

101 FERC ¶ 61, 230
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

KeySpan-Ravenswood, Inc.

v.

Docket No. EL01-50-002

New York Independent System Operator, Inc.

ORDER ON COMPLIANCE FILING

(Issued November 22, 2002)

1. In this order, we accept for filing, as modified, tariff revisions submitted by the New York Independent System Operator, Inc. (NYISO) to comply with our May 15, 2002 order (May 15 Order),¹ effective 120 days after the date of issuance of this order, as requested. In the May 15 Order, we directed NYISO to revise its tariff to provide for transmission of station power.²
2. Our decision in this order benefits market participants by determining the appropriate cost responsibility for the transmission of station power within the NYISO.

Background

3. The May 15 Order addressed a complaint filed by KeySpan-Ravenswood, Inc. (KeySpan) against NYISO alleging that NYISO's Market Administration and Control

¹ KeySpan-Ravenswood, Inc. v. New York Independent System Operator, Inc., 99 FERC ¶ 61,167, order on reh'g, 100 FERC ¶ 61,201 (2002).

² Station power is defined as the electric energy used for the heating, lighting, air-conditioning, and office equipment needs of the buildings on a generating facility's site, and for operating the electric equipment that is on the generating facility's site. See PJM Interconnection, LLC, 94 FERC ¶ 61,251 at 61,889 (2001).

Area Tariff (Services Tariff) failed to address transmission of station power. In particular, KeySpan requested modifications to NYISO's Services Tariff to allow generators directly connected to the transmission grid to obtain station power from NYISO and to net such power against its sales to the NYISO, thus treating station power as negative generation.

4. The May 15 Order granted KeySpan's complaint, rejected its proposed tariff changes and directed a compliance filing that addressed the delivery of station power. NYISO was also instructed that it must allow self-supplying merchant generators to net station power against gross output over some reasonable time period.

NYISO's Compliance Filing

5. On September 20, 2002, NYISO submitted its compliance filing, proposing to adopt rules very similar to those accepted by the Commission in a series of PJM orders³ and other recent Commission precedent addressing ramifications of station power service. NYISO believes that its proposal will prevent emergence of new seams issues.

6. Specifically, NYISO proposes to add to the Services Tariff a new provision defining station power, consistent with the PJM orders, as energy used for operating the electrical equipment, and for meeting incidental heating, lighting, air conditioning and office equipment needs on a generator site. The proposed definition excludes any energy used to power synchronous condensers, for pumping at a pumped storage facility, or for black start capability service.

7. NYISO also proposes to adopt a new provision addressing procurement of station power in three circumstances, *i.e.*, self-supply, remote self-supply at the price set by the NYISO LBMP⁴ markets and, to the extent that transmission service is involved, third party supply. The proposed language permits generators to arrange for any necessary transmission service under NYISO's Open Access Transmission Tariff (OATT), while leaving necessary local distribution service arrangements to state regulators and transmission owners' retail tariffs.

³PJM Interconnection, LLC, 94 FERC ¶ 61,251 (2001) (PJM II); PJM Interconnection, LLC, 95 FERC ¶ 61,333 (2001) (PJM III); PJM Interconnection, LLC, 95 FERC ¶ 61,470 (2001) (PJM IV).

⁴LBMP (location based marginal price) is a pricing methodology under which the price of energy at each location in the New York transmission system is equivalent to the cost to supply the next increment of load at that location.

8. In an effort to comply with the Commission's directive to allow netting of station power over a reasonable period of time, NYISO proposes to adopt a one-month netting period. NYISO states that the proposed netting period is identical to the station power netting period accepted in PJM IV. NYISO explains that, as in PJM, for any interval in which a generator is injecting energy into the New York State Power System it will be paid the applicable NYISO LBMP. Conversely, for any interval in which a generator is withdrawing energy to meet its station power needs it will pay the applicable NYISO LBMP. NYISO thus concludes that its use of monthly netting will not result in the netting of energy imbalances between high and low-priced hours.⁵ Monthly netting will simply determine whether a generator has self-supplied, in which case it will not pay transmission charges. If the generator resorts to remote self-supply or third party supply to meet its station power needs, monthly netting will determine the quantity of transmission that the generator must obtain.⁶ The compliance filing does not address the implications of monthly netting for state-jurisdictional local distribution service.

9. Furthermore, NYISO's compliance filing requires that generators that secure transmission service to remotely self-supply station power do so under Part II of the NYISO OATT⁷ and pay the hourly rate for firm point-to-point transmission service under Rate Schedule 7.⁸ NYISO also proposes to exempt from ancillary services charges transmission service under the NYISO OATT used for remote self-supply of station power.

