

114 FERC ¶61,267  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

New York Independent System Operator, Inc.                      Docket Nos. ER01-2230-001 and  
ER01-2230-002

ORDER ACCEPTING COMPLIANCE FILING, AS AMENDED,  
AND DIRECTING REFUNDS AND REFUND REPORT

(Issued March 16, 2006)

1. In this order, the Commission addresses the New York Independent System Operator, Inc.'s (NYISO) compliance filing specifying the treatment of Wheeling Revenues in the determination of a transmission owner's monthly Wholesale Transmission Service Charge (Wholesale TSC) under the NYISO's Open Access Transmission Tariff (OATT). On September 21, 2001, NYISO and certain Transmission Owners<sup>1</sup> made a filing (Compliance Filing) to comply with a Commission order conditionally accepting an informational filing (Informational Filing)<sup>2</sup> made pursuant to a settlement agreement (Wholesale TSC Settlement)<sup>3</sup> previously approved by the Commission.<sup>4</sup> For the reasons discussed below, we will accept the Compliance Filing, as amended, and direct Niagara Mohawk Power Corporation (Niagara Mohawk) to make refunds and file a refund report.

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<sup>1</sup> The Transmission Owners at that time were the Member Systems of the New York Power Pool. They subsequently became Members of the Transmission Owners Committee of the Energy Association of New York State. They are Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Long Island Power Authority; New York State Electric & Gas Corporation; Orange and Rockland Utilities, Inc.; New York Power Authority (NYPA); Niagara Mohawk Power Corporation (Niagara Mohawk); and Rochester Gas and Electric Corporation.

<sup>2</sup> The Informational Filing addressed the operation of the Wholesale TSC formula for first fifteen months of NYISO's operations under its OATT.

<sup>3</sup> *New York Independent System Operator, Inc.*, 96 FERC ¶ 61,169 (2001) (July 2001 Order).

<sup>4</sup> *Central Hudson Gas & Electric Corporation*, 92 FERC ¶ 61,128 (2000) (TSC Settlement Order).

## I. Background

2. On January 27, 1999, the Commission approved the Transmission Owners' proposal to employ their existing transmission revenue requirements in designing their Wholesale TSC rates under NYISO's OATT, and set for hearing and settlement judge procedures the appropriate billing units divisor to use in that rate design.<sup>5</sup>

3. The subsequent Wholesale TSC Settlement allowed the Transmission Owners to increase their Revenue Requirement<sup>6</sup> to reflect costs related to pre-NYISO OATT grandfathered arrangements,<sup>7</sup> as long as any revenues related to these arrangements were included as revenue credits in the Wheeling Revenue component of the formula.<sup>8</sup>

4. Under the Wholesale TSC Settlement, NYISO was to make an informational filing describing the operation of the Wholesale TSC formula after NYISO had been operational for fifteen months. NYISO made the Informational Filing on June 1, 2001.

5. On June 22, 2001, the Municipal Electric Utilities Association of New York (MEUA) filed a protest alleging, among other things, that NYISO and the Transmission Owners, particularly Niagara Mohawk, should file additional information concerning the Wheeling Revenues component of the Wholesale TSC formula. According to MEUA,

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<sup>5</sup> *Central Hudson Gas & Electric Corporation*, 86 FERC ¶ 61,062 at 61,212 (1999).

<sup>6</sup> The Wholesale TSC =  $\{ (RR/12) + (CCC/12) + (LTPP/12) - SR - ECR - CRR - WR \} / (BU/12)$  where: "RR" is the Annual Transmission Revenue Requirement; "CCC" is the Scheduling, System Control and Dispatch Costs of the Transmission Owner; "LTPP" is the Transmission Owner's annual Net LBMP (Locational Based Marginal Price) Transition Period Payment; "SR" is Sales Revenue from Transmission Congestion Contracts (TCCs); "ECR" is the Transmission Owner's revenues (positive) or costs (negative) from the allocation of Excess Congestion Rents (Congestion Rents collected by the NYISO, less Congestion Payments); "CRR" is the Transmission Owner's Congestion Payments received from Grandfathered TCCs and Imputed Revenues from Grandfathered Rights from Existing Transmission Agreements, the expenses for which are included in the Transmission Owner's RR; "WR" is the Wheeling Revenues received from certain grandfathered agreements; and "BU" is the Transmission Owner's Billing Units (annual MWh) for the Transmission District adjusted upward to include sub-transmission and distribution losses.

