123 FERC ¶ 61,044
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc. Docket Nos. ER07-521-000
ER07-521-001

ORDER ACCEPTING LONG-TERM TRANSMISSION RIGHTS PROPOSAL, SUBJECT TO MODIFICATION

(Issued April 16, 2008)

I. <u>Summary</u>

1. On February 5, 2007, the New York Independent System Operator, Inc. (NYISO) filed revisions to its Open Access Transmission Tariff (NYISO Tariff)[1] and Market Administration and Services Tariff (Services Tariff)[2] as required by Order Nos. 681 and 681-A[3] to institute long-term firm transmission rights (LTTRs) in New York. In this order, the Commission accepts NYISO's proposal, subject to modification.

2. Under NYISO's LTTR Proposal, as modified pursuant to this order, market participants that desire to secure LTTRs will be able to secure these rights in sufficient quantity to meet a reasonable percentage of their load serving obligations as required under the Energy Policy Act of 2005[4] (EPAct 2005) and the requirements set forth by the Commission in Order Nos. 681 and 681-A.

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[1] The NYISO Open Access Transmission Tariff is currently contained in New York Independent System Operator, Inc., FERC Electric Tariff, Original Volume No. 1.

[2] NYISO FERC Electric Tariff, Original Volume No. 2.

[3] *Long-Term Firm Transmission Rights in Organized Electricity Markets,* Order No. 681, FERC Stats. & Regs. ¶ 31,226 (July 20, 2006), *reh'g denied,* Order No. 681-A, 117 FERC ¶ 61,201 (November 16, 2006) (Final Rule).

[4] Pub. L. No. 109-58; 119 Stat. 983-84 (2005).

II. Background

A. Final Rule

3. Section 1233(a) of EPAct 2005 amends Part II of the Federal Power Act (FPA)[5] by adding section 217. FPA section 217(b)(4) authorizes the Commission to facilitate transmission planning and expansion to meet the service obligations of load serving entities (LSEs) and, as relevant to this filing, securing LTTRs for long term supply arrangements made, or planned, to meet such obligations.

4. On July 20, 2006, the Commission issued Order No. 681, the initial order of the Final Rule, in which it adopted seven general guidelines intended to serve as the basis for the substantive framework for the design of LTTRs. The Final Rule required independent transmission organizations that oversee organized electricity markets to make LTTRs available to all transmission customers. Transmission organizations subject to the Final Rule were given 180 days from the date of issuance of the initial order to file tariff revisions that complied with its guidelines. NYISO made its filing on February 5, 2007.

B. Current NYISO Transmission Rights Market

5. NYISO is a not-for-profit corporation that ensures the reliable operation of New York's electricity transmission grid, oversees and administers wholesale electricity markets, and provides for open access to the transmission system. Transmission service within the New York Control Area is provided pursuant to the NYISO Tariff, and also through numerous individual grandfathered agreements between transmission customers and transmission owners (TOs). Each transmission customer under the NYISO Tariff pays a Wholesale Transmission Service Charge (TSC) to the TO in the transmission zone where the load is located, which allows the TO to recover the embedded costs of its transmission system. The TSC does not apply to: (1) a TO's use of its own system to provide bundled retail service to its native load customers; (2) grandfathered transmission service;[6] and (3) retail transmission service pursuant to a retail tariff or rate schedule.[7]

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[5] 16 U.S.C. § 824, *et seq.* (2000 & Supp. V 2005).

[6] At the time that NYISO was established, customers under grandfathered transmission contracts were given a choice to: 1) retain grandfathered transmission rights and continue taking physically firm transmission service without any exposure to congestion charges; or 2) convert their contracts into "Grandfathered Transmission Congestion Contracts." Customers with grandfathered transmission rights continue to pay

(continued)

6. Firm transmission service in NYISO is service for which the transmission customer agrees to pay congestion costs.[8] Congestion costs are the difference between the congestion component of the locational based marginal price at the point of withdrawal and at the point of injection.[9] NYISO collects congestion costs through the Transmission Usage Charge for bilateral transactions and through the locational based marginal price for spot market transactions.[10]

7. A transmission customer may fix the price of congestion associated with its firm transmission service by purchasing Transmission Congestion Contracts (TCCs). A TCC is a financial instrument that allows a transmission customer to hedge its congestion costs. A TCC does not establish any rights to, or the availability of, physical transmission service.

8. NYISO sells TCCs in two centralized auctions, one in the spring and one in the fall, prior to the beginning of the summer and winter capability periods.[11] Currently, NYISO offers TCCs with durations of six months and one year in the centralized auctions, although it is also authorized to offer TCCs with durations of two years or five years. NYISO also conducts monthly reconfiguration auctions, in which TCCs with durations of one month are sold.[12]

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their original contract rate, as well as applicable charges for transmission losses and ancillary services until their contracts expire.

[7] NYISO Tariff, Attachment H, Original Sheet No. 389, Part I, section 1.0 (c).

[8] Definition 1.13, Firm Point-to-Point Transmission Service, NYISO Tariff, Original Sheet No. 30A.

[9] *See New York Independent System Operator, Inc.,* 106 FERC ¶ 61,095, at P 3-4 (2004).

[10] NYISO Tariff, Schedule 7, Original Sheet Nos. 273-276.

[11] *Id.* Third Revised Sheet No. 24. The two six-month Capability Periods are May 1 through October 31 (Summer Capability Period) and November 1 through April 30 (Winter Capability Period). *Id.* Attachment M, “Sale of Transmission Congestion Contracts,” First Revised Sheet No. 579; NYISO’s February 5, 2007 Transmittal Letter at 6-7 (Transmittal Letter).

[12] NYISO Tariff, First Revised Sheet Nos. 581 and 582.

9. At present, NYISO conducts the TCC auctions using a manual process, but intends to automate the TCC auctions and to put in place a system it calls the "End-State Auction" (discussed in detail below). Currently, it takes three months to completely process a centralized auction — a minimum of five weeks to auction TCCs with durations of six months and another five weeks to auction TCCs with a duration of one year. Each auction consists of a series of multi-staged sub-auctions in which TCCs of a single duration are sold.[13] Also, at present, NYISO conducts five auction rounds for each TCC of a single duration; four rounds in stage 1 and one round in stage 2.[14] It takes one week to complete each monthly reconfiguration auction.[15]

10. In addition, TOs may sell TCCs through direct sales.[16] Only buyers who purchase TCCs in an auction or through a direct sale by a TO become primary holders of TCCs.[17]

11. NYISO collects congestion costs from transmission customers and then allocates TCC revenues to the TOs,[18] which, in turn, are required to use the revenues to reduce the TSC charges paid by their customers. This is generally done through a credit to the customer's TSC so that the cost of a TCC is allocated on a load ratio share basis to all of the TO's TSC paying customers.[19] NYISO states that its billing and accounting systems

[13] Transmittal Letter at 7.

[14] *Id.* at 7 and 19 n.26.

[15] *Id.* at 19.

[16] NYISO Tariff, Second Revised Sheet No. 561; Substitute Original Sheet No. 571I.

[17] There is also a secondary TCC market in which Primary and Secondary Holders sell TCCs outside of the Centralized TCC Auction or Direct Sale. NYISO Tariff, Second Revised Sheet No. 49A and First Revised Sheet No. 562.

[18] *Id.* Attachment N, Second Revised Sheet No. 625O, First Revised Sheet No. 625O, section 3.1; Original Sheet No. 625AR.09, section 3.7.

[19] *Id.* Attachment H; NYISO February 5, 2007 Filing (LTTR Proposal); Transmittal Letter at 21.

were designed to allocate TCC auction revenues among a relatively small group of TOs and do not include provisions for direct allocation to individual LSEs within each TO's service territory.[20]

12. The capacity sold in the TCC auction consists of Existing Transmission Capacity for Native Load (ETCNL),[21] Original Residual Capacity, and Residual Capacity. ETCNL is capacity between zones that TOs used historically to bring energy from generators they had built outside their zones (service territories) to load within their zones. In addition to building the generators, the TOs also paid for or funded the transmission capacity that became ETCNL. The amount of ETCNL available for a TCC auction is the total amount of ETCNL reduced by ETCNL sold in previous auctions, by any reductions necessary to ensure feasibility, and by up to five percent for reservations by TOs.[22]

13. NYISO distributed Original Residual TCCs[23] to the TOs when the ISO commenced operation, and this capacity is also made available in the TCC auction. Lastly, the TCC auction includes TCCs related to the residual capacity of the New York

[20] Transmittal Letter at 21-22.

[21] *See* NYISO Tariff, section 1.11f, Third Revised Sheet No. 30. The total amount of ETCNL is equal to 6,550 MW or approximately 19.8 percent of the total transmission system capacity of about 33,000 MW; *see* NYISO Tariff Attachment L, "Existing Transmission Agreements & Existing Transmission Capacity for Native Load Tables," Table 3 [ETCNL].

[22] *Id.* Attachment M, First Revised Sheet No. 571. The NYISO's tariffs establish a capacity reservation cap that authorizes the New York TOs to "hold back" up to five percent of their ETCNL in the form of ETCNL TCCs.

[23] These are TCCs formed from the residual capacity that existed prior to the first TCC auction and were assigned to the transmission owners. The Original Residual TCCs comprise a small amount of capacity, approximately 70 MW. www.nyiso.com/public/webdocs/committees/bic_mswg/meeting_materials/2006-10-27/MSWG_Long_Term_Firm_Transmission_Rights_102706.pdf.

transmission system that is allocated among the TOs. The TOs may convert a limited amount of these residual capacity TCCs, the remainder of which are sold in the centralized auction.[24]

14. Currently, about 41 percent of NYISO capacity is subject to grandfathered agreements, primarily held by TOs, and is not made available in TCC auctions.[25] Customers with grandfathered TCCs and grandfathered rights[26] pay the rates in their contracts and make their payments directly to applicable TOs. The rates for grandfathered TCCs and grandfathered rights are based on the embedded costs of each TO. Customers using grandfathered rights do not pay congestion costs for amounts of energy that are within the grandfathered megawatt amount and that are scheduled in the Day-Ahead Market.[27]

III. NYISO's LTTR Proposal

A. Summary of the Proposal

15. On February 5, 2007, NYISO made the instant filing (LTTR Proposal) to revise the NYISO Tariff and its Services Tariff to comply with the Final Rule. NYISO proposes four types of LTTRs that would be available until it has established the End-State

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[24] *Id.* Attachment M, Substitute Original Sheet No. 571C; First Revised Sheet No. 571F; Original Sheet No. 571H; Substitute Original Sheet No. 571I, section 6. *See also* Transmission Congestion Contracts Manual, section 3.9.4 (NYISO February 2006).

[25] Grandfathered transmission agreements comprise about 13,612 MW (NYISO Tariff, Attachment L, Table 1A (summer)), or about 41.2 percent of total capacity. Transmittal Letter at 8.

[26] NYISO Tariff, sections 3.2 and 3.3, Original Sheet Nos. 509 and 510.

[27] *Id.* Schedule 7, Original Sheet No. 276; Attachment K, "Reservation of Certain Transmission Capacity and LBMP Transition Period," First Revised Sheet No. 508 and Original Sheet Nos. 508A and 509. To the extent they transmit energy without scheduling it Day-Ahead or exceed the number of megawatts of grandfathered transmission rights, customers using grandfathered transmission rights pay the Transmission Usage Charge, and thereby pay congestion charges. *Id.* Original Sheet No. 509.

Auction.[28] Three of the proposed types of LTTRs would be available to LSEs serving load within the New York Control Area that have grandfathered transmission rights and the fourth LTTR type would be available to all LSEs.

16. First, NYISO proposes to create LTTRs from existing grandfathered transmission rights. Second, it proposes a new 10-year Fixed Price Contract (Fixed Price TCC)[29] for which an LSE would pay an annual base price, plus adders (described later). Third, NYISO proposes a new Auction Allocation Right (AAR), consisting of an annual right to obtain TCCs at the auction clearing price with an annual right of first refusal for up to 10 years, i.e., annual right of refusal AARs.[30] Fourth, NYISO proposes a new set of AARs that would be allocated annually on a zonal load ratio share basis, i.e., AARs allocated to LSEs.

