04-449-013 ER04-449-014 ER04-449-015 ER04-449-017
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ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued January 15, 2009)

1. On August 5, 2008, the New York Independent System Operator, Inc. (NYISO) and the New York Transmission Owners¹ (collectively, Filing Parties) filed amendments to the NYISO's Open Access Transmission Tariff (OATT) and the NYISO's Market Administration and Control Area Services Tariff (Services Tariff). The Filing Parties offer these amendments (Deliverability Plan) in response to a series of Commission orders requiring the implementation of a second level of interconnection service with a deliverability component in the New York control area.² In this order, the Commission conditionally accepts the Deliverability Plan and directs compliance, as discussed below.

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

² *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,159 (2004) (*Order on Proposed Modifications*), *order on reh'g*, 111 FERC ¶ 61, 347 (2005) (*Order Denying*

(continued)

I. Background

2. In Order No. 2003,³ pursuant to its responsibility under sections 205 and 206 of the Federal Power Act (FPA)⁴ to remedy undue discrimination, the Commission required all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to append to their OATTs a *pro forma* Large Generator Interconnection Procedures and *pro forma* Large Generator Interconnection Agreement. Among their terms, the *pro forma* Large Generator Interconnection Procedures and *pro forma* Large Generator Interconnection Agreement require transmission providers to offer interconnection customers two levels of interconnection service: Energy Resource Interconnection Service and Network Resource Interconnection Service.⁵ Energy Resource Interconnection Service is a basic level of interconnection services that allows the interconnection customer to connect its generating facility to the transmission system and be eligible to deliver its output using the existing firm or non-firm capacity of the transmission system on an “as available” basis. By contrast, Network Resource Interconnection Service requires the transmission provider to undertake the interconnection studies and network upgrades needed to integrate the generating facility into the transmission system in a manner comparable to that in which the transmission provider integrates its own generators to serve native load customers.

3. In compliance with Order No. 2003, the Filing Parties filed a *pro forma* Large Generator Interconnection Procedures and *pro forma* Large Generator Interconnection Agreement including some proposed variations from the Commission’s *pro forma* text. Specifically, the Filing Parties proposed to provide only one level of interconnection service under the NYISO OATT, Network Access Interconnection Service, as opposed to the two levels of service described in the Commission’s *pro forma* interconnection procedures and agreement. Network Access Interconnection Service is a different service

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

³ *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).

⁴ 16 U.S.C. §§ 824d, 824e (2006).

⁵ Capitalized terms not otherwise defined have the meanings ascribed to them in the *pro forma* interconnection procedures and agreement.

than either Network Resource Interconnection Service or Energy Resource Interconnection Service in that it combines elements of both. Network Access Interconnection Service allows the interconnection customer to physically interconnect with the New York State Transmission System and, under attachment S of the NYISO OATT, allocates to the interconnection customer any “but for” network upgrade costs in excess of the Annual Baseline Assessment.⁶

4. In August 2004, the Commission conditionally accepted in part the Filing Parties’ proposed modifications to the *pro forma* Large Generator Interconnection Procedures and *pro forma* Large Generator Interconnection Agreement and directed the Filing Parties to file revisions incorporating a second level of service.⁷ In its order, the Commission noted that, while Network Access Interconnection Service combined elements of both Energy Resource Interconnection Service and Network Resource Interconnection Service, Network Access Interconnection Service did not address whether energy injected by the new interconnection can actually be delivered by the transmission system.⁸ The Commission affirmed its decision in Order No. 2003 to require two levels of service, including one level that incorporates a deliverability requirement (such as Network Resource Interconnection Service), and directed the parties to modify their tariff accordingly.⁹

5. In its order denying rehearing, the Commission acknowledged that there are two competing principles at work.¹⁰ The first is that offering a second level of interconnection service, one with deliverability, is a crucial component of Order No. 2003. The second is that the NYISO is a distinctive region and New York’s stakeholders should have the flexibility to craft a system appropriate to New York’s specific needs. Because of these competing interests, the Commission has granted multiple requests from the Filing Parties’ for additional time to continue the stakeholder process.

6. Members of the Filing Parties were divided on how best to respond to the Commission’s *Order on Proposed Modifications*. Its constituent members splintered into

⁶ “But for” network upgrades are those upgrades that would not have been constructed “but for” the customer’s request to interconnect.

⁷ *Order on Proposed Modifications*, 108 FERC ¶ 61,159 at P 28.

⁸ *Id.* P 25.

⁹ *Id.* P 28; *see also Order Denying Rehearing*, 111 FERC ¶ 61,347 at P 14.

¹⁰ *Order Denying Rehearing*, 111 FERC ¶ 61,347 at P 13.

smaller groups that have filed several competing compliance filings proposing different methods and schedules for implementing a second level of service with a deliverability component. Meanwhile, the NYISO has provided the Commission with periodic status reports and work plans regarding the progress of the stakeholder process.

7. Having resolved many of their differences, the Filing Parties submitted a Consensus Deliverability Plan on October 5, 2007. Developed with the NYISO stakeholders through the interconnection issues task force, the Filing Parties' plan provided the conceptual framework for adding to the NYISO OATT a second level of interconnection service with a deliverability component. 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.¹¹ A generator can elect to take Energy Resource Interconnection Service and partial Capacity Resource Interconnection Service. A generator taking both services may later ask the NYISO to reevaluate its eligibility for full Capacity Resource Interconnection Service

8. To qualify for Energy Resource Interconnection Service, an interconnection customer must fund the entire cost of the requisite interconnection facilities. It must also fund its share of any network upgrades that would not have been constructed but for the interconnection, minus the cost of any facilities that the NYISO's Regional Plan dictates would have been necessary anyway for load growth and reliability purposes. To qualify for Capacity Resource Interconnection Service, an interconnection customer must first satisfy the requirements for Energy Resource Interconnection Service. In addition, the interconnection customer's capacity must be found to be deliverable or the interconnection customer must fund or commit to fund upgrades to the transmission system necessary to make the capacity deliverable.

9. In its *Guidance Order*, the Commission approved, in principle, the conceptual framework proposed in the Consensus Deliverability Plan and provided further guidance to the NYISO and its members to facilitate the development of revisions to the NYISO OATT. The Commission's acceptance of the proposed Capacity Resource Interconnection Service was based on several factors. The Consensus Deliverability Plan

¹¹ In the Consensus Deliverability Plan, NYISO defined deliverability broadly as the ability to deliver the aggregate of New York control area capacity to the aggregate of the New York control area load under summer peak load conditions. The Filing Parties October 5, 2007 Consensus Deliverability Plan at 5.

met the objectives of prior Commission orders directing a second level of service that recognizes the need for new resources to be deliverable.¹² The Consensus Deliverability Plan was also the result of a comprehensive stakeholder process, shared support among affected market participants, and balanced the competing interests of market participants. The Commission reminded the Filing Parties that because their Consensus Deliverability Plan contemplates two levels of service that deviate from the *pro forma* OATT, their forthcoming revised tariff sheets must demonstrate that the particular proposed modifications meet the “independent entity variation standard” for revising the terms of the *pro forma* Large Generator Interconnection Agreement and *pro forma* Large Generator Interconnection Procedures to accommodate regional needs.¹³ The Commission directed the Filing Parties to file tariff revisions by August 4, 2008.

10. On August 5, 2008, the Filing Parties filed these proposed revisions to the NYISO OATT and Services Tariff.¹⁴ The Filing Parties state that they used the five months following the *Guidance Order* to develop a set of tariff amendments based on the framework set forth in the Consensus Deliverability Plan, which had broad consensus among the NYISO’s stakeholders. The NYISO asks the Commission to approve the proposed tariff sheets because they are just and reasonable and not unduly discriminatory, and would accomplish the goals of Order No. 2003. The Filing Parties state that the New

¹² *Order on Proposed Modifications*, 108 FERC ¶ 61,159 at P 28.

¹³ See Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 822-27; Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 759. An RTO or ISO proposing a variation must demonstrate that the variation is just and reasonable and not unduly discriminatory, and would accomplish the purposes of Order No. 2003. See, e.g., *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025, at P 7 (“[W]hen an RTO is the filing entity, the Commission will review the proposed variations to ensure that they do not provide an unwarranted opportunity for undue discrimination or produce an interconnection process that is unjust and unreasonable.”), *order denying reh’g*, 110 FERC ¶ 61,099 (2005); and *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,128 (2006), *order on reh’g*, 119 FERC ¶ 61,097, at P 7 (2007) (rejecting a proposed pricing variation because the RTO “had not shown that the proposal would accomplish the purposes Order No. 2003 set forth as possible justifications for this type of pricing”).

¹⁴ The Filing Parties concurrently filed a motion for leave to submit joint compliance filing one day out-of-time. The Filing parties explained that it was not possible to incorporate all final revisions and deliver the filing to the Commission until shortly after the 5 p.m. filing deadline. The Filing Parties state that the revisions proposed in this filing are identical to the revisions that they attempted to file on August 4, 2008.

York Transmission Owners generally agree but believe that certain limited modifications to the proposed tariff sheets are necessary, as discussed in their comments.

II. Notice of Filing and Responsive Pleadings

11. This proceeding has a lengthy history that involves competing efforts to comply with the Commission's *Order on Proposed Modifications*.

12. On February 7, 2005, NYISO, Central Hudson Gas & Electric Corp., Consolidated Edison Co. of New York, Inc., New York Power Authority, New York State Electric & Gas Corp., Orange & Rockland Utilities, Inc. and Rochester Gas & Electric Corp. submitted a deliverability study and proposal in compliance with the *Order on Proposed Modifications* and a request for extension of time in Docket No. ER04-449-005. Notice of the filing was published in the *Federal Register*, 70 Fed. Reg. 8,357 (2005), with interventions, comments and protests due on or before February 28, 2005. Multiple Intervenors,¹⁵ NRG Energy, Inc., the Mirant Parties¹⁶ and the New York Public Service Commission filed timely motions to intervene. Keyspan-Ravenswood LLC filed a protest.

13. Also on February 7, 2005, the Long Island Power Authority (LIPA) and Niagara Mohawk Power Corp., filed their own deliverability study and proposal in compliance with the *Order on Proposed Modifications* in Docket No. ER04-449-006. Notice of the filing was published in the *Federal Register*, 70 Fed. Reg. 8,357 (2005), with interventions, comments and protests due on or before February 28, 2005. NRG Energy Inc. filed a timely motion to intervene.

14. On July 1, 2005, the NYISO and the New York Transmission Owners filed a status report on their joint deliverability analysis in Docket No. ER04-449-009. Notice of the joint filing was published in the *Federal Register*, 70 Fed. Reg. 43,864 (2005), with interventions, comments and protests due on or before August 15, 2005. None was filed.

15. On October 5, 2005, the NYISO filed its second status report on its deliverability analysis in Docket No. ER04-449-010. Notice of the filing was published in the *Federal Register*, 70 Fed. Reg. 60,812 (2005), with interventions, comments and protests due on or before October 26, 2005. None was filed.