⁵See PJM IV at 62,684.

⁶The need for transmission will be a function of whether the generator is served by transmission or local distribution facilities.

⁷ Part II of NYISO's OATT prescribes terms and conditions for firm and non-firm point-to-point transmission service over the transmission facilities of the parties to the ISO/Transmission Owner (TO) Agreement.

⁸ Schedule 7 of NYISO's OATT contains the billing and settlement terms for firm point-to-point transmission service and identifies which customers are responsible for paying each of the charges.

10. For third party supply of station power involving transmission service, delivery will be under Part IV of the NYISO OATT,⁹ unless the generator and the relevant transmission owner make other arrangements. Likewise, NYISO's usual transmission service charges, New York Power Authority transmission adjustment charges, congestion charges and losses will apply.

11. Furthermore, NYISO proposes to adopt rules that prohibit remote self-supply from affiliated generators and that govern remote self-supply from partially-owned generation. Lastly, NYISO will amend the definition of Adjusted Actual Peak Load of Section 2.2a of the Services Tariff to ensure that third party deliveries of station power do not distort determination of Installed Capacity Requirements.

12. In addition, NYISO states that, as directed by the May 15 Order, it has ensured that the filing reflects stakeholder input by holding several stakeholder meetings, soliciting comments, and briefing NYISO's Scheduling and Pricing Working Group and the Management Committee.

13. NYISO requests an effective date 120 days after the date of issuance of this order. NYISO explains that it requires additional time for implementation of the tariff revisions.

Notice of Filing, Motions to Intervene, and Protests

14. Notice of the filing was published in the Federal Register, 67 Fed. Reg. 62,048 (2002), with comments, protests and interventions due on or before October 11, 2002. Motions to intervene and protests were timely filed by entities listed in the Appendix to this order. Project Orange Associates LLC filed a late motion to intervene. KeySpan, Niagara Mohawk Power Corporation (NIMO), AES NY, L.L.C. and AES Eastern Energy, L.P. (AES), and Independent Power Producers of New York (IPPNY) filed answers to the protests. NYISO also filed an answer to answers.

⁹ Part IV of NYISO's OATT sets forth special provisions for retail transmission services over the transmission facilities of the parties to the ISO/TO Agreement. Part IV applies only to eligible customers taking service under retail access tariffs filed with the New York Public Service Commission (New York Commission) and this Commission.

Discussion

A. Procedural Matters

15. Pursuant to Rule 214(c) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(c) (2002), the timely, unopposed motions to intervene serve to make the movants parties to this proceeding. Given the lack of undue prejudice and the party's interest, we find good cause to grant under Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2002), this unopposed, untimely motion to intervene in this proceeding. Answers to protests and answers are generally not permitted pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2002). We are not persuaded to allow the answers to the protests and answers.

16. We accept for filing NYISO's proposed tariff revisions, effective 120 days after the date of issuance of this order, as requested, subject to the modification discussed below. We note that NYISO's compliance filing is generally supported by many of the intervenors.¹⁰ The Commission, however, also received protests challenging individual aspects of the NYISO's compliance filing. We address the issues raised by protesters below.

B. Transmission Charges

17. Orion Power New York GP, Inc. (Orion) and IPPNY argue that only NYISO's OATT rate should apply when a generator takes station power using both local distribution and transmission facilities. In Orion's opinion, state regulation should apply only if local distribution facilities are the only facilities used in connection with delivery of station power. In addition, IPPNY requests that the Commission direct NYISO to clarify that generators utilizing transmission service under Rate Schedule 7 pay the wholesale transmission service charge.

18. The New York Commission, however, requests that NYISO's tariff be clarified that generators are not exempted from state charges for retail delivery service (i.e.,

¹⁰ KeySpan, PSEG Companies (PSEG), NRG Companies, Dynegy Power Marketing, Inc., Sithe Power Marketing, L.P., Sithe/Independence Power Partners, L.P., Dynegy Power Marketing, Inc., New York Power Authority, AES, IPPNY submitted supporting comments.

delivery service over local distribution facilities). The New York Commission argues that even when the delivered energy is not considered to be a sale due to netting, generators should be required to pay retail delivery charges.