B. Specific LTTR Proposals and Planning Explanation

1. Existing Grandfathered Transmission Rights as LTTRs

17. NYISO proposes that its existing grandfathered transmission rights be viewed as the equivalent of newly created LTTRs,[31] consistent with the Commission's determination that if grandfathered transmission rights satisfy all of the guidelines in the Final Rule, they "may substitute for such rights in the transmission organization's allocation process."[32]

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[28] In NYISO's August 24, 2007 Response, NYISO explains that the End-State Auction process would benefit the LTTR market because it could conduct "a single, multi-period auction [and] …permit the bids submitted by market participants to determine the duration of the TCCs…" that are sold by the NYISO. NYISO's August 24, 2007 Response at 24. This would increase the auction's efficiency and allow LSEs to hedge more precisely. Also, NYISO would no longer need to devote as many resources to the existing auctions for shorter-term TCCs. The End-State software will increase NYISO's overall flexibility and free resources to add new LTTR features that its stakeholders desire, or that the Commission requires. The final capabilities and functions of the End-State Auction software have not yet been determined. NYISO states that it intends to solicit stakeholder input beginning in the second half of 2008.

[29] NYISO Tariff, Attachment M, proposed section 2A.

[30] *Id.* proposed section 2B.4.

[31] Transmittal Letter at 27.

[32] *Id.* (citing Order No. 681-A at P 87).

NYISO argues that grandfathered transmission rights in NYISO already have all of the attributes required by the Final Rule.[33]

2. <u>10-Year Fixed Price TCC</u>

18. Until the implementation of its End-State Auction process, NYISO is proposing to allow LSEs to convert up to 100 percent of their expired or expiring (at the time when they expire) grandfathered transmission rights to 10-year Fixed Price TCCs.[34] After 10 years, 23.75 percent of the capacity associated with the Fixed Price TCCs would be made available through AARs allocated to LSEs, and the remainder would become residual transmission capacity that would be sold in the TCC auction.[35]

19. To obtain a Fixed Price TCC, an LSE must certify that it expects to be legally obligated to serve the load that it served historically under its grandfathered transmission rights or Existing Transmission Agreement (grandfathered agreement), and that it needs the transmission capacity between the point of injection and point of withdrawal specified in the grandfathered agreement to serve that load.

20. NYISO states the base price of the Fixed Price TCCs will be calculated by averaging the following components: (1) the historic auction prices for TCCs with a duration of one year and the same point of injection and point of withdrawal over the four previous Centralized TCC Auctions; and (2) congestion costs between those points over the four most recently concluded Capability Periods.[36] The data from past periods would be adjusted for inflation. The inflation-adjusted average would then be increased by two adders, a ten percent "option premium" to determine the base amount of the LSE's annual

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[33] Transmittal Letter at 2.

[34] *Id.* NYISO Tariff, Attachment M, Third Revised Sheet No. 565, Original Sheet Nos. 565A-565C, proposed section 2A. Table 1A of NYISO Tariff Attachment L lists grandfathered transmission agreements held by LSEs on November 18, 1999, the date NYISO's operations commenced.

[35] NYISO Tariff, Attachment M, Original Sheet Nos. 565E and 565F, proposed section 2A.3.

[36] Price calculation for Zone K, Long Island, is based on the inflation-adjusted annual average difference between the Day-Ahead Market Congestion Component at the point of withdrawal and the point of injection associated with the TCCs. LTTR Proposal; NYISO Tariff, Attachment M, Original Sheet No. 565D, proposed section 2A.2 (ii).

payment, and an inflation adjustment, included upfront to reflect the anticipated effects of inflation over the 10-year term of the Fixed Price TCC.

21. NYISO states that the LSE would know the total amount owed for the Fixed Price TCC at the time it makes the election and that this amount will remain fixed over the 10-year period, although the size of the actual annual payments would be different each year in step with the forecasted inflation. NYISO states that LSEs should be able to calculate the conversion price before deciding whether or not to obtain the Fixed Price TCCs because NYISO is proposing to use in this calculation only data that are posted on its website and publicly available inflation rates.[37]

22. Revenues from the Fixed Price TCC would be allocated to the TOs according to the existing provisions in Attachment N, "Congestion Settlements related to the Day-Ahead Market and TCC Auction Settlements," pursuant to which these revenues would be credited against the TSC of each TO as described earlier.[38]

23. However, NYISO notes that the revenue allocation rules in Attachment N are predicated on the assumption that TCCs will be sold in auctions. It explains that, even though the Fixed Price TCC creates new streams of revenue associated with converted TCCs that could be sold at prices materially different from auction prices, it concluded that it would be more appropriate to wait to consider changes to the revenue allocation rules until there has been an opportunity to consider the significance of the changes in this proposal and the Commission's response to this filing.[39] NYISO proposes to make an additional compliance filing to offer any necessary changes to the allocation rules.

3. <u>AAR with Annual Right of First Refusal for 10 Years</u>

24. Prior to the implementation of the End-State Auction process, NYISO proposes that LSEs taking transmission service under a grandfathered agreement that expires on or after May 1, 2008 may exercise an annual right of first refusal for AARs up to a maximum of 10 years at an annual auction price. If the LSE exercises this right, it is allocated a number of AARs equal to one hundred percent of the megawatt quantity in its grandfathered agreement, subject to a feasibility test. It may convert the AARs into TCCs with a one-year duration by paying the weighted average of the market-clearing prices determined in

[37] Transmittal Letter at 12-13.

[38] NYISO Tariff, Original Sheet No. 565E, proposed section 2A.3; and NYISO Tariff, Attachment N, section 3.7.

[39] Transmittal Letter at 22-23.

the Spring Centralized TCC Auction. The annual right of first refusal will expire or be reduced to the extent that the LSE does not convert the AARs into TCCs or ceases to serve the load that it previously served under the expired grandfathered agreement.

25. After the annual right of first refusal expires, 23.75 percent of the capacity associated with the expired grandfathered agreement would be made available through AARs allocated to all LSEs, as discussed immediately below, and the remainder would become residual transmission capacity, which would be sold in the TCC auction.[40]

4. <u>Allocation of AARs to LSEs</u>

26. Until the implementation of its End-State Auction process, NYISO also proposes to create AARs of a one-year duration that would be available to all LSEs.[41] These AARs would not be associated with grandfathered transmission rights (grandfathered agreements) and would not have a right of first refusal.

27. NYISO would create AARs for each zone and each year allocate them proportionally on a zonal load ratio share basis to LSEs. An LSE's allocation of AARs will be reduced by the quantity of its other LTTRs. LSEs can convert their AARs to TCCs with a duration of one year by giving notice of their election to convert and by paying a weighted average price determined in the one-year sub-auction held during the Spring Centralized Auction.[42]

28. In each subsequent year, the pool of AARs to be sold in the TCC auction will be increased by 23.75 percent of the transmission capacity associated with ETCNL, Original Residual Capacity, and Residual Capacity. Additionally, when Fixed Price TCCs expire, 23.75 percent of the associated capacity will be used to create additional AARs to be distributed to LSEs, and the remainder will become Residual Capacity to be sold in the TCC auction.[43]

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[40] NYISO Tariff, Original Sheet Nos. 565H (clean version) and 565I, proposed section 2B.2; Transmittal Letter at 16.

[41] *Id.* Original Sheet Nos. 565F-565P, proposed section 2B.

[42] NYISO Tariff, Original Sheet No. 565O, proposed section 2B.6; *see also* NYISO Tariff Original Sheet Nos. 565 N and 565O, proposed sections 2B.5 and 2B.6.

[43] *Id.* Original Sheet Nos. 565H, 565I, and 565J, proposed sections 2B.2 and 2B.3.

29. NYISO asks that if the Commission does not accept the LTTR Proposal without modification, the Commission waive the requirements that the LTTR Proposal fails to meet.[44] As NYISO has repeatedly emphasized, the LTTR Proposal reflects the characteristics of New York's electricity system, NYISO's market design, and NYISO's existing technical capabilities.

30. In particular, NYISO requests that if the Commission decides to interpret Guideline (7) as requiring that LTTRs be priced at embedded cost rates, or for LTTR auction revenues to be assigned directly to LSEs, it could waive that interpretation with respect to NYISO.[45] NYISO argues that such a waiver would be appropriate to reflect NYISO's history, regional market design, stakeholder preferences, the need to avoid inequitable cost shifting, and other considerations.

31. NYISO explains that the Commission itself has acknowledged that the statute is broadly worded and gives it substantial flexibility. Alternatively, if the Commission concludes that the LTTR Proposal does not fully comply with the Final Rule, NYISO renews its request against overly prescriptive compliance directives and seeks identification of any deficiencies.

IV. Notice of Filing and Responsive Pleadings

32. Notice of NYISO's filing was published in the *Federal Register*, 72 Fed. Reg. 7,871 and 72 Fed. Reg. 8,375 (2007), with comments, interventions, and protests due on or before February 26, 2007. Direct Energy Services, LLC, Dynegy Power Marketing, Inc., CEG Companies,[46] and NRG Companies[47] filed motions to intervene in this proceeding. New York Public Service Commission filed a notice of intervention. DC Energy, LLC

[44] NYISO's November 9, 2007 Post Tech. Conf. Reply Comments at 21.

[45] NYISO notes that if the Commission issues an order adopting this interpretation, NYISO reserves the right to object on hearing. See NYISO's November 9, 2007 Post Tech. Conf. Reply Comments at 22 and n.46.

[46] Constellation Energy Commodities Group, Inc. and Constellation NewEnergy Inc.

[47] NRG Power Marketing Inc., Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Oswego Harbor Power LLC.

(DC Energy), Coral Power, LLC (Coral), New York Association of Public Power (NYAPP), New York Municipal Power Agency (NYMPA), and the New York TOs[48] filed motions to intervene and comments and protests in this proceeding.

33. On March 13, 2007, NYISO filed a request for leave to answer and an answer to the comments and protests. The New York TOs also filed a motion to respond and a response to the protests. On March 28, 2007, NYAPP filed an answer in opposition to NYISO's request for leave to file an answer, and, alternatively, its own motion for leave to answer and answer to NYISO's answer and the New York TOs' answer.

34. On July 27, 2007, in order to supplement the existing record and thereby facilitate the decision-making process, the Commission issued an order establishing a technical conference[49] and posing questions concerning Guidelines (5) and (7) of NYISO's Proposal. In response to the Order Establishing Technical Conference, on August 24, 2007, both NYAPP and the New York TOs filed comments and NYISO filed a response. On September 7, 2007, NYISO filed a supplemental response to the Order Establishing Technical Conference.

35. On September 10, 2007, the technical conference was held, and on October 25, 2007, NYISO, the New York TOs and Coral filed post-technical conference comments and NYAPP filed comments along with a request for appointment of a settlement judge. NYISO filed an answer to NYAPP's request for appointment of a settlement judge, supporting further discussion, but expressing no strong preference between a technical conference or a settlement judge. The New York TOs filed an answer in opposition to NYAPP's request for appointment of a settlement judge. On November 9, 2007, the New York TOs, NYAPP, and NYISO filed reply comments.

36. On December 6, 2007, the Commission issued an order regarding settlement procedures, *New York Independent System Operator, Inc.*[50] Subsequently, a settlement judge was assigned, settlement conferences were held, but ultimately settlement was not

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[48] Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation doing business as National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

[49] *New York Independent System Operator, Inc.*, 120 FERC ¶ 61,099 (2007) (Order Establishing Technical Conference).

[50] 121 FERC ¶ 61,237 (2007) (Interim Order).

reached and settlement judge procedures were terminated. The settlement judge procedures did result in additional discussion among parties and in modifications by NYISO to the original proposal. The matter was returned to the Commission on February 10, 2008.

37. On December 20, 2007, NYISO submitted a response in Docket No. ER07-521-001 to the Commission directive in the Interim Order with respect to the proposed effective date of the LTTR Proposal.[51] NYISO proposed a new effective date to begin a partial implementation in Fall 2008, with full implementation in Spring 2009. The filing was noticed on January 17, 2008. No protests or comments were filed.

V. <u>Discussion</u>

A. <u>Procedural Matters</u>

38. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), notices of intervention and timely unopposed motions to intervene serve to make the entities that filed them parties to these proceedings.

39. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers of NYISO, the New York TOs, and NYAPP because they have provided information that assisted us in our decision-making process.