¹⁵ Multiple Intervenors is an unincorporated association of approximately 55 large commercial and industrial energy consumers with manufacturing and other facilities located throughout New York State.

¹⁶ The Mirant Parties include Mirant Americas Energy Marketing, LP, Mirant New York, Inc., Mirant Bowline, LLC, Mirant Lovett, LLC and Mirant NY-Gen, LLC.

16. On November 30, 2005, the NYISO filed its third status report on its deliverability analysis in Docket No. ER04-449-012. Notice of the NYISO's filing was published in the *Federal Register*, 71 Fed. Reg. 13,831 (2006), with interventions, comments and protests due on or before March 24, 2006.¹⁷ None was filed

17. On March 3, 2006, the NYISO filed its fourth status report on its deliverability analysis in Docket No. ER04-449-011. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 13,830 (2006), with interventions, comments and protests due on or before March 24, 2006. The New York Transmission Owners and LIPA filed separate comments.

18. On March 28, 2006, the NYISO filed its fifth status report on its deliverability analysis in Docket No. ER04-449-013. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 18,313 (2006), with interventions, comments and protests due on or before April 7, 2006. None was filed.

19. On June 7, 2006, the New York Transmission Owners filed a compliance plan to file revised tariff sheets in Docket No. ER04-449-014. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 34,914 (2006), with interventions, comments and protests due on or before June 28, 2006. Also on June 7, 2006, the NYISO filed a report and work plan regarding the implementation of a deliverability requirement in the New York control area in Docket No. ER04-449-015. Notice of the NYISO's filing was published in the *Federal Register*, 71 Fed. Reg. 34,914 (2006), with interventions, comments and protests due on or before June 28, 2006. FPL Energy Generators filed a timely motion to intervene. Entergy Nuclear Power Marketing filed a motion to intervene along with the joint comments of AES Eastern Energy, L.P., Astoria Generating Company and Entergy Nuclear Power. Fortistar Chelsea LLC and the PSEG Companies,¹⁸ filed separate motions to intervene and comments. The NRG Companies,¹⁹ Constellation Generation Group and Keyspan-Ravenswood, LLC filed separate comments. The NYISO filed comments on the New York Transmission Owners' plan, and the New York Transmission Owners filed comments on the NYISO plan.

¹⁷ Although the NYISO filed its third status report in November 2005, it was not noticed in the *Federal Register* until the following March. This explains why the third and fourth status reports shared the same comment date.

¹⁸ The PSEG Companies include PSEG Energy Resources & Trade LLC and Public Service Electric and Gas Company.

¹⁹ The NRG Companies include NRG Power Marketing, Inc., Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Oswego Harbor Power LLC.

20. Notice of the Filing Parties' current Deliverability Plan was published in the *Federal Register*, 73 Fed. Reg. 47,144 (2008), with interventions, comments and protests due on or before August 26, 2008. CPV Valley, LLC filed a timely motion to intervene. Empire Generating Company, LLC (Empire) filed a timely motion to intervene with comments. Timely Motions to intervene and protests were filed by Astoria Energy, LLC (Astoria), Brookfield Energy Marketing, Inc. (Brookfield), and HQ Energy Services (U.S.), Inc. (HQ Energy). Comments were filed by Consolidated Edison Company of NY, Inc. and Orange and Rockland Utilities, Inc. (collectively, Con Edison) and the New York Transmission Owners. Linden VFT, LLC (Linden) filed comments with a conditional protest. Protests were filed by the Independent Power Producers of New York, Inc. (IPPNY), NRG Companies and Astoria Generating Company, L.P. (NRG-AG). Noble Environmental Power, LLC (Noble) filed a motion to intervene out-of-time. The New York State Electric and Gas Corp. (NYSEG) filed comments out-of-time.

21. Initial answers were filed on September 10, 2008. A smaller group of New York transmission owners, named the Upstate Transmission Owners,²⁰ filed an answer to the comments filed by Con Edison and the protest filed by IPPNY. The Long Island Power Authority and its subsidiary, LIPA (collectively, LIPA) and the New York Power Authority (NYPA) filed a joint request to direct the NYISO to clarify its tariff revisions. Con Edison filed an answer to the protests of IPPNY and Astoria. Astoria filed an answer to the protest of NRG-AG. On September 11, 2008, the NYISO filed an answer to multiple comments. On September 19, 2008, a group of New York suppliers, named the Upstate Suppliers,²¹ filed an answer to the protests of HQ Energy and Brookfield.

22. On September 17, 2008, Linden filed an answer to the answer of the NYISO. On September 19, 2008, NRG-AG filed an answer to Astoria's answer. On October 6, 2008, HQ Energy filed an answer to the answer of the Upstate Suppliers.

²⁰ The Upstate Transmission Owners include Central Hudson Gas & Electric Corp., New York State Electric & Gas Corp., Niagara Mohawk Power Corp. d/b/a National Grid, and Rochester Gas and Electric Corp.

²¹ The Upstate Suppliers include AES Eastern Energy, L.P., the Constellation Companies, the Noble Windparks (Noble Altona Windpark, LLC, Noble Bellmont Windpark, LLC, Noble Bliss Windpark, LLC, Noble Chateauguy Windpark, LLC, Noble Clinton Windpark, LLC, Noble Ellenburg Windpark, LLC, and Noble Wethersfield Windpark, LLC), the NRG Companies, and the PSEG Power Companies.

III. Discussion

A. Procedural Matters

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2008), the Commission will grant Noble's late-filed motion to intervene given its interest in the proceeding and the absence of undue prejudice of delay. For the same reasons, we will accept NYSEG's late-filed comments.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept all filed answers because they have provided information that has assisted us in our decision-making process.

B. Overview

25. In this order, the Commission grants the NYISO's motion for leave to submit the compliance filing one day out-of-time and conditionally accepts the proposed tariff revisions to the NYISO tariff as in compliance with the *Order on Proposed Modifications*, the *Order Denying Rehearing*, and the *Guidance Order*. For the same reasons stated in the *Guidance Order*, we accept NYISO's addition of the Deliverability Interconnection Standard and the corresponding Capacity Resource Interconnection Service to comply with the Commission's prior orders and Order No. 2003.²² The Commission generally finds that the implementation of this second level of interconnection service meets the independent entity variation standard because it does not provide an unwarranted opportunity for undue discrimination or produce an interconnection process that is unjust and unreasonable.²³

26. The proposed revisions include variations from the provisions of the standard *pro forma* Large Generator Interconnection Procedures and *pro forma* Large Generator Interconnection Agreement adopted in Order No. 2003. The NYISO therefore seeks an independent entity variation. In Order No. 2003, the Commission stated that it would allow a regional transmission operator (RTO) or independent system operator (ISO) to seek "independent entity variations" to recognize "that an RTO or ISO has different operating characteristics depending on its size and location and is less likely to act in a

²² *Guidance Order*, 122 FERC ¶ 61,267 at P 25.

²³ See *PJM Interconnection, LLC*, 108 FERC ¶ 61,025, at P 7 (2004).

discriminatory manner.”²⁴ As discussed below, the Commission finds that the proposed revisions do not provide an unwarranted opportunity for undue discrimination or produce an interconnection process that is unjust or unreasonable. Thus, with the modifications and clarification directed herein, we find that the proposed revisions meet the independent entity standard.

27. It has taken over three years for the NYISO to make this filing. During that time, the NYISO filed several status reports and several stakeholders filed alternative compliance plans, which were developed outside of the stakeholder process. While the Commission accepts for filing the status reports filed by the NYISO, in light of the Commission’s acceptance of the current compliance filing, all prior compliance filings and associated comments are hereby rejected as moot.

C. Deliverability Plan

28. The Filing Parties state that the tariff amendments described below are designed to implement the two-tiered interconnection mechanism reflected in the Consensus Deliverability Plan. The majority of the amendments are made to attachment S of the NYISO OATT, which governs the allocation of cost responsibility for upgrades required to interconnect generation and merchant transmission projects to the New York State Transmission System.

1. Deliverability Interconnection Standard

29. Currently, NYISO’s attachment S defines a single interconnection standard, the Minimum Interconnection Standard, that is applicable to every generation and transmission developer in the NYISO market. The Filing Parties state that the Minimum Interconnection Standard “is designed to ensure reliable access by the proposed project to the New York State Power System,” but “does not impose any deliverability test or deliverability requirement on the proposed project.”²⁵ The Filing Parties propose to revise the definition of Minimum Interconnection Standard to clarify that the standard applies to all interconnecting generation and transmission developers, regardless of whether the developer elects Energy Resource Interconnection Service or Capacity Resource Interconnection Service.

²⁴ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 822-27: *see also* Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 759.

²⁵ Proposed section II.A.1, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, Second Revised Sheet No. 660.

30. The Filing Parties also propose to amend attachment S by adding a new interconnection standard—the Deliverability Interconnection Standard, which would apply to developers electing Capacity Resource Interconnection Service. The revised tariff sheets state that the Deliverability Interconnection Standard “is designed to ensure that the proposed project is deliverable throughout the New York Capacity Region.”²⁶ The revised tariff language further establishes that “a generation Developer or merchant transmission Developer must meet the ISO Deliverability Interconnection Standard before it can become a qualified Installed Capacity Supplier or receive Unforced Deliverability Rights”²⁷ and that such a developer will receive such rights “up to the amount of its deliverable capacity, as that amount is determined in accordance with ... Attachment S, once the Developer of the project has funded or committed to fund any required System Deliverability Upgrades in accordance with the rules in this Attachment S.”²⁸

31. NYISO proposes additions to attachment S of the OATT that provide that the deliverability test would be applied in each of the three New York capacity regions: Rest of State, Long Island and New York City.²⁹ In order to be declared deliverable, a generator or merchant transmission project must be deliverable throughout the NYISO capacity region in which the project is interconnected. In addition, to be eligible to become an installed capacity supplier or receive unforced capacity deliverability rights, a developer must elect Capacity Resource Interconnection Service. The revised tariff limits the amount of Capacity Resource Interconnection Service a developer can request to the name plate capacity of its generation or merchant transmission project. The revised language also makes clear that a developer “need only address the incremental deliverability of its interconnecting generator or merchant transmission project, not the deliverability of the pre-existing system depicted in the Existing System

²⁶ Proposed Section III.A, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, Second Revised Sheet No. 661.

²⁷ Unforced Capacity Deliverability Rights (UDRs) are rights, measured in megawatts, associated with new incremental controllable transmission projects that provide a transmission interface into a capacity constrained region in the New York Control Area from an external control area or an unconstrained region within the New York Control Area. *See* Services Tariff, section 2.194a1.

²⁸ *Id.*

²⁹ A map of the NYISO capacity regions and load zones is included as attachment A to this order.