<sup>7</sup> There are two types of pre-NYISO OATT grandfathered transmission agreements: (1) agreements under each Transmission Owner's OATT that pre-date the existence of NYISO, and (2) agreements that were entered into before the existence of any Transmission Owner's OATT.

<sup>8</sup> See FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 394.

Niagara Mohawk's workpapers failed to show any change in the Wheeling Revenues component of its Wholesale TSC attributable to the conversion of nineteen of its members' grandfathered service agreements to service agreements under the NYISO's OATT. The Commission agreed with MEUA and directed NYISO and the Transmission Owners to make a compliance filing to address this concern.<sup>9</sup>

6. In the Compliance Filing, NYISO and the Transmission Owners explain that the Wheeling Revenues component is updated prior to the start of each month based on actual data for the calendar month prior to the month in which the adjustment is made (*e.g.*, January actual data would be used to calculate the Wholesale TSC effective in March). Therefore, to the extent that a grandfathered arrangement reflected in the Revenue Requirement is terminated, no revenue would be collected and the Wheeling Revenues component would be adjusted, in accordance with NYISO's OATT. In response to MEUA's protest regarding application of the Wholesale TSC formula rates to Niagara Mohawk's customers, NYISO and the Transmission Owners concede that there was an inadvertent application of Niagara Mohawk's OATT provisions and state that Niagara Mohawk is proposing a solution. They maintain that, with the exception of Niagara Mohawk, none of the other Transmission Owners needs to adjust their respective Wholesale TSCs.

7. In an answer filed on October 29, 2001 by NYISO and the Transmission Owners (Answer), Niagara Mohawk explains that seventeen of the in-state MEUA members terminated their service agreements under Niagara Mohawk's OATT effective January 1, 2001, and began taking service under NYISO's OATT. Niagara Mohawk claims that, for the period covered by the Informational Filing, it subtracted the projected revenues associated with the in-state municipals, out-of-state municipals, and High Load Factor Fitzpatrick customers in determining the Revenue Requirement adjustments that were used to calculate its Wholesale TSC. According to Niagara Mohawk, since the Revenue Requirement was reduced by projected revenues for these entities, the associated Wheeling Revenues component was \$0.

8. Niagara Mohawk further states that it had not increased its Revenue Requirement to reflect the fact that the seventeen in-state municipal agreements were terminated, but Niagara Mohawk proposed to do in the Compliance Filing. Niagara Mohawk also advises that the actual revenues that it received from its customers were lower than the projected revenues and submits that a one-time adjustment of \$22,690.50 to the Wheeling Revenues component in the Wholesale TSC is required. Additionally, Niagara Mohawk proposed to adjust its future Wholesale TSC to reflect actual revenues, rather than making an adjustment based on projected revenues. According to Niagara Mohawk, this would ensure that only actual revenues collected would be reflected in the Wheeling Revenues component of its Wholesale TSC.

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<sup>9</sup> July 2001 Order, 96 FERC ¶ 61,169 at 61,758.

## II. Notice and Responsive Pleadings

9. NYISO's and the Transmission Owners' Compliance Filing was noticed in the *Federal Register*, 66 Fed. Reg. 50,638 (2001), with interventions and protests due on or before October 12, 2001. MEUA filed a timely protest. NYISO and the Transmission Owners filed an answer to MEUA's protest.

10. Niagara Mohawk's November 30<sup>th</sup> Response was noticed in the *Federal Register*, 66 Fed. Reg. 67,240 (2001), with interventions and protests due on or before January 3, 2002. None was filed.

11. In its protest, MEUA states that, while it is not protesting Niagara Mohawk's proposed adjustments to the Revenue Requirement in its Wholesale TSC at this time, it continues to study these adjustments and may amend its protest. With respect to Niagara Mohawk's proposed adjustment to the Revenue Requirement to reflect actual revenues, MEUA contends that it is not clear what is being proposed or how it will work. In any event, MEUA contends, such an adjustment would seem to require a tariff change to NYISO's OATT. MEUA also asserts that, if a grandfathered agreement is included in the Revenue Requirement and service is terminated when the grandfathered agreement is converted to NYISO's OATT, the Revenue Requirement should be adjusted. Accordingly, MEUA requests that the Commission require Niagara Mohawk to explain its proposed adjustments and require NYISO and the Transmission Owners to explain the effect on Wheeling Revenues.