B. <u>Adherence with Final Rule Guidelines</u>

1. <u>Guideline (1)</u>

> *The long-term firm transmission right should be a point-to-point right that specifies a source (injection nodes or node) and sink (withdrawal node or nodes), and a quantity (MW).*

40. Guideline (1) is intended to support the ability of LSEs to obtain point-to-point LTTRs that will hedge particular long-term power supply arrangements. In the Final Rule, the Commission concluded that the primary objective of Guideline (1), consistent with FPA section 217(b)(4), is to allow an LSE to obtain LTTRs for purposes of hedging congestion charges associated with delivery of power from a long-term power supply

[51] Interim Order at P 8.

arrangement to its load. The Commission expected that Guideline (1) would be largely consistent with the market designs already in place in the organized electricity markets operated by transmission organizations.[52]

a. <u>NYISO's LTTR Proposal</u>

41. NYISO states that its existing TCC system already complies with Guideline (1) because NYISO's tariffs currently require TCCs, including grandfathered TCCs, to specify a point of injection, point of withdrawal, and a quantity expressed in megawatts. NYISO states that TCCs created under the LTTR Proposal would have the same attributes. NYISO adds that existing grandfathered rights, and any TCCs created from them upon their expiration, also include a specific point of injection, point of withdrawal, and quantity.

b. <u>Commission Determination</u>

42. The Commission finds that the LTTR Proposal complies with Guideline (1) of the Final Rule. The proposal is based on the current NYISO market for TCCs, which specifies a point of injection, point of withdrawal, and specific megawatt quantities. This includes the LTTRs that are derived from grandfathered agreements that already provide the source, sink, and megawatt quantity, as detailed in the NYISO Tariff.

2. <u>Guideline (2)</u>

> *The long-term firm transmission right must provide a hedge against locational marginal pricing congestion charges or other direct assignment of congestion costs for the period covered and quantity specified. Once allocated, the financial coverage provided by a financial long-term transmission right should not be modified during its term (the "full funding" requirement) except in the case of extraordinary circumstances or through voluntary agreement of both the holder of the right and the transmission organization.*

a. <u>NYISO's LTTR Proposal</u>

43. Guideline (2) responds to the requirement in FPA section 217(b)(4) that LSEs with service obligations be able to obtain "firm" transmission rights or equivalent financial or tradable rights on a long-term basis. As stated in the Final Rule, the Commission

[52] Final Rule P 116.

interpreted “firmness” in the context of LTTRs to refer primarily to two properties of such rights: (1) stability in the quantity of rights that an LSE is allocated over time; and (2) price certainty for the rights once they are allocated.

44. NYISO states that its existing TCC system already complies with this guideline because TCCs are already “fully funded” and the TOs cover any difference between the amount of congestion revenues that NYISO collects and the TCC payments that NYISO makes. TCCs therefore provide a complete hedge against congestion charges for the term of the TCC and the specific quantity. NYISO states that the financial coverage provided by TCCs does not vary under normal circumstances, and that the same will be true of new TCCs that are created through future auctions, and through all of the mechanisms proposed in its compliance filing, including through the conversion of AARs, grandfathered transmission rights, or grandfathered TCCs.

b. <u>Protests</u>

45. NYAPP states that in promulgating Guideline (2), the Commission required both stability in the quantity of rights and price certainty, both of which the LTTR Proposal fails to satisfy because in NYISO’s reduction process, required before each auction, LSEs’ LTTRs must correspond to a simultaneously feasible constrained Power Flow. In cases where the total set of transmission rights does not meet this test, the transmission rights of LSEs are subject to reduction and, therefore, the long-term stability of the transmission rights is not ensured. NYAPP states that under the LTTR Proposal, an LSE that currently holds grandfathered transmission rights would be given a priority in acquiring TCCs annually (up to a maximum of 10 years) at a price to be determined in an auction each year. NYAPP states that subjecting LSEs to the unpredictable nature of an annual open market auction for transmission credits violates Guideline (2). NYAPP also protests that NYISO’s alternative fixed-price scheme, whereby LSEs can acquire a Fixed Price TCC at a fixed, upfront price for the entire 10-year period, is merely a supplement to its base proposal on LTTRs.

46. However, in its August 24, 2007 response, NYISO asserts that feasibility limitations will not prevent an LSE from meeting its reasonable needs with LTTRs. NYISO will perform a one-time feasibility analysis and use established proration methods to identify a set of ETCNL and Original Residual TCCs that are feasible. It will then set aside 23.75 percent of that feasible set of ETCNL and Original Residual TCCs as AARs. Additionally, NYISO will confirm that LSEs may convert the full amount of expiring or expired grandfathered transmission rights into Fixed Price TCCs without undermining the feasibility of outstanding and valid TCCs. NYISO states that in the event a Fixed Price TCC would affect the feasibility of an existing TCC, the quantity of Fixed Price TCCs

created would be reduced appropriately. However, NYISO states that once LTTRs have been awarded, the NYISO Tariff, as revised by the LTTR Proposal, does not provide for a subsequent reduction.[53]

c. Answers

47. NYAPP argues that NYISO has not created a full funding mechanism that ensures price certainty because it relies on auctions.[54] NYAPP notes that this mechanism also runs afoul of the Guideline (7) prohibition against auctions. However, in response to similar arguments made by NYMPA, the New York TOs state that NYMPA fails to recognize that the Fixed Price Option in the NYISO's proposal allows parties to fix the price of congestion charges.

d. Commission Determination

48. We find that the NYISO's proposal meets the requirements of Guideline (2). The proposal essentially extends the congestion funding features of NYISO's existing TCC system to TCCs that are issued as LTTRs and, as NYISO notes, the existing system meets the full funding requirements of Guideline (2) because it requires the TOs to cover any difference between the amount of congestion revenues that NYISO collects and the TCC payments that NYISO makes. Also, as NYISO states, once LTTRs have been awarded, the proposal does not provide for their subsequent reduction.[55] We note that many of the comments that NYAPP filed with respect to Guideline (2) actually concern the manner in which the purchase price of LTTRs is to be determined. Therefore, we will address these comments in the discussion of Guideline (7), which concerns the pricing of LTTRs.

3. Guideline (3)

> *Long-term transmission rights made feasible by transmission upgrades or expansions must be available upon request to any party that pays for such*

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[53] *Id.* at 12.

[54] NYAPP's March 28, 2007 Answer in Opposition to Motion for Leave to File Answer of the New York Independent System Operator or, in the Alternative, Motion for Leave to File Answer and Answer at 12-13 (NYAPP's March 28, 2007 Answer).

[55] The AAR proposal does not meet the price certainty requirement of Guideline (4) and the "no auction" requirement of Guideline (7), and therefore does not qualify as LTTRs. Nevertheless, we will permit the NYISO to implement the AAR proposal as a useful supplement to the Fixed Price TCC proposal, as discussed *infra.*

upgrades or expansions in accordance with the transmission organization's prevailing cost allocation methods for upgrades or expansions.

49. The Commission intended that Guideline (3) apply to transmission rights awarded to entities that fund transmission upgrades and expansions through direct cost assignment and not to rights related to upgrades that are rolled into transmission rates.

a. NYISO's LTTR Proposal

50. NYISO states that it already has a number of tariff provisions in place that reflect the fundamental principles underlying Guideline (3). NYISO states, however, that it has not yet developed specific procedures governing awards of Incremental TCCs and does not propose to make related tariff revisions pertaining to Incremental TCCs as part of this compliance filing. But, NYISO states that it will initiate a stakeholder process as soon as possible to determine how NYISO will comply with this aspect of the Final Rule and to establish a work plan. NYISO originally proposed to start awarding AARs and Fixed Price TCCs on May 1, 2008, and has recognized that it must come up with ways to implement this guideline as soon as is reasonably possible. NYISO is developing more detailed rules governing the creation and allocation of Incremental TCCs as a separate part of its compliance with the Final Rule. NYISO explains that tying access to Incremental TCCs to funding the construction of new construction is comparable to what is required of LSEs that wish to obtain LTTRs for non-historic uses under PJM's Commission-approved LTTR design.[56] On March 12, 2008, NYISO filed a status report advising the Commission that it would not be making a compliance filing containing its proposal for Guideline (3) until the Commission issues an order on NYISO's LTTR Proposal. Thereafter, NYISO will submit the Guideline (3) compliance filing in advance of its first award of LTTRs associated with existing transmission capacity.

b. Comments

51. The New York TOs request a more detailed timeline regarding the stakeholder process NYISO proposes to initiate in order to develop tariff revisions that comply with Guideline (3). NYAPP states that NYISO claims that it has adhered to the general

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[56] NYISO's October 25, 2007 Initial Post-Technical Conf. Comments at 8 (citing PJM Operating Agreement at section 7.4.2(b) (limiting the allocation of LTTRs associated with existing transmission capacity in PJM to historic uses); and section 7.8 (specifying that LSEs that fund Network Upgrades outside of the normal PJM Regional Transmission Enhancement Plan will be assigned new LTTRs associated with the new capacity that they paid for, exactly as they would under the NYISO's Incremental TCC rules)).

principle enunciated by the Commission in Guideline (3); however, it has not yet accomplished necessary NYISO Tariff revisions and must undertake amendments. NYAPP also comments that there is no agreement on NYISO's position that new LTTRs are only available if a party builds transmission and acquires Incremental TCCs. NYAPP requests that the Commission find this position unreasonable as well.

c. <u>Answers</u>

52. NYISO states that the Final Rule allows Independent System Operators (ISOs) or Regional Transmission Organizations (RTOs) until the time that they award their LTTRs to work out the details concerning the creation and allocation of incremental expansion rights. NYISO states that in the interim, NYISO will be in compliance with the Final Rule and the Commission's regulations because its tariffs already specify that incremental rights will be awarded to entities that sponsor new facilities.

d. <u>Commission Determination</u>

53. The Commission will withhold making a determination regarding NYISO's provisions for granting LTTRs for incremental upgrades pending a further compliance filing. As NYISO states, the NYISO Tariff currently contains provisions for awarding TCCs for incremental expansions. However, these provisions make no reference to LTTRs, and NYISO does not explain how these provisions enable it to comply with the Final Rule. The Final Rule states that transmission organizations must develop and file tariff sheets and rate schedules for LTTRs for incremental expansions and upgrades by the time they award LTTRs for existing capacity.[57] As discussed later in this order, the first stage of awarding long-term rights will be effective for the period beginning November 1, 2008. Therefore, we direct NYISO to submit a compliance filing with regard to Guideline (3), consistent with the intent of the Final Rule, no later than 60 days prior to November 1, 2008. In addition, NYISO is directed to file within 30 days of the date of this order, its plan for conducting a stakeholder process to meet this deadline.

4. <u>Guideline (4)</u>

> *Long-term firm transmission rights must be made available with term lengths (and/or rights to renewal) that are sufficient to meet the needs of load serving entities to hedge long-term power supply arrangements made or planned to satisfy a service obligation. The length of term of renewals may be different from the original term. Transmission organizations may*

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[57] Final Rule P 214.

propose rules specifying the length of terms and use of renewal rights to provide long-term coverage, but must be able to offer firm coverage for at least a 10-year period.

54. In the Final Rule, the Commission stated that it will allow regional flexibility in defining the terms of LTTRs that are offered and will permit substantial latitude to determine how to achieve long-term coverage through combinations of transmission rights of specific terms and renewal rights, along with transmission planning and expansion procedures that support LTTRs. However, the Final Rule requires that transmission organizations make available transmission rights and renewal rights that provide coverage for a period of at least 10 years, in order to ensure that the transmission rights offered meet the reasonable needs of LSEs and enable them to obtain transmission service for long-term power supply arrangements that will be used to meet service obligations.

a. <u>NYISO's LTTR Proposal</u>

55. NYISO states that the LTTR Proposal complies with Guideline (4) because LSEs that will have AARs may convert them into TCCs for as long as they continue to serve the load. AARs could therefore last at least 10 years and potentially indefinitely. Further, all grandfathered transmission rights held by LSEs satisfy Guideline (4) because they may be converted into AARs for a 10-year period after their expiration. NYISO states that Fixed Price TCCs are also compliant for their entire 10-year duration, even though they are not renewable for an additional 10 years.

b. <u>Comments on Initial Proposal</u>

56. DC Energy states that a long-term auction such as five or 10 years will provide better price signals than the historic-congestion and TCC pricing model proposed by NYISO. Coral requests that the Commission establish a firm deadline with milestones for NYISO to implement its End-State Auction process. DC Energy adds that Commission-established milestones will help NYISO achieve related market improvements.

57. NYAPP asserts that the proposed structure whereby LSEs may convert AARs into TCCs for "as long as they serve the load," does not guarantee a 10-year period, as the period could potentially terminate prior to 10 years, should an LSE no longer serve the load. NYAPP states that due to the conversion of AARs to TCCs in an auction, in reality, the period would extend no longer than one year, which does not provide the price certainty that Guideline (4) requires.

58. NYAPP further asserts that because the fixed price option is tied to a one-time maximum 10-year term, the Fixed Price TCC proposal does not provide LSEs with the

ability to hedge long-term power supply arrangements beyond the benchmark of 10 years. Consequently, it does not meet the requirements of Guideline (4).