Representation.”³⁰ Additionally, a developer may elect both Capacity Resource Interconnection Service and Energy Resource Interconnection Service such that a portion of its project is eligible for Capacity Resource Interconnection Service.³¹

Comment

32. IPPNY states that attachments S and X define Energy Resource Interconnection Service as enabling “the New York State Transmission System to receive electric energy from the Large Generating Facility.”³² IPPNY contends that these definitions should be modified to include ancillary services because those products are treated similarly to electric energy in the NYISO’s wholesale markets and deliverability is not needed for a supplier to sell ancillary services. IPPNY further contends that corresponding revisions should be made to attachment Z.³³

Answer

33. The NYISO states that it generally agrees with IPPNY’s comments and will endeavor to implement tariff revisions reflecting those comments.³⁴

Commission Determination

34. We agree that IPPNY’s proposed revision to the definition of Energy Resource Interconnection Service would add clarity to the definition of that term. We therefore direct NYISO to revise the definition of Energy Resource Interconnection Service to clarify the products that are included in this service and to file these revisions within 30 days from the date of this order.

³⁰ Proposed section VII.E, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, Original Sheet No. 679.04.

³¹ Proposed section VII.F, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, Original Sheet No. 679.04.

³² *Citing* proposed section I.B, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, Original Sheet No. 656.01; Proposed section 1, Attachment X, NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, Second Revised Sheet No. 743.

³³ IPPNY August 26, 2008 Protest at 11.

³⁴ NYISO September 11, 2008 Answer at 15 n.17.

2. System Deliverability Upgrades

35. The Filing Parties state that attachment S currently defines only two types of interconnection upgrades: Attachment Facilities and System Upgrade Facilities. Attachment Facilities are defined as “all facilities and equipment between the Large Generating Facility or Merchant Transmission Facility and the Point of Interconnection ... that are necessary to physically and electrically interconnect the Large Facility to the New York Transmission System.”³⁵ System Upgrade Facilities, in turn, are defined as “the least costly configuration of commercially available components of electrical equipment that can be used ... to make the modifications to the existing transmission system that are required to maintain system reliability due to” changes in load growth and proposed generation and transmission interconnections.³⁶

36. In order to accommodate the addition of Capacity Resource Interconnection Service, the Filing Parties propose to amend attachment S by adding a third type of interconnection upgrade: System Deliverability Upgrades. The Filing Parties propose to define System Deliverability Upgrades 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 for Capacity Resource Interconnection Service.³⁷

Comments

37. Proposed revisions to attachment S of the NYISO OATT provide that if a developer fails to accept the NYISO’s assignment of its project to a particular class year, it will be deemed to have withdrawn its interconnection request from the NYISO’s

³⁵ Proposed section I.B, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, Fifth Revised Sheet No. 655, Sixth Revised Sheet No. 656.

³⁶ Proposed section I.B, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, Third Revised No. 658A.

³⁷ *Id.*

interconnection queue.³⁸ IPPNY contends that because a developer is not required to seek or accept Capacity Resource Interconnection Service, it would be inappropriate to deem a developer's interconnection request withdrawn if it does not seek Capacity Resource Interconnection Service and therefore does not accept any class year assignment with respect to System Deliverability Upgrades. IPPNY contends that this provision should be modified to clarify that a developer's interconnection will be deemed withdrawn only if it fails to accept a class year assignment with respect to its cost allocation for System Upgrade Facilities.

38. IPPNY also points out articles 5 and 6 of the *pro forma* Large Generator Interconnection Agreement were generally amended to apply equally to System Upgrade Facilities and System Deliverability Upgrades. IPPNY states that inasmuch as the same rules are not applicable to both types of facilities, generally including System Deliverability Upgrades in this article is inappropriate.

Answer

39. NYISO states that prior to the instant Deliverability Plan, the only network upgrades associated with interconnections were System Upgrade Facilities. With the addition of deliverability requirements, there would be two types of network upgrades: System Upgrade Facilities and System Deliverability Upgrades. NYISO states that it is therefore reasonable, appropriate, and necessary that the Large Generator Interconnection Agreement reference both types of upgrades.³⁹ Additionally, NYISO states that it generally agrees with the other comments of IPPNY and will endeavor to implement corresponding tariff revisions.⁴⁰

Commission Determination

40. We agree with IPPNY that section VIII.B.3 of attachment S to the OATT should be clear in differentiating the requirements for those customers seeking Capacity Resource Interconnection Service from requirement for those who will take Energy Resource Interconnection Service. The tariff should be clear that an interconnection customer may decide not to accept its obligation for System Deliverability Upgrades and therefore not provide capacity. However, that customer may accept its project cost allocation with regard to System Upgrade Facilities necessary for it to sell into the

³⁸ Proposed section VIII.B.3.b, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, First Revised Sheet No. 681B.

³⁹ NYISO September 11, 2008 Answer at 15.

⁴⁰ *Id.* at 15 n.17.

NYISO energy and/or ancillary services markets. NYISO states that it agrees with comments and that it will revise its tariff to clarify this situation. As such, we direct NYISO to file within 30 days from the date of this order, tariff revisions to section VIII.B.3 that satisfy these concerns. We deny IPPNY's protest regarding the referencing of System Deliverability Upgrades in the Large Generator Interconnection Agreement. With the addition of this new type of upgrade facility, we find that it is appropriate to provide this cross reference. IPPNY has not convinced us that its exclusion is necessary.

3. Cost-Allocation Methodology for Capacity Resource Interconnection Service

41. Under the revised attachment S, costs of System Deliverability Upgrades will be allocated to developers of projects in a class year based on the *pro rata* contribution of each project in the class year to each of the System Deliverability Upgrades identified in the class year deliverability study.

42. For purposes of implementing the cost allocation methodology plan outlined in the Consensus Deliverability Plan, the Filing Parties propose to amend attachment S by adding new definitions of "Highway," "Byway," and "Other Interfaces." Highways are defined as 115 kV or higher transmission facilities that comprise the interfaces between certain load zones within the NYISO control area. 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. Other interfaces are any interface into New York City or Long Island, and any interface between the New York control area and other control areas.⁴¹

43. As described in the Deliverability Plan, the smallest feasible highway upgrade may exceed the minimum required to make the generator deliverable. Accordingly, the percentage of the upgrade costs that is allocated to the developer will be the cost associated with the minimum megawatt capacity required to achieve deliverability. If the size of the minimum feasible highway upgrade needed to render the interconnection customer deliverable is at least 90 percent of the total size of the upgrade, the generator will bear the entire cost of that upgrade.

44. Should a highway facility be constructed in which the interconnection customer's allocated share is less than the 90 percent threshold size, the remaining related costs would be allocated to load-serving entities, based on their proportionate share of the installed capacity requirement in the rest-of-state capacity region. With one exception, system deliverability upgrades that fall below the 90 percent threshold will be constructed only when 60 percent of the most current cost estimate of the upgrade has been paid or

⁴¹ See Attachment A.

posted as security by the developer. The one exception would be when the NYISO comprehensive reliability planning process identifies a reliability need for the highway facility to be constructed.⁴² Upgrades to byways are allocated solely to the interconnection customer.

45. The Filing Parties state that if an interconnection customer seeking Capacity Resource Interconnection Service degrades the transfer capability between NYISO capacity regions or between the NYISO and external control areas, the interconnection customer will be responsible for the cost incurred to restore that transfer capability.

46. The Filing Parties state that to the extent that incremental transmission congestion contracts are created by a System Deliverability Upgrade, the entities funding that upgrade would be awarded the transmission congestion contracts commensurate with their share of the cost responsibility for those upgrades. In addition, should an upgrade create headroom⁴³ the entity or entities that paid for the upgrade headroom will be repaid the depreciated cost of that headroom by the developer of any subsequent interconnecting generators that uses the headroom within ten years of the creation of the headroom.⁴⁴ Any interconnecting generators paying for headroom will be eligible for transmission congestions contracts associated with the capacity that it uses.⁴⁵

47. Under the revised tariff sheets, if a developer has not passed the deliverability test and has accepted its project cost allocation to construct the appropriate System Deliverability Upgrade, that developer may elect to be retested for deliverability prior to

⁴² The Filing Parties state that if the comprehensive reliability planning process causes the construction of a system deliverability upgrade, funds collected from developers to fund such upgrades will be used as an offset to the total reliability solution upgrade cost, with the remainder of the cost to be allocated per the requirements of the comprehensive reliability planning process, as set forth in Attachment Y of the NYISO OATT.

⁴³ NYISO defines headroom as “[t]he functional or electrical capacity of the System Upgrade Facility or electrical capacity of the System Upgrade Facility that is in excess of the functional or electrical capacity actually used by the Developer’s generation or merchant transmission project.” Proposed section I.B, attachment S, FERC Electric Tariff, Original Volume No. 1, Fifth Revised Sheet No. 656A.

⁴⁴ Proposed section VIII.G, attachment S, FERC Electric Tariff, Original Volume No. 1, Third Revised Sheet No. 686.

⁴⁵ Proposed section VII.K.6, attachment S, FERC Electric Tariff, Original Volume No.1, Original Sheet No. 679.16.

commencement of construction of a System Deliverability Upgrade. If a developer elects to be retested, and the project is found to be deliverable without construction of the System Deliverability Upgrade, the revised tariff would allow the developer to request to be placed in the then open Class Year.⁴⁶ The revised tariff ensures that a developer's "cost responsibility for System Deliverability Upgrades shall not increase as a result of such retesting," and may, as a result of retesting, decrease or eliminate its cost responsibility for any previously identified System Deliverability Upgrades.⁴⁷

48. In addition, a developer may elect to construct System Deliverability Upgrades that are larger than necessary to support the requested level of service as long as those upgrades are reasonably related to the developer's project. In such an event, the developer must pay the difference between the cost of the incremental upgrade necessary to achieve deliverability and the actual cost of the larger upgrade.⁴⁸

49. Once a developer has posted security for its share of the System Upgrade Facilities and paid or posted security for its share of the System Deliverability Upgrades, that developer will not be responsible for the cost of future required system upgrade facilities and System Deliverability Upgrades.⁴⁹ The Filing Parties state that once a facility qualifies for Capacity Resource Interconnection Service, it will be permitted to maintain Capacity Resource Interconnection Service as long as (1) the facility begins commercial operation within three years of a specified date; (2) the facility's interconnection agreement is not terminated; and (3) the facility remains capable of operating at the capacity level studied and is not deactivated.⁵⁰

Comments

50. Con Edison argues that the NYISO tariff should include a joint investment option. Con Edison contends that joint funding by transmission owners of System Deliverability Upgrades on highways would facilitate the implementation of Capacity Resource

⁴⁶ Proposed section VII.K.4, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, Original Sheet Nos. 679.15, 679.16.

⁴⁷ *Id.*

⁴⁸ Proposed section VII.K.7, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, Original Sheet No. 679.17.

⁴⁹ Proposed section IX.A, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, First Revised Sheet No. 687C.

⁵⁰ Proposed section IX.B, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No.1, Second Revised Sheet No. 688, Original Sheet Nos. 688.00, 688.01.

Interconnection Service by distributing the responsibility of supply capital related to the construction of necessary facilities. Con Edison states that joint funding, on a basis such as load ratio, would be likely to facilitate the development of such needed upgrades in a timely manner. In addition, Con Edison argues that if joint funding permits load serving entities to pay carrying charges over time in proportion to their future loads, it might avoid an impediment to load serving entity participation in the retail access program.