19. Transmission Owners of New York (Transmission Owners) and NIMO agree with the New York Commission's assertion that NYISO's proposal will result in exemption of remotely self-supplying generators from retail delivery charges. They propose to require that all deliveries of station service power be placed under Part IV of the NYISO OATT, which governs all retail transmission service over transmission facilities of the parties to the ISO/TO Agreement. Transmission Owners argue that because generators' consumption of station power through self-supply or remote self-supply is end use, use of transmission facilities to deliver station power to a generating station constitutes retail transmission service and thus retail transmission charges under Part IV of NYISO's OATT should apply. Transmission Owners add that NYISO's compliance filing violates the ISO/TO Agreement by proposing changes to policies and tariffs relating to retail transmission.

20. We believe that the proposed tariff language identifies the charges to be paid under Schedule 7 and find that additional clarifications are not necessary. Moreover, as we held in PJM III, "[d]epending on the situation, the delivery of station power could be over transmission under our jurisdiction, or involve local distribution facilities subject to state jurisdiction, or both."¹¹ To the extent that transmission facilities are involved, such delivery service will be subject to NYISO's OATT. Any delivery of station power over local distribution facilities, and the compensation for such delivery is a matter properly for the New York Commission and not for this Commission.¹²

21. In response to Transmission Owners' assertion that transmission charges under Part IV of NYISO's OATT, associated with unbundled retail access, should apply to self-supply and remote self-supply on the ground that self-supply and remote self-supply are sales for end use, as we explained in PJM II:

Because a self-supplying generator is not using another's generating facilities, it is not causing another to incur costs associated with the usage of the other's generating resources

¹¹ See PJM III at 62,184.

¹² See generally Sunbury Generation, LLC, 99 FERC ¶ 61,168 at 61,683, order on reh'g, 100 FERC ¶ 61,200 (2002); USGen New England, Inc., 99 FERC ¶ 61,169 at 61,686, order on reh'g, 100 FERC ¶ 61,199 (2002).

that would warrant a form of consideration. In other words, there is no sale (for end-use or otherwise) between two different parties, but only one party using its own generating resources for the purposes of self-supply and accounting for such usage through the practice of netting.¹³ (Emphasis provided)

Thus, because a generator that self-supplies or remotely self-supplies does not engage in a sale at retail or any other kind of sale, the charges under Part IV of the NYISO OATT associated with unbundled retail access are not applicable to self-supplied or remotely self-supplied station power. To the extent a generator needs transmission to remotely self-supply, point-to-point transmission service charges under Part II of the NYISO's OATT will apply.

C. Netting Issues

22. The New York Commission argues that NYISO's proposal fails to properly charge generators for unbundled transmission service. The New York Commission explains that in on-site netting, self-supplied generation is delivered just as in any other LBMP transaction. The New York Commission further asserts that there is very little merit in exempting generators using remote self-supply from ancillary services charges. It believes that it is not reasonable to treat generators self-supplying station power differently from those purchasing station power from third parties. The New York Commission argues that such an approach ignores the operating characteristics of the transmission system. Accordingly, the New York Commission requests the Commission to reject the NYISO-proposed exemption from ancillary services charges.

23. In PJM II, we found that the practice of netting station service power "will better ensure comparable treatment, and will address the concerns of the merchant generators that some vertically-integrated utilities are favoring their own or affiliated generating facilities to the competitive disadvantage of merchant generators."¹⁴ Also, we explained that "because vertically-integrated utilities own transmission lines that interconnect their generating facilities, these generators may never have to pay a third party's transmission

¹³ See PJM II at 61,890.

¹⁴ See PJM II at 61,893.

charges for the delivery of station power."¹⁵ We accept NYISO's proposed methodology for netting of self-supply on the same basis, thus eliminating disparities between merchant generators and vertically-integrated utilities. In regard to the exemption from ancillary services charges, we are satisfied with justification of the exemption provided by NYISO that the administrative costs associated with calculation of ancillary services charges related to self-supply and remote self-supply would not be justified given the relatively small charge amount involved.¹⁶ We also find that this exemption from ancillary services charges will further ensure comparable treatment of merchant generators and integrated utilities.

24. Additionally, NIMO opposes the monthly netting provision, suggesting that netting should occur over a period of no more than one hour. We disagree; we will accept NYISO's proposed monthly netting for several reasons. First, monthly netting is consistent with the practice in the neighboring PJM control area, a practice that the Commission has accepted.¹⁷ Second, it also promotes uniformity in treatment of station power among merchant generators and vertically-integrated utilities. In addition, as a practical matter, monthly netting corresponds to NYISO's billing and accounting practices. Finally, there is nothing inherently unreasonable about monthly netting.¹⁸

25. Orion requests the Commission to direct NYISO to clarify that all energy received by a generator, no matter at what voltage or meter, is netted against all energy produced by a facility in a given month. We find Orion's request reasonable and we will grant it. We direct NYISO to file revised tariff sheets to clarify that any energy delivered that falls under the definition of station power must be netted against energy produced during the given month.