12. In their answer, NYISO and the Transmission Owners explain that the Wholesale TSC Settlement provided for Transmission Owners to adjust the Revenue Requirement so that the requirement would not need to be revised if, and when, grandfathered agreements under the Transmission Owners' OATTs terminated and customers converted to NYISO's OATT. They explain further that the Transmission Owners agreed to include any actual revenues received from these agreements as credits to the Wheeling Revenues component of their Wholesale TSCs. As a result, they maintain that the Wholesale TSCs are reduced if, and to the extent, these revenues actually exist. They also state that, if, and to the extent, these grandfathered agreements terminate and the revenues no longer exist, the Wheeling Revenues credits are automatically reduced. They conclude, therefore, that no further adjustments to the Revenue Requirements are needed.

13. In addition, NYISO and the Transmission Owners point out that, with the exception of Niagara Mohawk, all of the Transmission Owners properly passed their actual revenues on as a credit in the Wheeling Revenue component of their Wholesale TSC. Niagara Mohawk states that it has determined that it inadvertently omitted from its Wheeling Revenues component revenues associated with service under Niagara Mohawk's grandfathered OATT that was provided to MEUA's members and to NYPA for deliveries to NYPA's High Load-Factor Fitzpatrick customers. As a remedy, Niagara Mohawk proposes prospective adjustments to its Wheeling Revenues component in order

to refund \$7,055,186.70, plus \$650,147.55 in associated interest, over a two month period.<sup>10</sup> Niagara Mohawk states that its refund proposal eliminates the need to modify Niagara Mohawk's Revenue Requirement. Accordingly, Niagara Mohawk informs us that it is withdrawing its proposal in the Compliance Filing to address this issue through a proposed change to Niagara Mohawk's Revenue Requirement.

### **III. Discussion**

#### **Procedural Matters**

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits answers to protests unless otherwise ordered by the decisional authority. We will accept NYISO's and the Transmission Owners' answer because it provides information that assists us in our decision-making process.

#### **Analysis**

15. The Commission will accept NYISO's and the Transmission Owners' Compliance Filing, as amended. We conclude that the amended Compliance Filing complies with our July 2001 Order and NYISO's OATT.<sup>11</sup> Specifically, we agree with NYISO and the Transmission Owners that the adjusted Revenue Requirements of the Wholesale TSCs would not need to be revised if, and when, grandfathered agreements terminate and customers convert to service under NYISO's OATT.

16. Niagara Mohawk's admissions that its Wheeling Revenues component inadvertently excluded revenues from MEUA and NYPA under grandfathered agreements and its proposal to refund these amounts plus interest, address the concerns raised in MEUA's protest. We note that MEUA did not protest Niagara Mohawk's refund proposal.

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<sup>10</sup> 96 FERC ¶ 61,169 at 61,758.

<sup>11</sup> NYISO's OATT, Attachment H, identifies three subcomponents of the Wheeling Revenues component of the Wholesale TSC formula, as follows:

The WR component will equal the sum of: (1) TSC revenues received from new external transactions (Wheels Through and Export Transactions); (2) transmission revenues received under grandfathered OATT agreements and actual revenues received under Schedule 1 [Scheduling, System Control and Dispatch Services] to the grandfathered OATT agreements, but not under Schedules 2 through 6 to the grandfathered OATT agreements; and (3) any revenues related to pre-OATT grandfathered arrangements if the transmission owner increased its OATT revenue requirement to derive its RR component... .

17. Accordingly, we will direct Niagara Mohawk to make the refunds it proposed. We also will direct NYISO and Niagara Mohawk to file a refund report with the Commission showing the monthly refunds, including interest, within 30 days after making the refunds.

The Commission orders:

(A) NYISO's and the Transmission Owners' Compliance Filing, as amended by the NYISO and Transmission Owners' answer, is hereby accepted as in satisfactory compliance with the Commission's July 2001 Order, as discussed in the body of this order.

(B) Niagara Mohawk is hereby directed to make refunds, as discussed in the body of this order.

(C) Within thirty (30) days after making refunds, NYISO and Niagara Mohawk are hereby directed to file a refund report, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.