51. Con Edison also expresses concern about the proposed tariff revisions that would require developers to be responsible only for increases in costs due to inflation. The risk of cost increases, Con Edison states, would be shifted to load serving entities because they are responsible for all costs above that paid for by the developer. Con Edison states that the current attachment S is very balanced on this issue because it requires developers to pay actual costs whether they are less than or greater than the estimated costs. Con Edison requests that the Commission require that the proposed tariff sheets be revised to clarify that developers bear responsibility for cost increases on upgrades which are determined by the NYISO to be their responsibility and for which the cost increases are not caused or triggered by the transmission owners.

Answers

52. The Upstate Transmission Owners state that the NYISO OATT deliverability provisions should not include a joint investment option by transmission owners. They state that Con Edison's comments appear to mix principles of cost allocation with the financing of transmission projects. They state that the *Guidance Order* made clear that the cost allocation for determining which customers are responsible for paying for transmission enhancements necessary to make capacity deliverable is based on the amount of the actual upgrade needed. The Upstate Transmission Owners also argue that Con Edison's rationale lacks merit because it is unsupported by legal authority. Finally, the Upstate Transmission Owners contend that transmission owners have an obligation to connect generation developers to the transmission grid and that there is no need to encourage investment in these facilities by transmission owners. They contend that joint funding should remain a voluntary option to be negotiated as needed or desired by the transmission owners.

53. NYISO states that Con Edison's joint investment proposal is a premature and unwarranted attempt to circumvent the stakeholder process and, in fact, has not been reviewed by stakeholders.⁵¹ NYISO also states that Con Edison's comments regarding the responsibility for the cost of System Deliverability Upgrades are directed at situations in which the developer's cost responsibility is less than the 60 percent threshold of the cost of the System Deliverability Upgrade where the developer is required to pay for its

⁵¹ NYISO September 11, 2008 Answer at 16-17.

share. In this circumstance, construction is deferred until the developer pays for or posts security required for its share of the costs. NYISO states that the developer is responsible for its share of the cost estimate (subject to increases caused by developer changes to the project). NYISO further states that other cost increases over the original estimate that are within the control of the applicable transmission owner are allocated to that transmission owner and increases outside of the transmission owner's control are allocated to NYISO LSEs and subsequent developers that push the aggregate developer cost responsibility above 60 percent. NYISO states it is reasonable that developers have this degree of finality, and that Con Edison's characterization of the cost risk to transmission owners is oversimplified by misrepresenting the degree to which developers are exempt from paying costs in excess of the original estimate, and its comments contravene the risk allocations adopted in paragraph 10(e) of the Consensus Deliverability Plan.⁵²

Commission Determination

54. We disagree with Con Edison regarding the cost allocation provisions. We find that the joint investment proposal is beyond the scope of this compliance filing. It is not necessary to implement the Deliverability Plan and it was not presented as a part of the Consensus Deliverability Plan. While this feature may have merit, it should be presented to and discussed among NYISO stakeholders and filed as a section 205 proposal, not unilaterally presented to the Commission.

55. With respect to Con Edison's concern on developer cost responsibility, we note that the relevant part of the Consensus Deliverability Plan (paragraph 10(e)) states: "[T]he allocated cost to the generator will not be increased if the estimated cost of the project increases. However, the costs allocated to subsequent generators will be based on a current cost estimate of the upgrade." The proposed revisions to section VIII.F of attachment S of the NYISO OATT (Developer's Future Cost Responsibility) appear to be consistent with this provision that the Commission accepted in the *Guidance Order*⁵³ and treat System Deliverability Upgrades consistently with the existing provisions for System Upgrade Facilities. NYISO has provided sufficient detail as to be clear with the cost responsibility requirements as directed by the Commission.⁵⁴ We also find that Con Edison's comments regarding cost estimate risk is without merit as the Consensus Deliverability Plan was clear that identified cost increases are the responsibility of subsequent developers.

⁵² *Id.* at 17-18.

⁵³ *Guidance Order* at P 45-46.

⁵⁴ *Id.* P 49.

4. Participation in Capacity Markets

56. The Filing Parties state that the amendments to attachment S permit the transfer of deliverability rights under certain circumstances. If a generator deactivates an existing unit and commissions a new one at the same location, it can transfer its deliverability rights to the new one as long as the new facility becomes operational within three years from the date of deactivation of the old facility. The Filing Parties clarify that, under this circumstance, deliverability rights would transfer only when the new facility becomes operational (i.e., the existing facility would retain its rights until the new facility becomes operational). Alternatively, an existing generator with Capacity Resource Interconnection Service status may transfer its deliverability rights to new facility at a different location, as part of the class year deliverability study, as long as “the new facility is found to be deliverable after the existing facility assumes Energy Resource Interconnection Service status or retires.”⁵⁵

Comment

57. IPPNY contends that a definition of Deactivation is needed to protect the rights of deliverable or grandfathered suppliers participating in the installed capacity market. With respect to the proposed tariff revisions, IPPNY argues that the NYISO could find that a supplier is deactivated if it experiences an extended unplanned outage or is otherwise taken off-line to perform a major overhaul or system upgrade. IPPNY contends that the intent of the Consensus Deliverability Plan was to secure a facility’s deliverability rights until it ceases operations, after which it is given a limited opportunity to sell or transfer those rights.⁵⁶ To address this issue, IPPNY proposes to add the following definition of Deactivation:

Deactivation: The retirement of a generating facility or its prolonged withdrawal from the NYISO’s capacity markets due to a change in its physical condition (*e.g.* mothballing). The date of Deactivation shall be the first day of the month after which the following three events have occurred: (a) either (i) a notice pertaining to the generating facility has been filed with the New York State Public Service Commission and the NYISO in accordance with the Public Service Commission’s Order Adopting Notice Requirements For Generation Unit Retirements, issued December 20, 2005 in Case 05-E-0889, Policies and Procedures Regarding Generation Unit Retirements; or (ii) for an entity not to subject to the Order described (i), a

⁵⁵ Proposed section IX.D, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No.1, Original Sheet Nos. 688.02, 688.03, 688.04, 688.05.

⁵⁶ IPPNY September 10, 2008 Protest at 9.

notice that conforms to the same requirements as those set forth in the Order is filed with the NYISO; (b) the applicable notice period has expired (*i.e.*, 180 days for facilities rated equal to or greater than 80 MW and 90 days for facilities rated less than 80 MW); and (c) the generating facility ceases to offer any of its capacity into the NYISO's capacity spot market or other auctions or otherwise sell it in a bilateral transaction.⁵⁷

Answers

58. NYISO states that there is no reason to add a definition of deactivation or to reference the New York Public Service Commission's retirement notice procedure. NYISO states the proposed tariff language defines the deactivation date marking the beginning of the three-year period after which deliverability rights will terminate. NYISO goes on to state that there is no danger under this provision that a facility will lose its deliverability rights any time it has an outage or is otherwise temporarily unavailable to supply capacity. Furthermore, NYISO states that IPPNY's proposal was discussed among stakeholder after the Guidance Order was issued. During those discussions, NYISO stated its concerns with IPPNY's proposal including the recognition of deliverability rights for facilities that are dormant and the possibility of confusion and tariff problems if the NY Public Service Commission were to change or eliminate the cross-referenced provisions.⁵⁸

59. The Upstate Transmission Owners and Con Edison also state that the definition of deactivation should not be modified to incorporate a project sponsor's intent to cease plant operations. The Upstate Transmission Owners state that this definition was the subject of extensive stakeholder discussion prior to settling on the three-year preservation window.⁵⁹ Con Edison states that the maximum three-year period in the Consensus Deliverability Plan is analogous to the relevant provision in the Commission's standard *pro forma* Large Generator Interconnection Procedures. The Upstate Transmission Owner and Con Edison contend that by allowing a non-operating project to retain its deliverability rights as long as it intends to resume operations some day, as IPNNY proposes, would frustrate new entry by imposing unnecessary upgrade costs on interconnecting generators and creates the illusion of greater supply than is actually available in the market.

⁵⁷ *Id.* at 10.

⁵⁸ NYISO September 11, 2008 Answer at 14.

⁵⁹ Upstate Transmission Owners' September 10, 2008 Answer at 12.

Commission Determination

60. We find that the proposed provisions regarding the retention of Capacity Resource Interconnection Service after deactivation and the transfer of deliverability rights are just and reasonable. The provisions are consistent with the Consensus Deliverability Plan and the result of the NYISO stakeholder process. Sections IX.B, C and D of Attachment S of the NYISO OATT are clear and detailed regarding the requirements and obligations for retaining deliverability status and for the transfer of deliverability rights. The proposed three-year period after deactivation strikes a reasonable balance between allowing generators to remove themselves from the capacity market, NYISO being required to maintain this quantity of megawatts as deliverable from the market, and the ability of the generator to obtain value from this deliverability right through transfer. IPPNY has not demonstrated that these provisions, particularly the three-year deactivation period, are not just and reasonable. Neither has IPPNY demonstrated that the New York Public Service Commission procedures would clarify the proposed tariff language. We agree with NYISO that cross-referencing provisions from another commission, in this instance, could create more problems than it attempts to resolve. We therefore deny IPPNY's protest.

D. Deliverability Test Methodology

1. Highways and Byways

61. Section VII.H of attachment S sets forth the methodology for determining deliverability over highways and byways. This section defines deliverability in the New York capacity area as the ability to deliver the aggregate of NY capacity area resources to the aggregate of the New York capacity area load under summer peak load conditions.⁶⁰ The Filing Parties state that the tariff makes clear that this “is accomplished through ensuring the deliverability of new Large Facilities, new Small Generators larger than 2 MWs, and any existing facility increasing its capacity by more than 2 MWs, in the three Capacity Regions in New York State.”⁶¹ The Filing Parties state that Section VII provides further that all projects seeking Capacity Resource Interconnection Service will be evaluated on an aggregate Class Year basis, and that deliverability in “[e]ach Capacity Region will be tested on an individual basis.”⁶²

⁶⁰ Proposed section VII.H.1, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, Original Sheet No. 679.05.

⁶¹ Filing Letter at 11, *citing* proposed section VII.H.1, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, Original Sheet No. 679.05.