59. NYAPP also requests special treatment that would allow the NYAPP members with grandfathered TCCs to continue their grandfathered TCCs after their term is up in 2013. NYAPP anticipates that NYAPP members may need to acquire new LTTRs. NYAPP requests that a new class of LTTRs be made available if there is remaining transfer capacity that is physically feasible.

c. Answers

60. NYISO states that it will support longer-term auctions, open to all market participants, and potentially with more flexibility, once the End-State Auctions begin. NYISO insists that it is not in a position to provide a reasonable estimate of an implementation date of the End-State Auction until conclusion of the automation project. NYISO expects to begin discussions with stakeholders by late 2008 or early 2009 to determine exactly what functionality and features the End-State Auction model should have.

61. NYISO does not believe that it has the legal authority to impose unilaterally the contract extensions requested by NYAPP, since NYISO is not a party to those agreements. Furthermore, NYISO states that it would be discriminatory to give NYAPP's members the rights they seek without making similar rights available to other LSEs, which NYISO asserts could not be implemented in a non-discriminatory manner within a timeframe likely acceptable to the Commission.

d. Post-Technical Conference Comments

62. In its post-technical conference comments regarding Guidelines (5) and (7), NYISO made several proposals to modify the LTTR Proposal that deal with LTTR term length. NYISO proposes that until such time as the End-State Auction has been successfully implemented and in place for at least one full calendar year, NYISO will offer LSEs that seek to convert expired or expiring grandfathered transmission rights a choice between a Fixed Price TCC with a 10-year or five-year duration. Five-year Fixed Price TCCs held by LSEs would be renewable upon expiration for an additional five years, with the new price determined by using the LTTR Proposal's pricing formula (or its successor) at the time of renewal. NYISO argues that giving LSEs the option to choose shorter duration LTTRs should ameliorate any concern that the difference between the nature of one-year and 10-year rights is too great for the price of the one-year right to predict accurately the value of the 10-year LTTR. NYISO explains that the use of five-year rights is consistent with Guideline (4), and, moreover, five-year LTTRs would only be used to smooth the

transition to the End-State Auction; no LSE would ever be required to take them instead of a 10-year right.[58]

63. NYISO explains that it is willing to explore providing LSEs an additional option to obtain Fixed Price TCCs for non-historic uses as part of the End-State Auction, although it would not be practical to implement such a feature in time for a Fall 2008 LTRR implementation date.[59] NYISO explains that it is not currently feasible to allow LSEs to nominate freely new points of injection for LTTRs because NYISO cannot conduct the iterative feasibility analysis that would be required to support such rights, given the limitations of the existing manual auction systems. Consequently LTTRs would not be available via allocation for non-historical uses of the transmission system.[60]

64. In response to the concern raised in the Order Establishing Technical Conference regarding whether the LTTRs created from AARs can provide adequate price certainty, NYISO proposes to enhance the LTTR Proposal by allowing entities, such as NYMPA and NYAPP, to obtain Fixed Price TCCs that would last until the end of their New York Power Authority (NYPA) contracts.[61] NYISO also proposes to discuss the specific details with stakeholders, including the municipal systems, e.g., whether this could be best accomplished by offering a Fixed Price TCC with a duration of 12 years or through some combination of shorter-term Fixed Price TCCs. The municipal systems whose grandfathered transmission rights expire in 2013 would be able to obtain Fixed Price TCCs until 2025. NYISO also commits to exploring the possibility of allowing LSEs that obtain Fixed Price TCCs to renew them for additional terms, at a new fixed price, as part of its development of End-State Auction rules. NYISO expects that at that time it will have the technical ability to support Fixed Price TCCs and renew them for additional terms.[62] NYISO expects to implement the End-State Auction years before any Fixed Price TCC expires.[63]

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[58] NYISO's October 25, 2007 Initial Post-Technical Conf. Comments at 5-6.

[59] *Id.* at 9-10.

[60] *Id.* at 8.

[61] *Id.* at 7.

[62] *Id.* at 7.

[63] *Id.* at 8 (citing NYISO's August 24, 2007 Response at 3-11, 23-24).

e. Commission Determination

65. We find that the LTTR Proposal, as modified by the enhancements described in the NYISO's post-technical conference comments, meets the requirements of Guideline (4) by providing LSEs that desire them with the ability to obtain LTTRs for at least a 10-year period. Additionally, LSEs will be able to acquire Fixed Price TCCs that match the remaining terms of their NYPA power contracts. In this regard, the modified proposal recognizes regional flexibility by harmonizing the LTTRs with the situations of individual LSEs that have existing long-term power supply arrangements.[64] Therefore, we direct NYISO to modify its original proposal to incorporate the proposed features and options that it presented in its post-technical conference comments within 30 days of the date of issuance of this order.

5. Guideline (5)

> *Load-serving entities must have priority over non-load serving entities in the allocation of long-term firm transmission rights that are supported by existing transmission capacity. The transmission organization may propose reasonable limits on the amount of existing transmission capacity used to support long term firm transmission rights.*

66. Guideline (5) protects transmission rights used to satisfy native load service obligations. In the Final Rule, the Commission found that both LSEs with long-term power supply arrangements and those with short-term power supply arrangements should receive the same preference for LTTRs, and that this preference is not shared with non-LSEs. The Final Rule also allowed transmission organizations to limit reasonably the amount of transmission capacity made available for LTTRs, and to restrict the amount of LTTRs any single LSE could obtain, provided the LSE's reasonable needs are met.

a. NYISO's LTTR Proposal

67. NYISO states that its proposed AAR allocation and grandfathered transmission rights conversion options satisfy Guideline (5)'s requirement for LSEs' access to LTTRs because AARs will be allocated to all LSEs, and existing grandfathered transmission rights are also predominantly, although not exclusively, held by LSEs. NYISO states that it cannot practically make fixed price LTTRs freely available to all LSEs at this time and must, therefore, either limit access to such rights in some reasonable fashion or not make them available at all. NYISO states that its proposal offers the class of LSEs that has

[64] Final Rule P 261.

generally been the most interested in obtaining LTTRs, i.e., current or past grandfathered rights holders, a fixed price to obtain such rights.[65] NYISO asserts that limiting the offer of Fixed Price TCCs to holders of expired grandfathered transmission rights is not unduly preferential and respects the established historic uses of the transmission system by allowing LSEs to obtain new LTTRs associated with the historic uses. Furthermore, all other LSEs will still have the opportunity to obtain long-term TCCs through the AAR conversion process. NYISO further argues that its proposal also allows each class of LSEs to have what it prefers, i.e., to choose whether to obtain LTTRs or short-term transmission rights.

68. NYISO defines an individual LSE's "reasonable needs" as its historic use of the transmission system, as identified by its expired or ongoing grandfathered transmission rights, and its share of the maximum amount of capacity that NYISO can practically make available to support new LTTRs.[66] NYISO maintains that it has allocated as much transmission capacity as it believes it can to support new LTTRs and believes that by giving each LSE a share of the total amount that has been set aside and by offering LSEs that want LTTRs greater access to them, the LTTR Proposal provides for LSEs' reasonable needs consistent with the Final Rule.[67]

69. NYISO explains that Fixed Price TCCs are available to holders of expired or expiring grandfathered transmission rights primarily to limit the potential for broad negative financial consequences in the TCC market that could occur if Fixed Price TCCs were under-valued as compared to the price determined in the auction for shorter term TCCs. By confining the opportunity to acquire TCCs at a fixed price to a small set of LSEs, NYISO intends to limit the financial impact of the potential subsidy that such an under-valuation would produce.[68]

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[65] Most of the grandfathered transmission rights in New York are (or were) held primarily by municipal utility systems and the New York TOs and are (or were) used to serve historical loads associated with service obligations from historical resources that are often associated with long-term power supply arrangements. In particular, most of the New York municipal utility systems that have participated in this proceeding have, or have had, fixed price firm transmission service.

[66] Transmittal Letter at 3.

[67] *Id.* at 5-9.

[68] NYISO's August 24, 2007 Response at 23.

70. With regard to the amount of capacity available for LTTRs, NYISO states that its LTTR Proposal, which enjoys broad stakeholder support, satisfies Guideline (5), as it allocates 55 percent of New York State's transmission capacity to support LTTRs. NYISO states that the amount set aside is comparable to the total amounts set aside by other transmission organizations whose compliance proposals have been approved by the Commission.[69]

71. Further, NYISO states that it is setting aside a substantial additional quantity of transmission capacity to support new rights, i.e., 23.75 percent of the transmission capacity associated with ETCNL, Original Residual TCCs, and expiring grandfathered transmission rights. In addition, the new options it would offer will allow LSEs to hold Fixed Price TCCs and exercise annual rights of first refusal after the expiration of their grandfathered transmission rights, which effectively means that LSEs can obtain "new" rights to support their historic transmission uses for at least an additional 10 years.

b. <u>Comments in Support</u>

72. Coral comments that the proposed market design complies with Guideline (5) and, based on the technical conference, it is not clear that there is still any dispute regarding NYISO's compliance.[70] Coral argues that in allocating 23.75 percent of the remaining transmission capacity for AARs, NYISO and the stakeholders took great care to ensure that a sufficient amount of capacity is preserved to continue the robustness of the existing TCC markets and serve the needs of competitive market participants and their customers.

73. Similarly, the New York TOs state that, after the technical conference, there is no longer a dispute that the LTTR Proposal meets market participants' reasonable needs for LTTRs.[71] The New York TOs believe that NYISO's proposal addresses the interests of all

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[69] *Id.* at 3 n.9 (citing *California Independent System Operator Corporation*, 120 FERC ¶ 61,023 (2007) (approving an LTTR compliance proposal under which 50 percent of system transmission capacity would be set aside to support LTTRs after a four year phase in and after netting out California's version of grandfathered transmission rights)).

[70] Coral's October 25, 2007 Comments on Technical Conference at 6 (citing Conf. Tr. 36-39).

[71] New York TOs' October 25, 2007 Comments on Technical Conference at 6 and 7 (New York TOs' October 25, 2007 Comments) (citing Conf. Tr. 76:3-6).

stakeholders in a fair and equitable manner,[72] and assert that in the NYISO market, where retail access exists, approximately 90 percent of the LSEs rely on shorter-term rights or financial hedges primarily because their load serving obligations can change monthly due to customer migration. The New York TOs assert that the vast majority of LSEs are disadvantaged to the extent that capacity is diverted from the short-term TCC market to the LTTR market and less than 10 percent of the existing LSEs desire LTTRs because they are not subject to load migration and they have access to long-term low cost power.[73]

c. Protests and Responses

i. Reasonable Needs

74. Originally, NYAPP challenged NYISO's proposal to limit new LTTR rights to 23.75 percent of the transmission capacity associated with ETCNL, Original Residual TCCs, and expiring grandfathered transmission rights. NYAPP argued that the 23.75 percent, or about 131 MW, of transmission capacity that would be available for AARs under the LTTR Proposal falls short of what NYAPP contends are the reasonable needs of LSEs.[74] In its initial post-technical conference comments, however, NYAPP indicates that it is now in "tentative agreement" that the Fixed Price TCC option would be sufficient to meet its members' needs with respect to their historic and current uses.[75] NYAPP's reply comments to the technical conference, however, clarify that there is substantial, but not complete, agreement on how the proposal would meet the "reasonable needs" of NYAPP members and other LSEs. NYAPP states that it is in tentative agreement that the current uses of the transmission grid to get Niagara Project power to municipals and cooperatives, including NYAPP members, is sufficient. However, NYAPP comments that it is not able to respond to NYISO's information about the NYAPP members' loads, i.e., Table 1-A:

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[72] *Id.* at 12.

[73] *Id.* at 5 & n.14 (citing Conf. Tr. 34:1-11).

[74] NYAPP's March 28, 2007 Answer at 16.

[75] *See* Request of NYAPP for Appointment of a Settlement Judge on an expedited Basis and Comments on Technical Conference, October 25, 2007, at 4 (NYAPP's October 27, 2007 Initial Comments).

Existing Long Term Transmission Wheeling Agreements, because that information was deemed "confidential" when filed.[76]

ii. Certification Requirement

75. NYAPP also protests NYISO's proposal that LSEs must qualify for the Fixed Price TCC by submitting a written certification that it is legally obligated to serve the historic load, and specify the need for the transmission capacity between the point of injection and point of withdrawal. NYAPP states that the proposal will allow NYISO discretion on the allocation of LSEs based upon an undefined certification process that fails to guarantee that NYAPP members will be able to obtain LTTRs. NYAPP states that any such ISO procedures should be filed with the Commission for approval before acceptance.