D. Effective Date

26. PSEG and KeySpan protest NYISO's request to postpone the effective date until no earlier than 120 days after the date of issuance of this order. They argue that NYISO has failed to justify this 120-day delay and that the delay will result in a substantial

¹⁵ See id.

¹⁶ See NYISO's Compliance Filing and Request for Expedited Action at 8 n.21 (Docket No. EL01-50-002 Sept. 20, 2002).

¹⁷ See PJM IV at 62,684-85.

¹⁸ See id.

monetary impact upon their generation operation. PSEG and KeySpan state that the changes to be developed are accounting in nature, not market design changes, and in any event, NYISO may delay actual computation of usage and billing and address those through billing adjustments. PSEG request that the Commission make the effective date of NYISO's compliance filing the date of issuance of this order and direct NYISO to make billing adjustments when the necessary software is deployed. KeySpan requests a November 19, 2002 effective date, *i.e.*, 60 days after the NYISO's compliance filing.

27. We disagree with PSEG's assertion that NYISO has failed to justify the necessity for the requested effective date. We find convincing NYISO's arguments for delaying the development of appropriate software until it is certain which tariff revisions are required, recognize NYISO's reluctance to expend funds and staff resources unnecessarily, and agree that manual implementation is inadvisable as a stop-gap measure. The use of billing adjustments would add an additional level of fiscal uncertainty in the market that is unjustified. For these reasons, we grant NYISO's request for an effective date 120 days after the date of issuance of this order.¹⁹

E. Miscellaneous

28. Transmission Owners argue that the instant filing is not a proper compliance filing because it contains provisions that the Commission stated should not track aspects of PJM's station power model. Transmission Owners also state that NYISO's compliance filing violates the NYISO governance rules because it was made without Management Committee concurrence. Transmission Owners also argue that NYISO's compliance filing has not met the burden under section 206 of the Federal Power Act;²⁰ NYISO has failed to demonstrate that its existing station power policy is unjust or unreasonable, neither has NYISO shown that the proposed policy is just and reasonable.

29. In the May 15 Order acting on KeySpan's complaint, we found that NYISO's approach to station power was unjust and unreasonable, and ordered NYISO to provide a remedy. We find that NYISO has done so in a comprehensive and reasonable manner by proposing tariff revisions that have been vetted before the Commission in this proceeding. The fact that the Commission did not require specific language certainly does not make the compliance filing at issue here infirm or preclude NYISO from taking

¹⁹ See *Accord Portland General Electric Company*, 98 FERC ¶ 61,050 at 61,133 (2002) (notwithstanding protestor's request, Commission did not make proposed rates effective earlier than the date the filing public utility requested).

²⁰ 16 U.S.C. § 824e (2000).

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guidance from the Commission's prior orders. Additionally, even though NYISO's governance rules do not require the Management Committee's approval of a Commission-directed compliance filing, NYISO ensured that its compliance filing reflects stakeholder input by holding stakeholder meetings, soliciting comments, and briefing NYISO's Scheduling and Pricing Working Group and the Management Committee.

30. For these reasons, we accept NYISO's proposal for filing, effective 120 days after the date of issuance of this order, subject to the modification discussed above.

The Commission orders:

(A) NYISO's compliance filing is hereby accepted for filing, as modified, effective 120 days after the date of issuance of this order.

(B) NYISO is hereby directed to file, within 30 days of the date of issuance of this order, revised tariff sheets to provide clarification that all energy received, no matter at what voltage or meter, is netted against all energy produced in a given month.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.

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Appendix

KeySpan-Ravenswood, Inc. v.
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AES NY, L.L.C. and AES Eastern Energy, L.P.
Dynegy Power Marketing, Inc.
Entergy Nuclear Fitzpatrick, LLC, Entergy Nuclear Indian Point 2, LLC,
and Entergy Nuclear Indian Point 3, LLC
Independent Power Producers of New York
KeySpan-Ravenswood, Inc.
New York Power Authority
New York Public Service Commission
Niagara Mohawk Power Corporation
NRG Companies
Orion Power New York GP, Inc.
PSEG Companies
Sithe Power Marketing, L.P. and Sithe/Independence Power Partners, L.P.
Transmission Owners of New York