⁶² Filing Letter at 11, *citing* proposed section VII.H.2.A, Attachment S, NYISO

62. The Filing Parties state that the parameters and details of the analysis that the NYISO will perform to determine deliverability are set forth in section VII.H.2 of attachment S. They state forthcoming ISO procedures will provide a comprehensive description of all aspects of the test methodology.⁶³

2. External Resources

63. The Deliverability Plan proposes a separate deliverability test methodology for other interfaces and external resources. For both, NYISO proposes revisions to section 5.12 of the Services Tariff which sets forth the requirements that a supplier must satisfy in order to qualify as an installed capacity supplier in the NYISO's installed capacity market. Under NYISO's proposal, the capacity of each interconnected supplier that elects Capacity Resource Interconnection Service must be deliverable, or must be grandfathered as deliverable. For external suppliers, the Filing Parties propose to amend section 5.12.2 to establish that external installed capacity will be subject to the deliverability test for interconnection requests; however, deliverability will be evaluated as part of the process that sets import rights rather than as a part of the interconnection process. The proposed revisions explain that deliverability of "external resources for the upcoming Capability Year will be considered through the annual process of setting import rights under the NYISO Services Tariff."⁶⁴ Revisions to section VII of the OATT provide that a generator or merchant transmission project in a class year "will not be considered deliverable if its aggregate impact degrades the transfer capability of any Other Interface more than the lesser of 25 MW or 2 percent of the transfer capability of the Other Interface identified in the [Annual Transmission Baseline Assessment]."⁶⁵ The Filing Parties state that a developer causing this level of degradation on an Other Interface will be responsible for 100 percent of the total system deliverability upgrades that must be constructed to restore transfer capability on the other interface.

OATT, FERC Electric Tariff, Original Vol. No. 1, Original Sheet No. 679.06.

⁶³ Filing letter at 11.

⁶⁴ Proposed section VII.J, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, Original Sheet No. 679.11.

⁶⁵ Proposed section VII.I, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, Original Sheet No. 679.10. The Filing Parties state that when assessing the other interfaces into zones J and K of the New York control area, the interfaces will be defined consistent with the interfaces used by the New York State Reliability Council in performing reliability studies.

Comments

64. Brookfield, HQ Energy, and IPPNY protest the treatment of external resources under the revised tariff sheets. They contend that it is unduly discriminatory to require external resources to satisfy the deliverability test annually when internal resources are grandfathered regardless of their actual deliverability in any given year.⁶⁶ Moreover, they argue, new internal projects will take priority over existing external resources when deliverability is tested every year. This is because new internal resources would be assumed to be operating (their power flowing and loading transmission facilities) prior to the evaluation of imports; and therefore, would take priority over existing external resources. They argue, new internal resources, including generators seeking to interconnect and proposed merchant transmission, would be included in NYISO's study that sets import limits and would displace existing external resources. Moreover, they point out, new internal resources will be considered in the deliverability test even if they have made no commitments to sell capacity in New York. Brookfield further notes that, unlike existing internal resources, existing external resources are not grandfathered as deliverable. Parties urge the Commission to reject this aspect of the plan and direct the filing parties to file a revised proposal that does not discriminate against existing external resources. Brookfield and HQ Energy argue that grandfathering rights ought to be applied to existing external resources. Similarly, Brookfield contends that because external resources have been accepted as capacity resources in New York before the inception of the NYISO, and the inter-tie lines which support these resources have been paid by New York ratepayers, external resources should be offered grandfather rights.

65. Brookfield and HQ Energy further contend that the Filing Parties have failed to demonstrate that the proposal does not discriminate against external resources. Brookfield contends that these revisions do not meet Order No. 2003's⁶⁷ independent entity variation standard because they create opportunity for undue discrimination and will produce an interconnection process that is unjust and unreasonable. This is because it ultimately discriminates, without justification, against external resources by giving internal resources unwarranted rights to sell capacity. HQ Energy adds that nothing in Order No. 2003 or its order on rehearing and appeal support this type of discrimination.

66. HQ Energy argues that discriminating against external resources also runs contrary to Commission precedent. HQ Energy states that in *Southwest Power Pool*, the Commission recognized that while external and internal generators are not similarly

⁶⁶ Brookfield states that NYISO sets the quantity of import rights on an aggregate basis for the New York control area as well as for each external interface annually. Brookfield August 26, 2008 Protest at 3.

⁶⁷ Order No. 2003, FERC Stats. & Regs. ¶ 31,146.

situated in every respect, placing the entire financial burden of implementing the pseudoties on external generators would unreasonably deter external generators from entering the market and would also be an unduly discriminatory internal financial burden.⁶⁸

67. HQ Energy also contends that ISO-NE evaluates deliverability differently and more equitably. HQ Energy states that to determine whether a new internal resource can qualify as a capacity resource, ISO-NE conducts an overlapping interconnection impact analysis. HQ Energy argues that, unlike the NYISO deliverability test, external capacity offers are not studied in ISO-NE and thus are allowed to sell capacity into New England up to the external interfaces' full import capability. Thus, HQ Energy states, new internal generation cannot displace the existing level of deliverability for imports.

68. HQ Energy argues that the Filing Parties' proposed treatment of existing external capacity will reduce capacity imports into New York. HQ Energy states that during the summer capability period, which is the period of New York's greatest reliability need, Hydro Quebec is experiencing its lowest demand, and typically has significant surpluses from existing resources that can be made available to the NYISO markets during the summer. HQ Energy argues that as capacity imports decrease in the NYISO, capacity prices will likely increase.

69. HQ Energy contends that the NYISO should assume the full use of all interfaces when evaluating internal deliverability, as ISO-NE does. But, HQ Energy argues, this still would provide inferior treatment to external resources because, unlike internal resources, specific external resources would not individually be considered deliverable - only the level of current import rights allowed through each tie would be considered deliverable each year.

70. HQ Energy also asks that the Commission clarify the proposed deliverability test methodology for Other Interfaces to ensure that new resources will not be considered deliverable if they degrade the transfer capability of the external ties or the deliverability of current levels of capacity imports.

71. IPPNY argues that the deliverability tests for external and internal resources should be equivalent. IPPNY states that, under the deliverability plan, external resources seeking to participate in the NYISO's capacity markets would be subject to the deliverability requirements, unless they had grandfathered import contract rights or emergency assistance benefits provided by existing interconnections with external control areas. IPPNY contends that, although the revised tariff sheets include extensive detail on the deliverability test that will be applied to new resources located within the New York control area, they do not provide any specificity on how an equivalent test will be applied

⁶⁸ *Southwest Power Pool, Inc.*, 121 FERC ¶ 61,029, at P 23-24 (2007).

to external resources. IPPNY contends that the annual test applicable to external resources not subject to the above-stated exceptions should directly reference the same methodology as is for internal resources while allowing for appropriate adjustments to the assumptions to make it representative of the upcoming capability period. Accordingly, IPPNY proposes the following alternative language in section 5.12.2:

The amount of External Installed Capacity that can be imported to the NYISO across any individual External Interface or the interfaces as a whole will be subject to the deliverability test in Sections VII.H and I of Attachment S to the ISO OATT. The deliverability of External Installed Capacity will be evaluated annually on a schedule to be determined so as not to delay the processing of deliverability requests by internal NYISO resources. The External Installed Capacity deliverability test will be performed using the NYISO's forecast of [New York control area Capacity Resource Interconnection Service] resources, transmission capability (topology), and the forecast load for the upcoming Capability Year. Under this process, Grandfathered External Installed Capacity Agreements listed in the Installed Capacity Manual will be considered deliverable. The External Installed Capacity Import Limit will be set no higher than the amount of imports that can be delivered, in addition to delivering the [New York control area Capacity Resource Interconnection Service] resources, without 1) causing a deliverability problem in the Capacity Region where the External Interface interconnects with the NYISO, or 2) degrading the transfer capability of any Other Interface by more than the thresholds identified in Section VII.I of Attachment S to the ISO OATT.⁶⁹

72. NYSEG contends that the clear intent of the Consensus Deliverability Plan is to recognize that existing facilities and capacity arrangements predated the deliverability requirements. NYSEG argues that, although the Consensus Deliverability Plan did not explicitly reference rights associated with existing transmission capacity for native load, the plain language of both the Services Tariff and the OATT require that grandfathered import rights be treated consistently with all other import contract rights. Accordingly, NYSEG requests clarification that the grandfathered import rights described in section 5.12.2 of the services tariff and attachment L of the NYISO OATT are not subject to the deliverability test and are treated in the same manner as grandfathered import rights that are linked to specific contracts.

⁶⁹ IPPNY August 26, 2008 Protest at 4.

Answers

73. NYISO and Upstate Suppliers state that paragraph 18 of the Consensus Deliverability Plan made clear that the deliverability of external resources will be considered through the annual process of setting import rights. They point out that this proposal is the result of the stakeholder process and that neither Brookfield nor HQ Energy submitted comments on this proposal once filed. NYISO and Upstate Suppliers contend that because the Commission conceptually approved this proposal, Brookfield and HQ Energy's protests represent a collateral attack on the Consensus Deliverability Plan and the *Guidance Order*. Upstate Suppliers further state that it is not discriminatory to examine the deliverability of new internal resources before including short-term external resources because short-term external economy capacity is not treated identically to internal capacity due to import limitations and because it may or may not be tied to a specific resource.⁷⁰

74. NYISO also states that the modification to OATT section 5.12.2 proposed by IPPNY is not necessary. NYISO states that the IPPNY language is an attempt to paraphrase language from attachments S, X and Z that are cross referenced by the Deliverability Plan. NYISO also states that it will continue to work with stakeholders to revise the installed capacity manual to further detail the deliverability tests and to propose additional tariff language.

75. In an answer to the answer of the Upstate Suppliers, HQ Energy contends despite that fact that any resource seeking capacity resource interconnection service, regardless of whether it is an internal or external resource, the proposed tariff changes discriminate against external resources because they permit new internal resources to seek capacity resource interconnection service and to always take priority over existing external resources when deliverability is tested each year. In addition, HQ Energy states that each upstate resource is continually free to choose whether or not to participate in the NYISO capacity markets. Taking capacity resource interconnection service, HQ Energy states, only requires the resource to offer, not sell, some portion of its capacity in NYISO at least once every three years. HQ Energy also notes that external resources are also subject to NYISO's market power mitigation rules.

Commission Determination

76. The provisions of the Deliverability Plan that pertain to external resources are contained in Attachment S, section VII.J of the NYISO OATT. According to these provisions, the deliverability of external capacity resources will be determined by NYISO through the annual process of setting import rights while honoring grandfathered import

⁷⁰ Upstate Suppliers September 19, 2008 Answer at 6.

contract rights and emergency assistance.⁷¹ This is basically the same language that is contained in the Consensus Deliverability Plan.⁷² By comparison, the deliverability test for internal resources that is conducted during the interconnection study process and does not require internal resources to be retested on an annual basis. As the Commission stated in the *Guidance Order*, tariff revisions should provide sufficient detail to reduce uncertainties in implementing the Capacity Resource Interconnection Service.⁷³ We find that NYISO has not provided sufficient detail regarding the treatment of external resources

77. We agree with HQ Energy that the deliverability test conducted as part of the interconnection process does not appear to take into account existing external capacity resources. The Commission expected, as stated above, that NYISO would include the necessary specificity in the proposed tariff language to clearly define the deliverability test methodology. However, NYISO has not expanded upon the language from the Consensus Deliverability Plan and has not provided in its filing additional details that justify the approach taken. As such, inconsistencies exist between paragraph 18 of the Consensus Deliverability Plan, which states external capacity will be re-evaluated annually and paragraphs 13 and 14, which state generators qualifying for Capacity Resources Interconnection Service will retain their deliverability status.