76. In response, NYISO states that the purpose of the certification requirement is to limit the availability of the Fixed Price Option to entities with a genuine need to hedge congestion risks in order to facilitate their ability to serve load on a long-term basis. NYISO states that there is no reason to include all of the particulars of NYISO's certification procedure in the tariffs. The proposed tariff revisions already include a general description of the certification requirement.

iii. Long-term TCC Auction

77. Coral questions whether NYISO's inability to offer auctions for TCCs with a duration greater than one year until it has implemented its End-State Auction software is adequate, asserting that there is an emerging need for entities to be able to obtain longer-term rights, for example in a one- to five-year range. DC Energy also urges the Commission to direct NYISO and its stakeholders to develop a long-term TCC auction open to all creditworthy market participants. DC Energy adds that there is no reason to exclude all non-LSEs from the long-term market as the Final Rule is clear that access to LTTRs should be available to all market participants.

d. Commission Determination

78. The Commission finds that NYISO's proposal to offer 10-year Fixed Price TCCs, with the enhancements presented in NYISO's post technical conference comments, generally meets the requirements of Guideline (5) for the initial implementation of LTTRs in NYISO. However, we find that the proposal to offer AARs does not qualify for

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[76] NYAPP's November 9, 2007 Reply Comments on Technical Conference at 2-3 (NYAPP November 9, 2007 Reply Comments).

consideration under Guideline (5) because, as explained in the discussion of Guideline (7) below, it fails to satisfy the fundamental requirements of Guideline (7). That is, to convert AARs into TCCs, an LSE must, in effect, submit a winning bid in an auction, a requirement that is not allowed under Guideline (7). Nevertheless, if NYISO and its stakeholders prefer to retain this design feature, we will allow NYISO to implement the AAR proposal in its current form for two main reasons: (1) we find it just and reasonable as a supplement to the other elements of the long-term firm transmission rights proposal that do comply with the Final Rule; and (2) it complements the other elements of NYISO's market design that are tailored to meet the needs of those market participants that prefer shorter-term transmission rights. Further, because no market participant would be required to purchase AARs, we determine that offering them on an optional basis would be beneficial.

79. To determine whether the proposal for Fixed Price TCCs meets the requirements of Guideline (5), we examine two factors: (1) the proposed criteria (including allocation priorities) for determining which LSEs may receive Fixed Price TCCs; and (2) whether the Fixed Price TCCs will be available in sufficient quantities to meet the reasonable needs of LSEs.

80. Although NYISO does not define "reasonable needs" within the context of a particular "reference year" or "baseline quantity," NYISO reiterates that a substantial portion of its transmission capacity already supports LTTRs in the form of grandfathered transmission rights. Under the proposal, Fixed Price TCCs are made available only to LSEs that have expired or expiring grandfathered transmission rights and are able to certify that they expect to need to use their historic transmission rights to serve their historic loads for the entire 10-year period. Each LSE that meets these criteria would be able to obtain up to 100 percent of its formerly grandfathered transmission rights as Fixed Price TCCs.[77] NYISO states that the LSEs that would be eligible to receive Fixed Price TCCs are those that have expressed the greatest interest in obtaining LTTRs, i.e., the municipal systems and cooperatives.[78] NYISO claims that it cannot make Fixed Price TCCs available for non-historic uses of the transmission system because of the limitations of NYISO's existing manual auction systems. However, it states that it is willing to

[77] NYISO Tariff, Attachment M, Third Revised Sheet No. 565, Original Sheet Nos. 565A-565C, proposed section 2A and NYISO's November 9, 2007 Reply to Technical Conference Reply Comments at 4.

[78] Transmittal Letter at 10.

explore the possibility of giving LSEs an additional option to obtain Fixed Price TCCs for non-historic uses as part of the End-State Auction.[79]

81. The Commission finds that NYISO's proposal to limit the availability of Fixed Price TCCs to the historical uses of LSEs with expired or expiring grandfathered transmission rights is reasonable for the initial implementation of LTTRs in New York. In this proceeding, no LSEs other than the municipal systems and cooperatives (as represented by NYAPP and NYMPA), which are grandfathered rights holders, have expressed an interest in obtaining LTTRs.[80] Therefore, the Commission is satisfied that the LSEs that have an immediate interest in obtaining LTTRs will be able to obtain them under NYISO's proposal for Fixed Price TCCs.

82. However, for the longer-term, limiting the availability of LTTRs to this small subset of market participants does not meet the requirements of the Final Rule. To fully comply with the requirements of Guideline (5), NYISO must expand the availability of LTTRs to LSEs that seek to use non-historic points of injection and withdrawal.[81] Such rights may take the form of Fixed Price TCCs, or other form of LTTRs that meet the requirements of the guidelines and is implemented in a non-discriminatory manner. Also, consistent with Guideline (5), NYISO may establish reasonable priorities for the allocation of these rights, such as a preference for LSEs with long-term power supply arrangements, and may propose reasonable limits on the amount of existing transmission capacity used to support the rights. NYISO may implement this requirement as part of its End-State Auction; however, NYISO must submit a compliance filing to implement this requirement no later than two years from the date of this order.

83. With regard to the question of whether the proposal for Fixed Price TCCs meets the reasonable needs of LSEs, NYISO claims that most municipal systems and cooperatives will be able to cover at least half of their peak load, as measured on the peak load day in 2006, with Fixed Price TCCs. NYISO adds that a number of the municipal systems will

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[79] NYISO October 25, 2007 Initial Post-Technical Conf. Comments at 9.

[80] We note that Coral and DC Energy, which are not LSEs, each express an interest in having the ability to obtain long-term TCCs through an auction. DC Energy urges the Commission to direct NYISO and its stakeholders to develop an auction for long-term TCCs that is open to all creditworthy market participants. DC Energy February 26, 2007 Comments at 5.

[81] Also, in response to the requests of Coral and DC Energy, we encourage NYISO to make available LTTRs to non-LSEs. Final Rule at P 326.

be able to cover their entire peak load with such rights.[82] NYISO states that it does not believe that there is any remaining dispute among the parties to this proceeding that NYISO's LTTR proposal satisfies the reasonable needs of LSEs, at least with respect to historic uses of the transmission system. Although NYAPP initially disagreed with this assessment, it states that it is now in tentative agreement that the current uses of the transmission grid to get Niagara Project power to the municipals and cooperatives, including NYAPP members, is sufficient.[83]

84. As for the certification requirement, we find it reasonable for NYISO to impose a certification requirement to ensure that the Fixed Price Option is limited to entities with a genuine need to hedge congestion risks in order to facilitate their ability to serve load on a long-term basis. This is particularly important, given that grandfathered transmission agreements, rather than a historic test year, are used as a basis for granting fixed price LTTRs. We note that NYISO's proposed tariff revisions already include a general description of the certification requirement. Under the "rule of reason," the NYISO Tariff must include only provisions that significantly affect rates, terms and conditions.[84] Consequently, we agree with NYISO that its tariff does not need to include all of the particulars of its certification process.

6. Guideline (6)

> *A long-term transmission right held by a load-serving entity to support a service obligation should be re-assignable to another entity that acquires that service obligation.*

85. The Commission stated that Guideline (6) is intended to comply with section 217(b)(3)(A) of the FPA, which requires that LTTRs be transferable to successors, ensuring that they follow migrating load. Noting that rules governing the reassignment of firm transmission rights that follow migrating load already exist, the Final Rule provides transmission organizations and stakeholders flexibility to propose similar rules for LTTRs.

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[82] NYISO October 25, 2007 Initial Post-Technical Conf. Comments at 11.

[83] NYAPP October 25, 2007 Post-Technical Conf. Comments at 4.

[84] *See City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (finding that utilities must file "only those practices that affect rates and service significantly, that are reasonably susceptible of specification, and that are not so generally understood in any contractual arrangement as to rend recitation superfluous").

The Final Rule states that this reassignment issue relates to transmission rights that are allocated preferentially to an LSE in accordance with Guideline (5) and not to rights acquired by an LSE via auction or direct assignment of funding for an upgrade.[85] Guideline (6) also allows the trading of transmission rights.

a. NYISO's LTTR Proposal

86. NYISO states that its compliance proposal will fully satisfy Guideline (6) since an LSE's share of AARs in each Load Zone will automatically change each year if it loses or gains load in proportion to other load in that zone. NYISO adds that Fixed Price TCCs will not automatically shift as load changes hands, but an LSE that holds such TCCs will be free to make financial arrangements to transfer them to other market participants. Similarly, to the extent that grandfathered transmission rights expire and are converted into AARs, or Fixed Price TCCs, the resulting rights can be transferred to follow load in the same manner as other AARs and TCCs.

b. Comments

87. NYAPP states that NYISO's proposal does not meet Guideline (6) because NYISO failed to address how reassignment would be addressed under the Fixed Price TCC proposal, i.e., the Fixed Price TCC proposal would not automatically shift LTTRs as loads change hands, but rather LSEs must make financial arrangements to transfer the value of the TCCs to other participants.

c. Answers

88. NYISO clarifies that although its tariffs do not specifically address the re-assignment of Fixed Price TCCs, and the original holder of such TCCs will be the Primary Holder, Fixed Price TCCs can be reassigned and can be sold through direct sales or centralized auctions. As was noted in the LTTR Proposal, the economic attributes of long-term TCCs can also be wholly or partially transferred through financial arrangements.

d. Commission Determination

89. The Commission conditionally accepts the LTTR Proposal as consistent with Guideline (6). The Final Rule provides flexibility for transmission organizations to establish the specific rules applicable to the reassignment of LTTRs for migrating load. NYISO acknowledges the migration of load and states that TCCs can be reassigned to

[85] Final Rule P 357.

provide for the transfer of LTTRs to follow load. However, NYISO must incorporate the reassignment provisions in its NYISO Tariff. In particular, the tariff provisions must allow the acquiring LSE to obtain, at its option, the Fixed Price TCCs (or their financial equivalent) associated with the load that it acquires. Therefore, we accept NYISO's proposal, conditioned on NYISO incorporating explicit reassignment provisions in its tariff. We direct NYISO to submit such tariff provisions within 30 days of the issuance of this order.

7. Guideline (7)

> *The initial allocation of the long-term firm transmission rights shall not require recipients to participate in an auction.*

90. Guideline (7) does not preclude a transmission organization from using an auction to allocate LTTRs; rather, it only precludes requiring an LSE to submit a winning bid in an auction in order to acquire LTTRs. The Final Rule described a number of different methods for allocating LTTRs.

a. NYISO's LTTR Proposal

91. NYISO states that the proposed Fixed Price Option TCCs fully comply with Guideline (7)'s requirements. NYISO states that the price paid for Fixed Price TCCs is tied to average prices in historic auctions and historic TCC payments. LSEs acquiring these TCCs will therefore be insulated from both the need to bid into future auctions and from exposure to future auction prices. The prices paid for these TCCs will be stable over the course of the 10-year duration of these TCCs, which should appeal to LSEs seeking long-term price certainty for the cost of their transmission hedges. NYISO also states that its proposed system of allocating AARs to LSEs and allowing them to convert them into TCCs at the applicable market clearing price complies with Guideline (7) because it does not require LSEs to win, or even to bid into, TCC auctions. Similarly, all AARs and TCCs created as a result of converting grandfathered transmission rights will be compliant with Guideline (7); if an LSE opts to convert an AAR, it cannot be outbid for TCCs.

92. NYISO also states that the grandfathered transmission rights that already exist under NYISO's system are fully compliant with Guideline (7). The transmission agreements from which these rights were derived were the product of bilateral negotiations that did not involve any kind of auction arrangement.

b. <u>Protests</u>

i. <u>Pricing of Fixed Price LTTRs</u>

93. NYMPA objects to NYISO's pricing of the Fixed Price TCCs, asserting that it is a form of marginal pricing that is not appropriate for the pricing of long-term TCCs because it is a short-term pricing mechanism. According to NYMPA, over the longer term, where LSEs simply desire to fix the cost of transmission service for long-term bilateral contracts, the buyer is not attempting to speculate on transmission congestion, but rather is using an allocation of transmission to deliver its purchased energy. This is not a marginal use of the transmission system, but constitutes base amounts of flow on the system and should be treated as such when developing pricing for LTTRs. NYMPA states that since it is not a marginal use, marginal pricing is not appropriate. NYMPA requests that the Commission order NYISO to develop a pricing option based on the fully embedded costs of transmission, like the long-term grandfathered transmission agreements that exist today.

