Energ Washington Week
incorporating Inside Fuels and Vehicles

from Vol. 5, No. 35, August 27, 2008

NYISO Outcry Raises Wider Bulk Power Market Organization, Inconsistency Issues

An intense controversy involving high fees charged to New York ISO (NYISO) customers — made possible by different rules among four major wholesale market operators — is prompting a broad demand for FERC to investigate possible market manipulation of non-uniform systems. Some critics are saying the NYISO situation points to a wider problem with organized markets, including the need for greater consistency among wholesale market rules to prevent future manipulation.

In an Aug. 21 announcement FERC accepted tariff revisions NYISO requested to deal with the immediate problem but declined to undertake the broad investigation numerous parties have requested. FERC disclosed that its enforcement office initiated a non-public investigation into the problem in May and said it will take no further action until that investigation is completed.

The outcry potentially challenges FERC's long-standing policy favoring regional system operator differences because it points to how such differences or "seams" can be exploited for profits at the expense of consumers, according to sources involved in the issue, now pending before FERC.

The NYISO problem has attracted a huge amount of attention, including from New York Senator Charles Schumer (D), a group of "seven neighboring states" (Pennsylvania, Ohio, Connecticut, Massachusetts, Rhode Island, New Jersey, Vermont), and a host of others who have filed motions with FERC to intervene. In an Aug 12 letter to FERC Chairman Joseph Kelliher, Schumer details the problem — citing potential costs to consumers ranging from $125 million to $290 million or more — and calling for "a full and thorough investigation."

The issue was created by a long-standing problem known as "loop flows." In NYISO, one or more market participants scheduled circuitous routes for transmission between states. Scheduling called for transmission to travel around Lake Erie and move power through Ontario, Michigan and Ohio, then back to its intended destinations of Pennsylvania and New Jersey, possibly to avoid high fees from using direct but congested lines between New York and New Jersey. But the power "scheduled" for the circuitous path actually followed the shortest, direct path, risking a blackout and creating increased congestion fees for transmission line users. In a July 21 FERC filing, NYISO asked for FERC approval of its emergency blockage of eight circuitous paths, a request approved in FERC's Aug. 21 announcement. The paths are "seams" involving different pricing methodologies that can be exploited for external transactions involving NYISO, PJM, MISO, and Ontario's IESO, operating in the Eastern Interconnection, explains one source involved in the issue.

As a result of the differences in the affected markets' methodologies, NYISO members and customers were hit with large, unexpected congestion and other charges. Although NYISO did not specify an amount, its filing cited "unjust and unreasonable" rates and charges from exploitation of the seams. Although NYISO's July filing only asked FERC to approve its ban on the eight transmission paths that enable what critics say is a "gaming" or manipulation of the market using flawed rules, a number of groups are demanding a much fuller section 206 FERC investigation going well beyond what NYISO is seeking.

For some who have filed comments with FERC, a key policy issue centers of whether organized markets should be allowed to continue having inconsistent rules that allow market gaming.

FERC Chairman Joseph Kelliher and former Chairman Pat Wood have said FERC "should allow regional differences in the markets," notes a source with the Midwest ISO (MISO). "But I suspect they would want consistencies so that what works in one market works in another" and inconsistent pricing rules don't allow such exploitation of seams as occurred in NYISO's case, the source adds.

That view is echoed by a source with the New York Department of Public Service, who says that "a lot of parties want further [FERC] investigation" of the NYISO loop flows problem and how as-yet-unidentified market participants were able to exploit what could be a new seam to earn significantly higher charges. The problem "could feed arguments for larger regional groups" that would put an end to seams, the source adds.

Another source representing consumers says the NYISO situation "shows the difficulty of getting centralized markets right." If the market rules aren't right 100 percent of the time, "consumers lose," the source says, and adds that the NYISO situation is a "symptom of the broader problem with organized markets."

But a source with National Energy Marketers Association (NEM), which represents wholesale and retail market-

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ers of gas and electricity, says the problem can be solved by establishing an agreement between utilities on Ontario-Michigan "Phase Angle Regulators" (PARs) to match actual and scheduled electricity transactions. NEM — which shares a desire for FERC to investigate whether its market behavior rules were violated — in its filing also suggests that the commission should direct the North American Electric Reliability Corporation to "achieve an agreement on the operations of the [PARs] in the interest of maintaining system reliability."

This source rejects the view, however, that the NYISO situation illustrates a problem with organized markets per se. It is unfair to describe the NYISO situation as a "market failure," this source says, noting that two million customers in New York are switching to the unregulated wholesale market "to get a better deal." The energy markets are in the middle of a "major transition" toward a "seamless" system that will enable power marketers to spread costs over millions of customers, achieving a better price for customers than under regulated monopoly systems, this source says.

But a source with the Public Utility Law Project (PULP), a non-profit advocacy group for low income consumers, says "The problem of gaming and lack of transparency is common to all these markets." States that have stuck to the old system and not restructured to create wholesale markets, "are better off" because ISOs are "not accountable to consumers," this source says, and notes that, in the wake of the Enron debacle, California restructured its ISO as a "public benefit corporation" with the governor appointing board members. In its FERC filing PULP is joining other groups in seeking a full section 206 FERC investigation, refunds to consumers, and other actions that go beyond NYISO's request.

In an indication that other critics also want new policies, the group representing "seven neighboring states" in its filing wants FERC to determine "whether additional rules are necessary to prevent similar market manipulation in the future." — *David Clarke*

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