78. The Commission agrees that a lack of specificity in the deliverability test methodology raises questions regarding the treatment of external resources that take Capacity Resource Interconnection Service. Among the questions would be the differentiation in deliverability priority between external resources with long-term contracts⁷⁴ to supply capacity into the NYISO market versus short-term external capacity. As articulated by Upstate Suppliers, each year, an existing external capacity resource will be considered a new resource under the Deliverability Plan.⁷⁵ As such, it would appear that a new interconnection customer internal to NYISO may be able to use system headroom and be considered deliverable while an existing external capacity supplier

⁷¹ See Consensus Deliverability Plan at P 18.

⁷² See proposed section VII.J, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, Original Sheet No. 679.11.

⁷³ *Guidance Order*, 122 FERC ¶ 61,267 at P 28.

⁷⁴ By this we refer to long-term contracts that are not grandfathered by the proposed Deliverability Plan because they were not in effect at the time of the creation of NYISO.

⁷⁵ Upstate Suppliers' September 19, 2008 Answer at 9.

would be required to pay for System Deliverability Upgrades in order to continue supplying capacity to the NYISO market. The proposed modifications do not address the issue of priority rights between new internal and existing external resources. The Deliverability Plan should not create a situation that discourages the development or use of external resources to satisfy installed capacity requirements in the NYISO market. We direct NYISO to clarify how the revised tariff sheets addressing deliverability tests for internal and external resources meet the “independent entity variation standard” for revising the terms of the *pro forma* Large Generator Interconnection Agreement and *pro forma* Large Generator Interconnection Procedures to accommodate regional needs.⁷⁶ The NYISO shall submit the clarification in a compliance filing within 30 days of the date of this order.

3. Unforced Deliverability Rights

Comments

79. Linden expresses concern with respect to the application of the deliverability test on grandfathered external sources. Linden points out that, although Attachment S grandfathers pre-Class Year 2007 projects from the deliverability requirement, section 5.12.2 of the services tariff states that the deliverability of external installed capacity will be evaluated annually. Linden contends that these provisions could be construed as requiring that the new NYISO deliverability interconnection standard apply to external installed capacity with unforced capacity deliverability rights. Linden states that the NYISO installed capacity manual makes clear that external installed capacity associated with unforced capacity deliverability rights need only demonstrate that such capacity is deliverable to the transmission facility supplying unforced capacity deliverability rights. To clarify the services tariff, Linden proposes to modify section 5.12.2 as follows:

... External Installed Capacity associated with Import Rights or [Unforced

⁷⁶ See Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 822-27; Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 759. An RTO or ISO proposing a variation must demonstrate that the variation is just and reasonable and not unduly discriminatory, and would accomplish the purposes of Order No. 2003. See, e.g., *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025, at P 7 (“[W]hen an RTO is the filing entity, the Commission will review the proposed variations to ensure that they do not provide an unwarranted opportunity for undue discrimination or produce an interconnection process that is unjust and unreasonable.”), *order denying reh’g*, 110 FERC ¶ 61,099 (2005); and *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,128 (2006), *order on reh’g*, 119 FERC ¶ 61,097, at P 7 (2007) (rejecting a proposed pricing variation because the RTO “had not shown that the proposal would accomplish the purposes Order No. 2003 set forth as possible justifications for this type of pricing”).

Deliverability Rights] is subject to the same deliverability requirements applied to Internal Installed Capacity Suppliers associated with [Unforced Deliverability Rights]. In addition, External Installed Capacity not associated with [Unforced Deliverability Rights] will be subject to the deliverability test for Interconnection Requests set forth in Attachment X, Attachment Z and Attachment S to the ISO OATT. The deliverability of External Installed Capacity not associated with [Unforced Deliverability Rights] for the upcoming Capability Year will be evaluated annually, ... as a part of the process that sets import rights.⁷⁷

80. IPPNY states that, under the Consensus Deliverability Plan, the deliverability requirements apply both to new resources and increases in the capacity of existing resources.⁷⁸ IPPNY notes that proposed revisions to section 5.12.8 of the Services Tariff clarify which suppliers are subject to the deliverability requirements. IPPNY states that the NYISO appears to have inadvertently omitted this clarifying language from the second paragraph of that section, which applies to changes in the capacity rating of certain existing suppliers. IPPNY states that the identical language used by NYISO to clarify the first and third paragraphs of section 5.12.8 should also be used to clarify the second paragraph.

Answer

81. NYISO and LIPA support Linden's proposed revisions to section 5.12.2 of the Services Tariff. NYISO states that it will endeavor to implement the proposed tariff revisions.⁷⁹ In its answer to NYISO's answer, Linden asks the Commission to condition acceptance of the Deliverability Plan on the submission of a compliance filing implementing these revisions. LIPA asks the Commission to direct the NYISO to amend three revised tariff sheets that incorrectly refer to Unforced Capacity Deliverability Rights as Unforced Deliverability Rights.⁸⁰

⁷⁷ Linden August 26, 2008 Comments at 9.

⁷⁸ *Citing* Consensus Deliverability Plan at P 3.

⁷⁹ NYISO September 11, 2008 Answer at 15 n.17.

⁸⁰ LIPA's proposed amendments pertain to the following proposed tariff sheets: Proposed section VIII.B, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, Second Revised Sheet No. 661, Original Sheet No. 661 and Original Sheet No. 688.01.

Commission Determination

82. The Commission accepts Linden's proposed revisions to section 5.12.2 of the Services Tariff. We also accept LIPA's proposed revisions regarding references in the NYISO OATT to Unforced Deliverability Rights. We also direct NYISO to make the clarification requested by IPPNY to section 5.12.8 as NYISO has agreed to do. We therefore direct NYISO to make these revisions in a compliance filing within 30 days from the date of this order.

E. Decision Period for Accepting Upgrades

83. The Filing Parties state that, under proposed attachment S, a developer must submit a notice of acceptance or non-acceptance within 30 calendar days of "approval of the Annual Transmission Reliability Assessment and Class Year Deliverability Study by the Operating Committee (the 'Initial Decision Period'), or within 7 calendar days following the NYISO's issuance of a revised Annual Transmission Reliability Assessment, Class Year Deliverability Study and accompanying Revised Project Cost Allocation and revised Deliverable MWs report."⁸¹ Upon this notification, the developer can: (1) accept the cost of the system deliverability upgrades and system upgrade facilities; (2) provide notice of non-acceptance for the cost of the system deliverability upgrades and accept or reject its deliverable megawatts; or (3) elect Energy Resource Interconnection Service by providing notice accepting only the cost of its system upgrade facilities.⁸² Therefore, a developer could opt to accept a level of Capacity Resource Interconnection Service that does not require any System Deliverability Upgrades.⁸³ In addition, a developer choosing to take Energy Resource Interconnection Service at this time could later request to be placed in a subsequent class year and be evaluated for Capacity Resource Interconnection Service.⁸⁴

Protest

84. IPPNY states that under the Consensus Deliverability Plan, a generator may seek Capacity Resource Interconnection Service eligibility at any time, either pre- or post-

⁸¹ Proposed section VIII.B, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, Third Revised Sheet No. 680.

⁸² *Id.*

⁸³ Proposed section VIII.B.3, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, Fourth Revised Sheet No. 681A, Original Sheet Nos. 681A.00, 681A.01.

⁸⁴ *Id.*

construction. IPPNY is concerned that the revised tariff sheets place limitations on this right. IPPNY therefore requests that the proposed tariff revisions be clarified by adding a new provision to section IX of attachment S stating that a developer may be evaluated for Capacity Resource Interconnection Service at any time, regardless of whether it has commenced commercial operations.⁸⁵

Commission Determination

85. We accept NYISO's proposed revision with regard to accepting System Deliverability Upgrade cost allocations as consistent with the Consensus Deliverability Plan. According to paragraph 6 of the Consensus Deliverability Plan, a generator that elects Energy Resource Interconnection Service may, at a later date, ask NYISO to re-evaluate its deliverability to identify upgrades necessary to participate in the capacity market. NYISO's proposed revisions discussed above provide this opportunity. However, IPPNY states that this provision appears in section VIII (Project Cost Allocation Decisions) of attachment S, which deals primarily with decisions made prior to construction. IPPNY states that to avoid confusion that this election could be made at any time, language should be added to section IX of attachment S (Going Forward). NYISO states that it agrees with this change.⁸⁶ We therefore direct NYISO to submit revised tariff sheets reflecting this change within 30 days from the date of this order.

F. Definition of Developer

86. The Filing Parties propose to define Developer as:

An Eligible Customer developing a generation project larger than 20 megawatts, or a merchant transmission project, proposing to interconnect to the New York State Transmission System, in compliance with the NYISO Minimum Interconnection Standard and, depending on the Developer's interconnection service election, also in compliance with the NYISO Deliverability Interconnection Standard.⁸⁷

Comment

87. IPPNY argues that the deliverability requirement should apply to all developers of controllable transmission facilities seeking unforced capacity deliverability rights.

⁸⁵ IPPNY August 26, 2008 Protest at 12.

⁸⁶ NYISO September 11, 2008 Answer at 15 n.17.

⁸⁷ NYISO OATT, section 1.9b, FERC Electric Tariff, Original Volume No. 1, Sixth Revised Sheet No. 28.

IPPNY states that one of the primary purposes of Order No. 2003 was to prevent discrimination between public utilities and merchant developers with respect to access to the utilities' transmission systems, and promote competition in the wholesale marketplace. IPPNY points out that the Deliverability Plan did not distinguish controllable transmission facilities owned by merchant developers from those owned by one or more Transmission Owners. IPPNY contends that the definition of Developer, as proposed in section 1.9b of the OATT, does make this distinction. IPPNY therefore proposes to revise the definition of Developer to eliminate this distinction so that the deliverability requirement applies to all developers of controllable transmission facilities. IPPNY proposes the following revisions to the definition of Developer:

Developer: An Eligible Customer developing a generation project larger than 20 megawatts, or a ~~merchant~~ controllable transmission project seeking [Unforced Capacity Deliverability Rights], proposing to interconnect to the New York State Transmission System, in compliance with the NYISO Minimum Interconnection Standard.⁸⁸

Answer

88. NYISO states that IPPNY proposes to expand the deliverability test to New York Transmission Owners developing regulated reliability projects pursuant to NYISO's Comprehensive Reliability Planning Process of attachment Y of the NYISO OATT. NYISO states that IPPNY's concerns regarding unforced deliverability rights for reliability- or regulatory-based projects developed by the New York Transmission Owners are not studied pursuant to attachments S and X, but are currently studied pursuant section 19 of the NYISO OATT—a process that is not altered by the August 5 Deliverability Plan. NYISO further states that the definition of the term Developer expressly takes this issue into account.⁸⁹

Commission Determination

89. The Commission rejects IPPNY's proposed revisions, which would expand the definition of Developer. As NYISO points out, section I.A of attachment S of the NYISO OATT specifically identifies the application of these rules which apply to interconnection facilities, and section II.A specifically states that a developer does not include a transmission owner constructing reliability or regulatory upgrades.⁹⁰ The intent

⁸⁸ IPPNY August 26, 2008 Protest at 7.