94. NYISO states that historical TCC prices are suitable for valuing LTTRs because the congestion costs that LSEs are trying to hedge against are based upon TCCs. NYISO agrees with NYMPA that setting the price of Fixed Price TCCs based on the results of earlier one-year TCC auctions is not a perfect model, but that Dr. David Patton, NYISO's independent market advisor, has stated that it is the most accurate pricing model available and is reasonable. With regard to pricing based on the embedded costs of the transmission system, Dr. Patton finds that this would produce prices that have no relationship to the actual value of TCCs, and it would result in inequitable transfers of wealth between market participants. Under the pricing mechanism as proposed, Dr. Patton finds that there would be a rational relationship between congestion and price.

95. NYAPP also argues that it is unjust and unreasonable to impose an inflation factor and an option premium on LTTR holders, as has been recognized by the Commission.[86] NYAPP argues that neither an inflation factor nor an option premium is supported by the record, and neither has been approved by the Commission for any other transmission organization and, therefore, these should be rejected here as they violate the price certainty requirement.

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[86] NYAPP's November 9, 2007 Reply Comments at 7 (citing *Panhandle Eastern Pipe Line Co.*, 68 FERC ¶ 63,008, at 65,094 (1994) (rejecting use of inflation factors to project costs); *ANR Pipeline Co.*, 69 FERC ¶ 61,432, at 62,542 (1994); and *Williston Basin Interstate Pipeline Co.*, 56 FERC ¶ 61,104, at 61,371 (1991) (same)).

96. NYISO disagrees with NYAPP's contention that NYISO's proposed inflation factor, which is part of its formula for determining the value of Fixed Price TCCs, "violates [the] price certainty requirement,"[87] and further argues that NYAPP offers no explanation for this assertion. NYISO reiterates that the inclusion of an inflation adjustment in the Fixed Price TCC formula will not prevent an LSE from knowing in advance the total amount that it must pay for a Fixed Price TCC. NYISO also notes that the proposed rules governing the conversion of AARs into TCCs is only one of the ways that LSEs may obtain LTTRs under the LTTR Proposal.

97. The New York TOs agree with NYISO that the inflation adder is known before LTTRs are purchased, so it does not violate the price certainty requirement.[88] However, the New York TOs object to NYISO's proposed use of the Gross Domestic Product (GDP) Implicit Price Deflator in determining the price that an LSE would need to pay each year for a 10-year Fixed Price TCC. They argue that use of the GDP Implicit Price Deflator is not appropriate because it is a measure of past inflation, not expected inflation. They ask the Commission to direct NYISO to use a measure that reflects expected inflation over the 10-year lifespan of Fixed Price TCCs, such as the difference between the yields on inflation-adjusted bonds and non-inflation adjusted bonds.

98. The New York TOs also state that the tariff language contained in the LTTR Proposal for determining the amount that LSEs are charged for a Fixed Price TCC may yield a negative price and, consequently, recommend that a minimum price of zero be applied to Fixed Price TCCs.

ii. <u>Crediting</u>

99. Protesters raised issues regarding the method NYISO uses to credit TCC revenues to the TSC. NYAPP maintains that there is a computational issue by which TCC revenues are not directly credited to the holder of the rights.[89]

100. NYISO states that TCC auction revenues are allocated to the TOs based on formulas previously approved by the Commission and included in Attachment N to the

[87] NYISO's Post Tech. Conf. Reply Comments at 11 (citing NYAPP's October 27, 2007 Initial Comments at 7).

[88] New York TOs' November 9, 2007 Reply Comments at 10.

[89] NYAPP's October 25, 2007 Comments at 5 (citing NYAPP February 28, 2007 Protest at 19-20 and Conf. Tr. 93:9-10).

NYISO Tariff. Net auction revenues are allocated based on the value each TO's facilities bring to that auction. All the auction revenues that are allocated to each TO are then allocated to its retail customers, and wholesale customers such as direct users, and municipal utilities with their own distribution systems, on an energy load ratio share basis pursuant to Attachment H, "Annual Transmission Revenue Requirement for Point-to-Point Transmission Service and Network Integration Transmission Service," of the NYISO Tariff. Because TOs allocate auction revenue related to all parts on which the TO has an ownership interest on a load ratio share basis across all load zones in their service territory (or across all customers in the State in the case of the NYPA), auction revenue will not exactly match the intra-zonal cost of an LTTR since the cost of an LTTR is zone specific.[90]

101. NYISO notes that the embedded costs of the TO's facilities are also socialized across all customers in their service territory, thereby matching responsibility for the costs of the transmission system and the financial benefits that result from its use, consistent with Commission policy.[91] If a portion of an LTTR uses transmission facilities that are not owned, at least in part, by the LSE's host TO, it will not be offset by any auction revenue. NYISO states that the three Long Island municipal systems that have existing grandfathered transmission rights and that have objected to the LTTR Proposal will be less affected by this inconsistency because Long Island is a single-zone service territory. NYISO further states that the extent to which the LTTRs available to these entities when their grandfathered agreements expire will not be offset by auction revenues depends primarily on what portions of the LTTRs between the Niagara and Long Island zones are associated with transmission facilities in which their host TO has no ownership interest.[92]

102. NYISO argues that LTTR costs will not be, and should not be, fully offset when a municipal system holds LTTRs in excess of its load ratio share of available transmission

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[90] NYISO's October 25, 2007 Initial Post-Technical Conf. Comments at 15.

[91] *Id.* at 15-16 (citing *Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design*, Notice of Proposed Rulemaking at P 171, Docket No. RM01-12-000, FERC Stats. & Regs. ¶ 32,563 (2002)). NYISO states that the Commission invoked this policy preference to justify systems under which auction revenues were directly allocated to LSEs, but the principle is also reflected in the NYISO's existing auction revenue allocation system.

[92] NYISO's October 25, 2007 Initial Post-Technical Conf. Comments at 16.

capacity.[93] NYISO states that NYAPP is wrong to claim that the Final Rule requires that auction rights be directly converted or that the value of rights must exactly cover their cost.

iii. Auction

103. NYAPP asserts that NYISO has not created a full funding mechanism that ensures price certainty because it relies on auctions, which do not produce price certainty. Specifically, NYMPA states that for grandfathered transmission agreements, the option under the AAR proposal to convert to one-year TCCs priced at the level of a one-year TCC in the auction does not provide price certainty to an LSE, and is really no different than having to bid at an auction. Similarly, NYAPP states that under the NYISO proposal for AARs that are allocated to LSEs, because every LSE must pay the winning bid in an auction, it is a *de facto* auction participant, a situation that clearly violates Guideline (7).

104. In NYISO, an LSE pays for the embedded costs through the TSC and is allocated an AAR. However, to convert the AAR into an LTTR, the LSE would have to pay a market price that includes an inflation factor and an option premium for the LTTR. NYAPP claims that paying a market value, in addition to the embedded costs of the transmission system, would be unreasonable and unduly discriminatory. Finally, NYAPP argues that NYISO is not accurate when it says "[auction] revenues are in turn credited back to all of the TO's customers on an equal basis."[94] Instead, it argues that auction revenues and congestion rents are to be credited back under the wholesale TSC, and the wholesale TSCs change monthly, while the bundled delivery charges to retail customers remain constant.

iv. Grandfathered Transmission Rights: Embedded Cost

105. The New York TOs argue that when given the option of continuing their grandfathered contracts or taking service under the NYISO tariff, NYAPP members elected to extend their grandfathered transmission agreements until 2013. The New York TOs assert that the three Long Island municipals elected to continue the grandfathered transmission agreements because the pancaked embedded cost charges are less than the single TSC at the point of withdrawal plus the cost of congestion. Municipal utilities

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[93] NYISO's Post Tech. Conf. Reply Comments at 9.

[94] NYAPP's November 9, 2007 Reply Comments at 9.

located in other zones elected to terminate the grandfathered transmission agreements because the pancaked rates exceeded the rates they would pay under the NYISO Tariff.[95]

106. The New York TOs state that LSEs pay a TSC to the TOs, under which the TOs recover the embedded cost of the transmission system. The procedure for calculating TSCs includes an offset that reflects the revenue earned by each of the TOs from the sale or allocation of TCCs, and from grandfathered contract revenues. Therefore, the amount of revenue that the TOs recover through the TSC is reduced to reflect this offset. Consequently, the New York TOs state that NYAPP's assertion that its members would be assessed cost-based rates plus a market-based charge for TCCs is incorrect. As a result, the New York TOs state that NYAPP members choosing to acquire TCCs would pay a market-based charge for those TCCs plus a charge that recovers only the residual embedded costs. NYAPP members are treated the same way as any other LSE that does not hold a grandfathered contract because they pay the same TSC that any other LSE serving load in a particular zone would pay. Consequently, the New York TOs state that the approach embodied in NYISO does not double-recover costs, as the Commission has recognized in the past when dismissing arguments that this approach constitutes unacceptable "and" pricing.[96] The New York TOs assert that NYAPP is trying to reopen settled Commission policy regarding locational based marginal pricing and the NYISO market.[97]

107. NYISO argues that the LTTR Proposal does not discriminate in favor of the TOs or against municipal systems. NYISO asserts that NYAPP mischaracterizes the LTTR Proposal with its claim that it is unduly discriminatory "for the grandfathered transmission agreements held by the New York TOs' to be treated as LTTRs with cost-based rates, while the LTTRs (Fixed Price TCCs or otherwise) offered to other LSEs are at cost-based

[95] New York TOs' November 9, 2007 Reply Comments at 7 (citing NYAPP February 26, 2007 Protest at 11-12).

[96] *Id.* at 6 & n.21 (citing *Central Hudson Gas & Elec. Corp*, 86 FERC ¶ 61,062, at 61,213 (1999)); *see Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257, at 62,259 (1997) (finding that locational marginal pricing model does not violate the prohibition against "and" pricing).

[97] Coral agrees with the New York TOs that the criticism of the pricing proposal is unwarranted and does not justify any changes to the proposal. Coral's October 25, 2007 Post Tech. Conf. Comments at 2.

rates plus a 'market value.'"[98] NYISO states that its approach is comparable to the rule that has been in place since the start of its markets under which customers pay both the applicable TSC and a market-based TCC price. The only difference is that the LTTR Proposal, consistent with Guideline (7), does not require customers to actually participate in an auction to obtain LTTRs.[99]

108. NYISO explains that under the existing system, LSEs that obtain TCCs pay both the applicable TSC and a market-based price. NYISO believes that the market-based approach continues to be efficient, beneficial, and compatible with New York's retail access rules. NYISO also argues that NYAPP's claim that favored LSEs should be permitted to obtain new, and potentially extremely valuable, LTTRs at embedded cost rates so that they will be treated the same as holders of active grandfathered transmission rights ignores the fact that the special pricing for grandfathered transmission rights in New York was never intended to be permanent.[100] NYISO contends that, contrary to NYAPP's assertion, the LTTR Proposal's requirement that customers pay the applicable TSC and an additional amount to reflect the value of LTTRs is consistent with the Final Rule and NYISO's existing TCC rules.[101] NYISO argues that nothing in the FPA or the Final Rule prohibits such a proposal and the proposal suits the region's needs.

109. NYISO explains that currently when grandfathered transmission rights expire the associated capacity becomes available to sale at market-based prices in the TCC auctions. NYAPP, however, is asking that the Commission permit its members to extend (or revive) their grandfathered transmission rights at embedded cost prices and, as a result, is asking the Commission to require other NYISO customers to indefinitely subsidize its members' access to LTTRs, an outcome that is neither required by the Final Rule nor just and reasonable.[102]

110. Additionally, the New York TOs assert that the purchase of an LTTR to hedge an LSE's share of congestion costs is unrelated to the issue of which customers receive the resulting LTTR revenue. Under NYISO's proposal, those LTTR revenues would be

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[98] NYISO's November 9, 2007 Post Tech. Conf. Reply Comments at 14-16 (citing NYAPP October 27, 2007 Initial Comments at 7).

[99] *Id.* at 15.

[100] *Id.* at 13.

[101] *Id.* at 12-13 (citing NYAPP's October 27, 2007 Initial Comments at 7).