⁸⁹ NYISO September 11, 2008 Answer at 13.

⁹⁰ NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, Fourth Revised Sheet No. 659.

of the deliverability requirement and Order No. 2003 apply to generator interconnection customers and not to projects needed to maintain overall system reliability. Therefore, it would not be appropriate here to expand the definition as IPPNY suggests.

G. Interconnection Procedures and Agreements

90. The Filing Parties propose changes to attachments X and Z of the NYISO OATT, which sets forth the standard interconnection procedures and agreements for interconnecting generating and merchant transmission facilities. They contend that the changes reflected in the filing are primarily conforming amendments necessary to reflect the additional level of interconnection service adopted under the Deliverability Plan.

Commission Determination

91. We accept the proposed changes to attachments X and Z of the NYISO OATT as necessary to implement the Deliverability Plan.

H. Attachment Y and Rate Schedule 10

92. The Filing Parties propose revisions to attachment Y of the NYISO OATT (NYISO Comprehensive System Planning Process) and Rate Schedule 10 of the NYISO OATT (Rate Mechanism for the Recovery of the Reliability Facilities Charge) relating to regulated transmission projects. Under the revised attachment S, discussed above, funds collected from developers for highway deliverability upgrades that are also identified through the capacity reliability planning process will be used to offset the costs of the upgrade. Specifically, monies collected to fund such deliverability upgrades will be used to offset the cost of the total reliability solution upgrade. Revisions to attachment Y and to schedule 10 implement the allocation of these project costs as prescribed under the Deliverability Plan.⁹¹

Commission Determination

93. We accept the proposed revisions to attachment Y and to schedule 10 as necessary to implement the Deliverability Plan.

I. Possible Future Tariff Amendments

94. As part of the cost-allocation methodology for System Deliverability Upgrades to transmission system highways, discussed above, the tariff revisions developed to implement paragraph 10.f.2 of the Consensus Deliverability Plan provide that the actual

⁹¹ Proposed section VII.K.3.c, Attachment S, NYISO OATT, FERC Electric Tariff, Original Vol. No. 1, Original Sheet No. 679.15.

costs of highway upgrades not covered by developers will be funded by load serving entities, based on their proportionate share of the installed capacity requirement in New York capacity market. The Filing Parties state, however, that the deliverability plan contains no mechanism to collect the required funds from the appropriate load serving entities or to distribute those funds to the appropriate transmission owners. The Filing Parties contend that they have not had sufficient time to develop such a detailed mechanism. Accordingly, the Filing Parties ask the Commission to grant them six months additional time to complete and file an appropriate funding mechanism.

95. With regard to modeling for emergency assistance, the Filing Parties identify a similar dilemma. They state that paragraph 17.i of the Deliverability Plan suggests that when applying the deliverability test to new interconnection requests, external system imports will be adjusted as necessary to eliminate or minimize overloads, consistent with paragraph 18. Paragraph 18 states that the deliverability of external resources will be considered through the annual process of setting import rights and that, under this process, grandfathered import contract rights and the emergency assistance benefits will be honored. The Filing Parties state that, after extensive discussions with stakeholders, they have not been able to determine how to implement paragraph 17.i in the class year deliverability study for new interconnection requests while implementing paragraph 18 in the separate annual process conducted under the market services tariff to set installed capacity import rights for resources not interconnected to the New York State transmission system for upcoming capability year. The Filing Parties also state that they have not reached agreement on how to treat, or model, external emergency assistance in the two processes in ways that are consistent. Accordingly, the Filing Parties ask that the Commission grant them four months additional time to complete their analysis of this issue and make a subsequent compliance filing. In the interim, the Filing Parties propose that the Class Year 2007 deliverability study will explicitly not represent any level of emergency assistance.

Protest

96. The New York Transmission Owners⁹² state that external system imports for emergency assistance will affect the deliverability of all new projects including those in Class Year 2007. They state that they are concerned about the integrity of the Class Year 2007 deliverability study because it does not model emergency assistance and that reliability goals must include such modeling.⁹³ The New York Transmission Owners request that the Commission direct the NYISO to include emergency assistance imports

⁹² Con Edison, as a member of the New York Transmission Owners, takes no position on this issue.

⁹³ New York Transmission Owners August 26, 2008 Comments at 8.

in all deliverability studies and to do so on a basis that is consistent with the treatment of emergency assistance in the NYISO's installed reserve margin and comprehensive reliability planning studies.

Answer

97. NYISO requests that the Commission reject the New York Transmission Owners' request that NYISO model emergency assistance for the Class Year 2007 consistent with the treatment of emergency assistance in the NYISO's installed reserve margin and comprehensive reliability planning studies. NYISO states that the request does not resolve or provide any clear guidance on how to reconcile the differences between modeling deliverability and the emergency assistance modeled in the reliability studies. NYISO states that there are several key differences between the deliverability study and the installed reserve margin and comprehensive reliability planning studies that prevent the emergency assistance in the installed reserve margin and comprehensive reliability planning studies from being directly transferable to the deliverability studies. NYISO states that this is the reason the parties need additional time to determine the appropriate level of emergency assistance to be represented in the deliverability study.⁹⁴

Commission Determination

98. We grant the Filing Parties request for an additional six months to resolve the Load Serve Entity funding mechanism. We direct NYISO to file the required tariff revisions within six months from the date of this order.

99. The Filing Parties state that they have not reached agreement on how to coordinate the modeling of external emergency assistance in the class year deliverability studies with the annual rights process. They also propose to not include external emergency imports in the Class Year 2007 studies to avoid further delaying the results.⁹⁵ We agree that the Class Year 2007 projects should not be further delayed and therefore grant the request of the Filing Parties for an additional four months to resolve this issue. As such, we direct NYISO to resolve the issues and file the appropriate tariff revisions within 120 days from the date of this order.

⁹⁴ NYISO September 11, 2008 Answer at 9-10.

⁹⁵ Filing Letter at 19.

J. Deliverability Requirements for New York Transmission Owners**Protest**

100. IPPNY states that during the stakeholder process preceding the Deliverability Plan and this compliance filing, a number of market participant raised concerns that deliverability can be equally affected by increasing demands placed on the New York State transmission system by the New York Transmission Owners and their customers. IPPNY states that these stakeholders argued that, in the same manner that suppliers are responsible for correcting reductions in transfer limits caused by their projects, the New York Transmission Owners should be responsible for restoring transfer limit levels that are reduced due to their customers' increased demands on the system. According to IPPNY, the NYISO and the New York Transmission owners objected to this request because it exceeded the scope of Order No. 2003 and the requirement to create two levels of service. IPPNY states, however, that the NYISO acknowledged the concern and agreed to consider the similar deliverability requirements for the New York Transmission Owners once it completed this process. IPPNY requests that the Commission direct the NYISO to file, in a reasonable period of time, proposed tariff revisions requiring the New York Transmission Owners to file proposed tariff revisions requiring the New York Transmission Owners to maintain and restore transfer limits.⁹⁶

Answer

101. NYISO states that IPPNY's request is outside the scope of this proceeding because it does not involve project interconnection deliverability.

Commission Determination

102. We deny IPPNY's request because it is outside the scope of this proceeding. The deliverability issues addressed here arise from the requirements established in Order No. 2003 which addresses generator interconnection issues.

K. Applicability

103. In accordance with the *Guidance Order*, the Filing Parties propose to apply the new tariff amendments to generators beginning in Class Year 2007. With respect to Class Year 2007 projects, the Filing Parties propose a two-step process for applying these amendments. The first step was to complete the necessary study under the minimum interconnection standard. The Filing Parties state that the NYISO's operating committee approved that study, which included project cost allocation for each project in the class

⁹⁶ IPPNY August 26, 2008 Protest at 14.

year, on July 17, 2008. The second step was to complete a deliverability study for Class Year 2007. The Filing Parties state that it has completed a preliminary deliverability study for Class Year 2007 that will be submitted for operating committee review and approval once the Commission acts on these tariff amendments. Once the deliverability study is approved, it will be presented to the members of Class Year 2007 to accept or reject cost responsibility for the System Deliverability Upgrades identified in the NYISO's report.

104. The revised tariff sheets state that pre-Class Year 2007 generators will not be responsible for the costs of system deliverability upgrades and add that such facilities will qualify for Capacity Resource Interconnection Service so long as the applicable interconnection agreement is not terminated and the facility begins commercial operations within three years of the commercial operation date or comparable commencement date specified in the interconnection agreement filing. If the interconnection agreement does not specify a commercial operation date, the facility will qualify for Capacity Resource Interconnection Service so long as it begins commercial operation within three years of the in-service date specified in the 2008 Gold Book.⁹⁷

105. In addition, generators that pre-date Class Year 2007 are eligible to receive Capacity Resource Interconnection Service without subjecting themselves to a deliverability test. The Capacity Resource Interconnection Service capacity level for pre-Class Year 2007 generators will be set at the maximum level achieved during five summer capability periods, even if that level exceeds the nameplate capacity of the generator. The Capacity Resource Interconnection Service capacity level for intermittent resources pre-dating Class Year 2007 will be set at each resource's nameplate capacity. As for controllable lines pre-dating Class Year 2007, their Capacity Resource Interconnection Service capacity level will be set at the megawatts of Unforced Deliverability Rights awarded to them.

Comments

106. Empire contends that the revised tariff sheets comply with the *Guidance Order* by properly applying the new deliverability standards beginning with Class Year 2007. Empire also states that the three-year period for slippage in the in-service date is reasonable and should not be shortened. Empire contends that the three-year slippage

⁹⁷ The "Gold Book" report entitled *2008 Load & Capacity Data*, prepared annually by NYISO, presents generation, transmission, and load forecast planning analysis and data for a 10-year planning horizon. Among the data relevant to this discussion are existing and planned generating capacity and transmission facilities. See http://www.nyiso.com/public/webdocs/services/planning/planning_data_reference_documents/2008_goldbook.pdf.

period beyond the in-service date listed in the 2008 Gold Book balances the legitimate need to allow developers some flexibility to deal with delays with the requirement that grandfathering be implemented with a degree of certainty and timeliness.

107. Astoria states that it is party to a 2004 interconnection agreement for a Class Year 2001, 1,000 MW generating project in New York City and asks the Commission to condition its acceptance of the revised tariff sheets on confirmation that the entire 1,000 MW facility is grandfathered and eligible for Capacity Resource Interconnection Service. Astoria states that it has paid for all system upgrade facilities allocated to the facility. Astoria states that the interconnection agreement contains no commercial operations date for the project.⁹⁸ Astoria states that according to the Consensus Deliverability Plan, its pre-Class Year 2007 project would be grandfathered “so long as (1) its interconnection agreement is not terminated, and (2) it begins commercial operations within three years of the commercial operations date specified in its interconnection agreement.”⁹⁹ Astoria explains that a 500 MW block of the project was in service as of 2006 with a second block scheduled to go into service in summer 2011.¹⁰⁰ Astoria also states that it has made its financial commitments for the project based on the interconnection rules in place at the time, including \$85 million for the second block after the *Guidance Order* was issued. Astoria states that NYISO’s 2008 Gold Book specifies a May 2010 in-service date for the second 500 megawatt power block of the facility, which would give Astoria until May 2013 (three years) to begin commercial operation in accordance with the proposed Deliverability Plan at section IX.B of Attachment S.