[102] *Id.* at 13.

passed through as a credit to the TSC in order to compensate the transmission customers that are responsible for paying the embedded cost of the transmission service area where their load is located. In order to obtain the TSC credit, a customer would need to be part of the group of customers that pay that TSC. The New York TOs state that under NYISO's LTTR Proposal, NYAPP members would pay the TSC at the point of withdrawal based only on each of their respective load ratio shares, and would not bear the full risks associated with their disproportionate rights to LTTRs. Thus, a municipal customer will receive a credit for LTTR revenues in direct proportion to the TSC costs it paid.[103]

111. The New York TOs assert that the protesters appear to want to obtain a portion of the revenue credit that would flow back to upstream TOs and their customers even though they would not be paying the TSC (embedded cost) of that upstream system. Consistent with the operation of NYISO's established TCC market mechanism, revenue credits from the sales of TCCs to a particular TO, including LTTRs, must, according to the New York TOs, flow only to the customers who pay for the costs of that TO's system and in proportion to their cost contribution. The New York TOs assert that if the protestors were to pay the TSC in order to receive revenue credits they would have to pay pancaked TSCs.[104] The New York TOs assert that the protesters are seeking preferential treatment by gaining access to credits without paying a TSC. It would also require the disaggregation of the embedded cost of the LTTR from each of the TO's respective system embedded cost TSC, which could require each TO to undertake a monthly calculation of the TSCs to be billed to individual (or classes of) customers within the applicable transmission service area.

v. Direct Allocation

112. NYAPP argues that a more reasonable approach for NYISO to achieve compliance with the Final Rule is through the direct allocation of LTTRs to LSEs.[105] The directly allocated capacity would match existing physical uses of the New York transmission system, and would not come out of the ETCNL used for the TCC auctions. The LTTRs would be fully funded on the same basis as the TOs' grandfathered transmission agreements, and the LSEs awarded such rights would pay for the embedded cost of the transmission system that supports those rights by paying the TSC of their host TO.

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[103] New York TOs' November 9, 2007 Reply Comments at 8-9.

[104] New York TOs' October 25, 2007 Comments at 11.

[105] NYAPP's March 28, 2007 Answer at 17.

113. NYAPP requests that NYISO implement a two-part proposal for allocating LTTRs to LSEs that would not undermine or disrupt the TCC auctions. The first part of the proposal, which is aimed at LSEs in upstate New York, would have NYISO directly allocate LTTRs from the available transmission capacity that is not reserved for the TOs' grandfathered transmission agreements and is not part of ETCNL. This direct allocation of LTTRs would not reduce the amount of capacity sold in the TCC auctions, which is limited to ETCNL, and would allow all market participants to continue to bid in the TCC auctions as they do presently.[106]

114. The second part of NYAPP's proposal pertains to downstate LSEs, where there is constrained transmission capacity and high congestion costs. NYAPP proposes that in 2013, when the grandfathered transmission rights of the three LSEs paying embedded cost to three TOs expire, the LSEs should be provided LTTRs that have a minimum 10-year term. NYAPP likens this proposal to NYISO's Fixed Price TCC option. The main difference in the NYAPP proposal is that the three LSEs would pay only the three pancaked wheeling charges, and not pay the two-year average congestion cost fixed price adder.[107] NYAPP further explains that a contribution would be made to the upstream TOs in recognition of the congestion costs they would forego to counter claims that NYAPP seeks "preferential treatment" by obtaining credits without paying a TSC. NYAPP states that it is not asking that Attachment N[108] be revised and argues that its direct allocation proposal is just and reasonable.[109]

115. NYAPP also argues that the direct allocation proposal would not lead to multiple TSCs and an undue administrative burden.[110] NYAPP argues that NYISO's claim that it may have to create new billing, accounting and cost allocation systems is no reason not to adopt the NYAPP direct allocation proposal. NYAPP also disagrees that there are "competitive LSEs" that might be disadvantaged by the direct allocation of LTTRs.

116. The New York TOs do not support NYAPP's two-part proposal. The New York TOs state that NYAPP seeks a continuation of cost subsidies that presently exist under

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[106] *Id.* at 5-6.

[107] *Id.* at 6-7.

[108] "Congestion Settlements Related to the Day-Ahead Market and TCC Auction Settlements."

[109] NYAPP's November 9, 2007 Reply Comments at 6.

[110] *Id.* at 8.

their grandfathered transmission agreements. The New York TOs then provide a detailed explanation of the flaws that they see in NYAPP's two-part proposal.

117. The New York TOs do not support any attempt to allocate or price LTTRs differently than the LTTR Proposal, such as by using a direct allocation method. They argue that to do so would require a major overhaul of NYISO's Tariff design (which currently assures transmission service without rate pancaking) and would disrupt existing multi-year rate agreements under which the TOs are bound at the State level. They argue that a direct allocation method could also be discriminatory to other customers by not adequately compensating the customers that pay for that TO's embedded costs.[111]

118. The New York TOs argue that while NYAPP accepts NYISO's proposal to award LTTR capacity rights because it grants the municipalities a vastly disproportionate share of LTTR capacity rights, NYAPP also seeks a price subsidy. The New York TOs state that NYAPP defends its effort to obtain allocated rights vastly in excess of its load ratio share at a price subsidy by incorrectly claiming that the Final Rule requires an allocated rights approach similar to that proposed by PJM. However, the New York TOs argue that the Final Rule clearly allows for other approaches that are consistent with NYISO's pre-existing market structure and related tariff.[112] The New York TOs and NYISO have repeatedly explained why an allocated rights approach would be inconsistent with NYISO's market tariff, would require multiple and repeated changes in each TO's TSC, disrupt multi-year rate agreements at the retail level, and require the reinstitution of TSC rate pancaking.[113] The New York TOs state that the current pricing proposal is consistent with the NYISO Tariff and would not over-recover costs or create any of the above-referenced problems.

119. Coral disagrees with NYAPP's two-part proposal, arguing that there is no legitimate reason for the customers of other utilities to subsidize the municipal electric

[111] New York TOs' October 25, 2007 Comments at 8-9. Under the LTTR Proposal, a LTTR holder would only pay the TSC of the TO whose transmission service area included the LTTR's point of withdrawal.

[112] New York TOs' November 9, 2007 Reply Comments at 5 & n.4 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs., Regs. Preambles ¶ 31,241, at P 458 (2007) (recognizing that there may be alternative designs for LTTRs)).

[113] *See* New York TOs' October 25, 2007 Comments at 8-9; New York TOs' August 24, 2007 Comments at 2-4; NYISO August 24, 2007 Response at 14-17.

utilities' cost for LTTRs. Coral further argues that there is no reason to treat competitive LSEs, or their customers, differently simply because they are not municipal entities. It states that NYISO's proposal provides a similar level of certainty to all LSEs, even though the municipal electric utilities are given substantially greater rights than other LSEs. Coral also argues that the competitive business model in NYISO is the preferred wholesale supply arrangement for many competitive LSEs operating in New York. Conversely, under the direct allocation approach, Coral states that an LSE's acquisition of TCCs and/or LTTRs may create an over- or under-hedge.

120. NYISO states that the Final Rule, which presented PJM's particular approach as an example for others to consider, did not determine that the PJM approach was the only path to compliance. NYISO states that the Commission's order approving PJM's compliance proposal was also clear that PJM's method was not the only way.[114]

121. NYISO states that, in its opinion, the only significant issue regarding Guideline (7) that remains after the technical conference is the pricing of LTTRs, which, under the LTTR Proposal, will be priced based on their actual value. NYISO argues that this approach avoids inequitable cost shifts, is consistent with the regional market design, has the blessing of the Independent Market Advisor, and reflects the preferences of nearly all the New York stakeholders.[115] Conversely, NYAPP's direct allocation proposal has none of these advantages.

122. NYISO states in its response to the Order Establishing Technical Conference that the Commission expressed interest in learning more about the issues surrounding the possible implementation of direct allocation methods, such as the model used by PJM. NYISO states that it considered adopting a PJM-like direct allocation system, but opted not to do so because of significant differences between the New York and PJM systems.[116]

123. NYISO explains that if NYISO and the New York TOs were directed to implement the PJM model, they would have to develop a "multiple TSC" system to reconcile TCC credits to individual entities, which would require difficult, time-consuming, and

[114] NYISO's March 13, 2007 Answer (citing *PJM Interconnection, LLC,* 117 FERC 61,220, at P 96 (2006)).

[115] NYISO's Post Tech. Conf. Reply Comments at 2.

[116] NYISO August 24, 2007 Response at 14.

expensive changes to their billing and accounting systems.[117] NYISO explains that the differences between the current NYISO and PJM approaches to allocating congestion hedging rights are far from arbitrary or accidental and that moving to the PJM model would be a radical shift and would leave NYISO with an LTTR allocation system inconsistent with other core elements of NYISO's overall design and transmission system cost allocation rules. Finally, NYISO argues that New York's municipal utility systems would be worse off under the PJM model than they would be under NYISO's proposal, especially after taking into account the enhancements that NYISO proposed in its October 25 comments.[118] (These enhancements are considered as part of the Guideline (4) discussion above).

c. <u>Commission Determination</u>

124. The Commission finds that, subject to modification as described below, NYISO's proposal to implement Fixed Price TCCs satisfies the requirements of Guideline (7). However, the Commission finds that the proposal to implement AARs does not meet the requirements of Guideline (7) because it effectively requires an LSE to submit a winning bid in an auction to acquire LTTRs and, as a result, exposes the LSE to unacceptable price risk.

125. First, with respect to AARs, NYISO proposes to allocate AARs to LSEs, which may then convert them into TCCs with a one-year duration by paying the market clearing price as determined in an auction for TCCs with the same points of injection and withdrawal. NYISO argues that its proposal complies with Guideline (7) because it does not require the LSE to win, or even to bid into, the TCC auction. The Commission disagrees. In order to determine a market clearing price for its TCCs, an LSE must participate in the auction as a price taker, which is equivalent to requiring the LSE to submit a bid with no upper bound. Indeed, this is confirmed by NYISO's statement that, if an LSE opts to convert its AARs, it cannot be outbid for TCCs. Most importantly, having to participate in the auction in this manner requires the LSE to commit to purchase the TCCs at a price that is not known at the time of the purchase commitment. Such a requirement is not compatible with Guideline (7).

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[117] NYISO's October 25, 2007 Initial Post-Technical Conf. Comments at 16-20 (citing NYISO's August 24, 2007 Response at 14-18); *see also* Tech. Conf. Tr. 134-40, 145-46.

[118] *Id.* at 3 and 18.

126. Although we find that the proposal to implement AARs does not meet the requirements of Guideline (7), we find that it can be a just and reasonable feature of NYISO's overall market design if it is offered as a supplement to an LTTR mechanism that meets the requirements of Guideline (7). Thus, if NYISO and its stakeholders agree, we will allow NYISO to retain this feature because we find that, as no market participant would be required to purchase AARs, offering them on an optional basis would be beneficial.

127. With respect to Fixed Price TCCs, the Commission finds that NYISO's proposal, with the pricing modifications described below, meets the requirements of Guideline (7) because any qualified LSE can purchase them without bidding in an auction and at a price that is known to the LSE before it makes a purchase commitment. The fact that the price of the Fixed Price TCCs is based in part on prices determined through recent auctions does not in itself conflict with Guideline (7). Indeed, the Commission finds that the proposal to use a combination of recent auction values for one-year TCCs and actual day-ahead congestion payouts to holders of TCCs to establish the basic value of the Fixed Price TCCs is just and reasonable. The data used are known and measurable, and because they represent important determinants of the market value of one-year TCCs, they provide a reasonable basis for estimating the annual value of longer-term TCCs. Contrary to the views of NYAPP, the Commission finds that market value as determined through NYISO's competitive auction processes can be an appropriate basis for pricing LTTRs and is fully compatible with the tenets of Guideline (7). We therefore reject NYAPP's proposal to require NYISO to make LTTRs available to LSEs through direct allocation.[119]

128. However, we find that other elements of the pricing proposal, namely the inflation adjustment and option premium, are not just and reasonable. The inflation adjustment would use the most recent GDP Implicit Price Deflator, compounded annually, as an estimate of inflation, to obtain a series of escalating annual prices corresponding to the 10-year life of the instrument. The option premium is described as an estimate of the value to the purchaser of having the option to buy, or not to buy, a long-term TCC at a fixed price. These adjustment factors attempt to estimate values that are not related to embedded costs

[119] It is important to note that, under the NYISO's proposal, many NYAPP members will be able to cover their entire peak load with Fixed Price TCCs. In regions that permit direct allocation of LTTRs, LSEs typically are able to cover only their base load with LTTRs. *See Midwest Independent Transmission System Operator, Inc.*, 119 FERC ¶ 61,143, at P 6 & n.5, P 156, P 158 (2007); *California Independent System Operator Corp.*, 120 FERC ¶ 61,023, at P 109 and 136 (2007); and *PJM Interconnection, LLC*, 117 FERC ¶ 61,220, at P 6 & n.5, P 56, P 78 (2006), *on rehearing*, 119 FERC ¶ 61,144, at P 30-31.

and, as NYAPP notes,[120] are not otherwise known and measurable or currently observable. Furthermore, these factors only serve to increase the price of the Fixed Price TCCs above the value of a series of equivalent one-year TCCs. The use of these factors gives no weight to the possibility that congestion could decline over a given path due to shifting flow patterns or the construction of network upgrades that expand transfer capability, among other things. Importantly, they do not allow for the possibility that the market value of a 10-year right could be less than the sum of the market values of 10 one-year rights, particularly given that, historically, the demand for long-term rights has not been as great as the demand for short-term rights. Therefore, we reject the inflation adjustment and option premium components of the Fixed Price TCC pricing formula, and direct NYISO to revise the pricing formula to remove these elements while retaining the historical pricing components (i.e., recent auction values for one-year TCCs and actual day-ahead congestion payouts) and other elements as proposed.