108. If the Commission determines that Astoria’s facility would not be fully grandfathered under the compliance filing, Astoria protests the compliance filing and the proposed tariff amendments and asks the Commission to find them to be contrary to the *Guidance Order* and unjust and unreasonable. Astoria contends that the grandfathering conditions in the tariff amendments depart from the deliverability plan’s unambiguous commitment to grandfather pre-2007 generators. Astoria also finds that using a comparable commencement date as specified in an interconnection agreement as a benchmark introduces imprecision and ambiguity since this term is not recognized by the industry.

⁹⁸ Astoria August 26, 2008 Protest at 2.

⁹⁹ *Citing* Consensus Deliverability Plan at P 12.

¹⁰⁰ Astoria states that in 2003 it pursued without success the second 500 MW block; however the interconnection agreement was for the entire 1,000 MW as were the required system upgrade facilities. Astoria states that in April 2008, the second block successfully bid on New York Power Authority’s most recent request for capacity and that it executed power purchase and sales agreements in July 2008.

109. In a joint filing, NRG-AG protest the grandfathering provisions in the revised tariff with respect to treatment of the historic un-built project subset of the pre-2007 projects, such as Astoria. NRG-AG contend that, if approved as proposed, these projects would be handed a blanket extension of three years from whatever date the generator subsequently self-specified in the 2008 Gold Book, thereby undermining the deliverability standard proposed by the NYISO. They also contend that the Commission should exempt from the deliverability standard only the historic un-built project if it achieves commercial operation within three years of the in-service date at the time they accepted its class year allocations.

110. The New York Transmission Owners agree, stating that projects that have been grandfathered or excepted from the deliverability requirement must come on line within three years of the in-service dates identified during their facilities studies. The New York Transmission Owners contend that linking the three-year grace period to the 2008 Gold Book unduly extends the time that a project can retain grandfathered status. They recommend that projects should be required to come on line within the time they identified when they were originally studied, or at least within some reasonable time frame. To do otherwise, the New York Transmission Owners contend, would reward grandfathered projects by conferring on them preferred status over projects that have been diligently pursuing their projects on a timely basis.

Answers

111. In response to NRG-AG's protest, Astoria states that its entire 1,000 MW project is in full compliance with its existing interconnection agreement. Astoria states that NRG-AG's comments ask the Commission to read into Astoria's interconnection agreement a proposed in-service date and find that Astoria failed to meet that date. Astoria contends that the Commission must decline this request because the interconnection agreement does not set an in-service date, only an interconnection date, which Astoria satisfied when it interconnected the first of two 500 MW power blocks in May of 2006. Moreover, Astoria argues that the Commission should resist prescribing a *comparable* commercial operation date because such a device would establish only a scheduling milestone.

112. In response to Astoria's answer, NRG-AG notes that stakeholders determined that existing facilities should be grandfathered and that a balances approach is needed to allow facilities such as Astoria a reasonable, but not unlimited, amount of time to commence commercial operations. Based on the same principles, NRG-AG states, existing facilities can lose their deliverability rights if they remain deactivated for more than three years. NRG-AG contends that if Astoria is not held to a commercial operation deadline, it would have greater deliverability rights than any existing or new generating facility.

113. In response to Astoria's comments, NYISO states that according to the Deliverability Plan, a project will be grandfathered as long as it achieves commercial operation within three years of the date specified in the interconnection agreement or in the 2008 Gold Book. NYISO also states that protests by NRG-AG and the New York Transmission Owners should be rejected. The term "comparable commencement date" was used in the Deliverability Plan to be consistent with the Consensus Deliverability Plan because it became apparent during stakeholder discussions that "commercial operation date" was a term not specifically used in interconnection agreements for pre-Class Year 2007 projects that pre-date Order No. 2003.¹⁰¹ Additionally, NYISO states that the use of the in-service date specified in the 2008 Gold Book was intended to preserve expectations for pre-Class Year 2007 interconnection agreements that do not specify a date, while also permitting certain limitations.

114. Con Edison states that it agrees with the protest of NRG-AG that projects should be limited to three years from the in-service date when the projects initially sought to interconnect such that new resources do not receive an undefined claim to the existing system. NRG-AG state that Astoria should be held to the dates set forth in its interconnection agreement. Astoria answers that NRG-AG attempt to impose an in-service date on Astoria where one is not specified in the interconnection agreement in order to justify that the project should not be grandfathered.

Commission Determination

115. In the *Guidance Order*, the Commission accepted the proposal in the Consensus Deliverability Plan that the deliverability requirements be applicable to Class Year 2007 projects.¹⁰² We accept the Deliverability Plan with respect to the grandfathering and applicability issues as in accordance with the Consensus Deliverability Plan because it strikes a reasonable balance between existing capacity, pre-existing agreements and the needs of the market. However, parties are protesting the Deliverability Plan filing as it applies to a subset of pre-Class Year 2007 projects—those that have not yet achieved commercial operation. According to the provisions in the Consensus Deliverability Plan accepted by the *Guidance Order*,

The deliverability requirement will be applicable to the 2007 Class Year. No upgrades to address deliverability will be required of pre-2007 generators under these deliverability procedures. A pre-Class Year 2007 generator shall qualify for [Capacity Resource Interconnection Service] so long as (1) its interconnection agreement is not terminated, and (2) it begins

¹⁰¹ NYISO September 11, 2008 Answer at 4.

¹⁰² *Guidance Order*, 122 FERC ¶ 61,267 at P 63.

commercial operations within three years of the commercial operation date specified in its interconnection agreement.¹⁰³

116. According to the proposed Deliverability Plan,

A pre-Class Year 2007 generator or merchant transmission facility without an interconnection agreement on the first effective date of the NYISO Deliverability Interconnection Standard, or one with an initial interconnection agreement filing that does not specify a commercial operation date or any comparable commencement date, shall qualify for [Capacity Resource Interconnection Service] so long as it begins commercial operations within three years of its in-service date specified in the 2008 Gold Book.¹⁰⁴

117. The proposed Deliverability Plan attempts to strike a balance between existing grandfathered capacity eligible for Capacity Resource Interconnection Service and capacity not yet in operation for which interconnection agreements pre-exist the Deliverability Plan. We find that it is appropriate to not grandfather pre-existing projects¹⁰⁵ such as Astoria, without condition, in their entirety, i.e. to the extent that capacity is not yet in commercial operation as of the effective date in the Deliverability Plan. To clarify, while Astoria's initial block of existing capacity would be grandfathered, the second block that is not yet in commercial operation, and would only be grandfathered for Capacity Resource Interconnection Service to the extent it is in commercial operation by the date specified in accordance with the tariff, i.e., the Gold Book. If projects such as Astoria's second block of 500 MW are not in commercial operation by that date, they would be required to satisfy the deliverability requirements in order to be eligible for the higher level of service.

118. In the *Guidance Order*, the Commission accepted the Deliverability Plan's applicability to Class Year 2007 because stakeholders have been active in the development of these pending requirements and they have been aware that the NYISO intended to apply these requirements prospectively beginning with Class Year 2007.¹⁰⁶ The proposals by NRG-AG and Con Edison would violate this rationale. The use of

¹⁰³ Consensus Deliverability Plan at P 12.

¹⁰⁴ Proposed section IX.B, Attachment S, NYISO OATT, FERC Electric Tariff, Original Volume No.1, Original Sheet No. 688.00.

¹⁰⁵ Astoria uses the term "historic un-built projects."

¹⁰⁶ *Guidance Order*, 122 FERC ¶ 61,267 at P 64-65.

either the date specified in the interconnection agreement or in the 2008 Gold Book as proposed in the tariff revisions, provides a date certain that is three years from the in-service date stated there. Since market participants have been on notice of these impending deliverability requirements since the *Order on Proposed Modifications* and since the Consensus Deliverability Plan was originally filed in 2007 it is appropriate to require them to be completed by a date certain. As such, we find that a three-year window from the date in the 2008 Gold Book, as proposed, will not violate the expectations of interconnection agreements entered into under prior market rules and prior to Order No. 2003, will provide sufficient time to parties to bring these projects into service within a timely manner, will avoid the potential for developers from holding system capacity from others for extended periods of time, and will provide a date certain when this transmission system capacity will be available to other developers if a project is not completed by that time.

L. Effective Date

119. The Filing Parties request that the Commission approve the proposed tariff sheets with an effective date of August 4, 2008, one day before filing, without requesting waiver of the 60-day notice requirement. The Filing Parties state that the proposed effective date is consistent with the Commission's approval of the proposal to apply the new tariff amendments to generators beginning in Class Year 2007. The Filing Parties explain that the NYISO is using a two-step process to apply the deliverability provisions approved in the *Guidance Order*. They state that the NYISO has completed the necessary study under the Minimum Interconnection Standard, and that the NYISO's Operating Committee approved that study, which included project cost allocations for each project in the Class Year, on July 17, 2008. Once the Commission acts on the tariff revisions proposed in this filing, the Filing Parties state that the NYISO will complete the second step – a deliverability study for Class Year 2007, which will be presented for operating committee review. Once the study is approved, the Filing Parties state that the study will be presented to members of Class Year 2007, and the procedures of section VIII.A. of attachment S will apply, i.e., members of Class Year 2007 will have 30 days to indicate whether they accept or reject cost responsibility for the system deliverability upgrades identified in the NYISO's report. Furthermore, the Filing Parties state that the interconnection agreements for Class Year 2007 will explicitly condition participation in the installed capacity market on satisfaction of the new deliverability interconnection standard and, to the extent a project is found to be not deliverable, on funding, or committing to fund, any required deliverability requirements.

120. Section 205(d) of the Federal Power Act prohibits any change by any utility of any rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after 60 days notice to the Commission and to the public, unless the

Commission finds good cause to grant waiver of the notice requirement.¹⁰⁷ The Filing Parties nevertheless failed to request waiver of the Commission's 60-day notice requirement or provide good cause to grant waiver. Accordingly, the Commission accepts the proposed tariff sheets with an effective date of October 5, 2008.

The Commission orders:

(A) The Filing Parties' motion for leave to submit the joint compliance filing one day out of time is hereby granted.

(B) The Filing Parties' revised tariff sheets are hereby conditionally accepted for filing, effective October 5, 2008, as discussed in the body of this order.

(C) The Filing Parties shall file the clarification and revised tariff sheets, as directed in this order, within 30 days from the date of this order.

(D) The Filing Parties, working through their stakeholder process, shall develop and file revised tariff sheets resolving the Load Serving Entity funding mechanism, as directed in this order, within six months from the date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁰⁷ 16 U.S.C. § 824d (2006).

New York Capacity Regions