129. Finally, we note that NYAPP argues that, to obtain a Fixed Price TCC, an LSE must pay embedded cost plus market value. This, NYAPP argues, is unreasonable and in violation of Guideline (7). We disagree. First, we note that, in general, each LSE pays its share of embedded costs through a TO's TSC. However, each TO's TSC is reduced by the amount of revenue that the TO receives from TCC auctions and, in the future, the sale of Fixed Price TCCs. Consequently, while each LSE must pay a market value for its Fixed Price TCCs, those payments will be returned to LSEs, in the aggregate, through reduced TSCs. The net result is that LSEs, in the aggregate, pay only embedded costs. Of course, deriving the TSC in this manner means that, rather than paying a strict load ratio share of embedded costs, an LSE will pay a share that is adjusted to reflect the relative market value of the TCCs that it has purchased. Although, for any given LSE, the credit that the LSE receives through its TSC will be unlikely to offset exactly its payment for Fixed Price TCCs (as it might in PJM), that result is not unreasonable. Rather, it simply reflects a determination by NYISO and a majority of its stakeholders that LSEs that choose to hold more valuable TCCs should be required to pay a share of embedded costs that more closely reflects the market value of those TCCs. Accordingly, we direct NYISO to revise tariff sheets consistent with the above determination within 30 days of issuance of this order. In addition, we direct NYISO to incorporate in these revised tariff sheets the recommendation of the New York TOs that a minimum price of zero be applied to fixed price TCCs to avoid a negative price.

[120] NYAPP Reply Comments on Technical Conference at 7.

8. General Comments - Transmission Planning Requirements

130. The Final Rule requires each transmission organization to implement a transmission system planning process that will accommodate the LTTRs that are awarded by ensuring that they remain feasible over their entire term. The Commission found that this is essential in order to meet the full funding requirement of Guideline (2).[121] Additionally, in the Final Rule, the Commission required that each transmission organization make its planning and expansion practices and procedures publicly available.[122]

a. NYISO's LTTR Proposal

131. NYISO states that its existing TCC auctions and planning processes already satisfy this requirement with respect to TCCs and will do so for the longer-term transmission rights established under this compliance filing as well. All AARs and TCCs that NYISO would create under this compliance filing will be derived from existing sources of transmission capacity, i.e., ETCNL, Original Residual TCCs, and grandfathered transmission rights, that are already accounted for in NYISO's planning process. NYISO states that, based on the analysis conducted prior to each TCC auction, there is currently a considerable margin of transmission capacity available above and beyond what is required to ensure the feasibility of that portion of existing transmission capacity that will be used to provide these LTTRs.

132. NYISO states, furthermore, that any TCCs that may be acquired as a result of its LTTR proposal are now and will continue to be fully funded, thus providing certainty of both price and quantity. In addition, NYISO states, the TOs are responsible for the costs of transmission facilities that are required to meet load growth, in the absence of projects by new developers. NYISO states that it does not expect that its proposed LTTRs would become infeasible, but that it will make any necessary adjustments to its planning processes or other procedures to ensure the feasibility of LTTRs going forward. NYISO also states that in compliance with Order No. 890,[123] NYISO will soon commence the development of new economic transmission planning rules.[124] It states that it will keep its

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[121] Order No. 681 at P 453.

[122] *Id*. P 454.

[123] *Preventing Undue Discrimination and Preference in Transmission Service*, FERC Stats. & Regs. ¶ 31,241 (2007) (Order No. 890).

[124] NYISO March 13, 2007 Answer at 16-17. NYISO filed is compliance with the planning requirements of Order No. 890 in Docket No. OA08-52-000.

compliance obligations under the Final Rule in mind and will develop economic planning procedures that will accommodate LTTRs and ensure their feasibility.

133. In addition, NYISO states that it already complies with the Final Rule's requirement that it make its plans, planning procedures, and underlying data publicly available. Attachment Y, "Comprehensive Planning Process for Reliability Needs," to the NYISO Tariff, which establishes NYISO's comprehensive planning process for reliability needs, contains several provisions that require the disclosure of all non-confidential information used in its planning analysis.

b. <u>Protests</u>

134. NYAPP states that NYISO failed to comply with the Commission's direction by not providing an explicit statement of how its planning and expansion practices will take into account the need to accommodate allocated or awarded LTTRs for their full terms. NYAPP protests that NYISO's statement regarding allocation and pricing schemes was not adequate. NYAPP states that NYISO should be ordered to develop and present a concrete plan for transmission planning that includes consideration of LTTRs.

c. <u>NYISO Answer</u>

135. NYISO states that the Commission directed only that transmission organizations explain in their compliance filings how their planning and expansion procedures would accommodate long-term rights and ensure their feasibility. Transmission organizations were also required to make their transmission planning procedures and plans publicly available. NYISO states that it fully addressed each of these issues in its compliance filing letter. Unlike other transmission organizations, NYISO does not need to file tariff revisions in order to comply with the requirements of the Final Rule. For example, an entity that did not already fully fund transmission rights may have needed to make significant tariff changes. NYISO states that this was not necessary because it already has full-funding mechanisms in place.

d. <u>Commission Determination</u>

136. The Commission finds that, subject to the requirement described below, the LTTR Proposal complies with the Final Rule's requirement relating to transmission planning vis-à-vis ensuring feasibility of LTTRs. NYISO explained how its current transmission planning process accommodates the feasibility requirement and also explained how the proposed approach will continue to accommodate LTTRs that are awarded by ensuring that they remain feasible over their entire term. NYISO further explained that Attachment Y to the NYISO Tariff provides for sufficient public disclosure. We agree. However, we

remind NYISO of its obligation to file revised tariff sheets to implement any necessary future amendments relating to transmission planning to ensure the continued feasibility of LTTRs. For instance, in the event that the required filing NYISO makes to comply with Guideline (3) impacts the continued feasibility of LTTRs, NYISO is directed to make the appropriate tariff changes and a resulting compliance filing to incorporate necessary changes to the planning process.

C. Seams with Neighboring Transmission Organizations

137. The Final Rule requires transmission organizations to explain in their compliance filings how they propose to address potential seams issues, including differences with respect to the durations of LTTRs and the procedures, and timelines for obtaining such rights.

1. NYISO's Proposal

138. NYISO states that the LTTR Proposal is fundamentally compatible with the system of LTTRs that the Commission has approved for PJM and with the rights that would be created under ISO New England Inc.'s (ISO-NE's) recent compliance filings. NYISO states that all three transmission organizations will offer financial transmission rights that are similar to the others, and, during the stakeholder process that preceded the filing, none of the stakeholders identified any seams concerns. Therefore, NYISO states that it does not see any need to modify existing seams arrangements with ISO-NE or PJM at this time.[125]

2. Commission Determination

139. We find that the LTTR Proposal complies with the Final Rule as to the seams issue. In the Final Rule, the Commission directed each transmission organization to explain in its compliance filing how its proposal addresses potential seams issues, particularly with regard to the term of the LTTRs offered and the procedures and timelines for obtaining such rights. With regard to potential seams between transmission organizations, each transmission organization was required to explain why it has or has not elected to revise its seams agreements.[126]

140. We agree that there is no current need to modify existing seams arrangements with ISO-NE or PJM and find that the LTTR Proposal is fundamentally compatible with the

[125] Transmittal Letter at 34.

[126] Order No. 681 at P 107.

system of LTTRs that the Commission has approved for PJM[127] and conditionally approved for ISO-NE.[128] We also recognize, as noted by NYISO, that no parties raised issues here or identified any seams concerns that arose during the stakeholders' process that preceded this filing.

D. Effective Date – Docket No. ER07-521-001

141. On December 20, 2007, NYISO submitted a response in Docket No. ER07-521-001 to the Commission directive in the Interim Order that discusses the proposed effective date of the LTTR proposal.[129] Noting that NYISO stated at the technical conference that it would not be able to implement LTTRs until the Fall of 2008, and that settlement judge procedures were being ordered, the Commission directed NYISO to inform it of a revised proposed effective date during the Fall of 2008, and, when it is requesting Commission action to support the new date.

142. NYISO states that it is no longer practicable for it to implement all elements of the proposal by Fall 2008. NYISO goes on to state that it would be able to implement core features of the proposal by Fall 2008 with remaining elements going into effect by Spring 2009, assuming the Commission issues an order by mid-March 2008 that accepts a proposal that is substantially similar to the original plan (including the enhancements proposed following the technical conference). NYISO states that it has substantial implementation work to be completed prior to implementing the LTTR rules. NYISO states that it plans to implement the LTTR rules in advance of either the spring or fall centralized TCC auction, as the price for LTTRs is based on the price for the one-year AARs resulting from these auctions. The auction process for terms beginning November 1, 2008 begins in July. NYISO proposes, however, that it could implement the Fixed Price TCC component in time for the Fall 2008 auction and implement the AAR-related provisions for the Spring 2009 auction, since it is the Fixed Price TCC that has the most interest among market participants. Under this two-stage implementation, NYISO states that it must have an order from the Commission by March 15, 2008. Alternatively,

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[127] *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,220 (2006), *reh'g denied*, 119 FERC ¶ 61,144, *reh'g denied*, 121 FERC ¶ 61,073 (2007).

[128] *ISO-New England, Inc.*, 122 FERC ¶ 61,173 (2008).

[129] Interim Order at P 8.

NYISO would implement the entire LTTR proposal at one time for the Spring 2009, and would need an order from the Commission by May 1, 2008.[130]

1. Commission Determination

143. The Commission does not believe that the modifications to NYISO's original filing directed above constitute major redesigns of the type that would cause a major delay in implementing LTTRs. The modifications are those proposed by NYISO in their post-technical conference comments, as well as a change to the method by which the LTTRs are priced. NYISO states that it contemplates these enhancements would be met in the timeline proposed in the December 20 filing, i.e., the Fixed Price TCC portion implemented for the Fall 2008 Centralized TCC Auction, and the AAR-related provisions implemented for the Spring 2009 Centralized TCC Auction. Regarding the latter, the removal of the inflation adder and the option premium should actually simplify the process from an implementation standpoint. Therefore, the Commission directs NYISO to implement its LTTR Proposal as modified herein. That is, the Fixed Price TCC stage is to be effective on June 1, 2008 to support the November 1, 2008 TCCs, and the remainder of the LTTR proposal is to be effective December 1, 2008 to support the Spring 2009 auction. NYISO is directed to file revised tariff modifications that meet this schedule according to the timetable set forth in this order. To support the November 1, 2008 TCCs, since there is good cause, we will waive the 60-day notice requirement, [131] and require the filing to be made no later than 30 days from the date of issuance of this order. The remainder of the LTTR Proposal should be filed no later than 60 days prior to its December 1, 2008 effective date. We do not believe that the small disparity between the date NYISO requested Commission action on this filing, i.e. March 15, 2008, and the date of this order should materially affect NYISO's ability to meet this implementation schedule.

The Commission orders:

(A) NYISO's LTTR Proposal is hereby approved except as discussed in the body of this order.

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[130] NYISO states that should the Commission require major changes to the proposal, that it would need significantly more time to implement.

[131] *Central Hudson Gas& Elec. Corp.*, 60 FERC ¶ 61,106, at 61,339, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

(B) NYISO is directed to make additional compliance filings regarding Guidelines (3), (4), (6), and (7) within thirty (30) days of the date of this order, as discussed in the body of this order.

(C) NYISO is directed to make a compliance filing consistent with Guideline (3) no later than sixty (60) days prior to November 1, 2008.

(D) NYISO is also directed to make a compliance filing to make LTTRs available for non-historical points of injection and withdrawal no later than two years from the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.