

135 FERC ¶ 61,002
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 4, 2011

In Reply Refer To:
New York Independent System
Operator, Inc.
Docket Nos. ER11-2224-002
ER11-2224-003

Hunton & Williams, LLP
1900 K Street, NW
Washington, DC 20006-1109

Attention: Ted J. Murphy, Hunton & Williams, LLP
Counsel for New York Independent System Operator, Inc.

Reference: (1) Filing to State Currently Effective Installed Capacity Demand Curves
(2) Motion to Withdraw February 17, 2011 Filing

Dear Mr. Murphy:

1. On March 28, 2011, in Docket No. ER11-2224-003, you submitted on behalf of New York Independent System Operator, Inc. (NYISO), a filing to comply with the January 28, 2011 Order¹ in this proceeding to establish that the currently effective Installed Capacity (ICAP) Demand Curves will remain in effect on and after May 1, 2011, until a date set by Commission order. NYISO requests waiver of the 60-day notice requirement to permit the proposed change to take effect April 21, 2011. As discussed below, we grant waiver and accept the proposed revised tariff record, effective April 21, 2011, as requested, subject to conditions. Further, we grant NYISO's February 17, 2011 request to withdraw its February 17, 2011 Filing in Docket No. ER11-2224-002 that you state was inadvertently submitted to the Commission.

¹ *New York Independent System Operator, Inc.* 134 FERC ¶ 61,058 (January 28, 2011 Order), *order on reh'g in part*, 134 FERC ¶ 61,178 (2011) (March 9, 2011 Order).

2. On November 30, 2010, NYISO filed proposed revisions to section 5.14.1.2 of the NYISO Market Administration and Control Area Services Tariff (Services Tariff) that implement revised ICAP demand curves for capability years 2011/2012, 2012/2013, and 2013/2014. The Commission reviewed the parameters for NYISO's demand curves and found that NYISO's proposal had not been shown to be just and reasonable.² The Commission accepted the proposed revised rates and suspended them, to become effective the earlier of June 28, 2011, the maximum suspension period allowed by law, or a date set by a subsequent Commission order in this proceeding, subject to the conditions set forth in the order to refile the rates to reflect the directives of the January 28, 2011 Order.³ In the January 28, 2011 Order the Commission stated that "the currently effective demand curves will remain in effect until superseded."

3. On March 9, 2011, the Commission denied NYISO's request for expedited clarification that the January 28, 2011 Order intended that it file the interim rates as reflected in its February 17, 2011 Filing.⁴ The Commission also denied certain requests for expedited rehearing that the Commission set alternate interim rates. The Commission reiterated its statement in the January 28, 2011 Order that "the currently effective demand curves will remain in effect until superseded"⁵ and added that "this language does not provide for or authorize any escalation or adjustment of the current demand curves rates during the suspension period; therefore the current 2010/2011 demand curve rates are to remain in effect without adjustment during the suspension period until superseded by rates that comply with the January 28, 2011 Order."⁶

4. NYISO's February 17, 2011 Filing proposed interim values for its ICAP Demand Curves that proposed to escalate existing demand curve rates by 1.7 percent, to be effective May 1, 2011, until implementation of revised ICAP demand curves. Later on the same day, NYISO submitted a request to withdraw the filing (Motion to Withdraw). On February 18, 2011 NYISO filed a motion to rescind the Commission's notice of

² *Id.* P 167.

³ *Id.* P 168. However, the Commission stated that, due to the difficulties of implementing revised demand curves in mid-season, NYISO should indicate in its compliance filing the date it anticipates implementing the new demand curves, provided that the date is not later than November 1, 2011, the start of the six-month winter capability period. *Id.*

⁴ March 9, 2011 Order, 134 FERC ¶ 61,178 at P 16.

⁵ *Id.* citing January 28, 2011 Order, 134 FERC ¶ 61,058 at P 168.

⁶ *Id.*

NYISO's February 17, 2011 Filing (Motion to Rescind). In support of its Motion to Withdraw, NYISO states that it inadvertently submitted the filing and that it is seeking to withdraw it at the first possible opportunity.

5. Notice of NYISO's February 17, 2011 Filing was published in the *Federal Register*, 76 Fed. Reg. 10,578 (2011) with comments due on or before March 10, 2010. Notice was issued establishing a 15-day period for filing answers in opposition to NYISO's Motion to Withdraw and denying NYISO's Motion to Rescind and other relief related to the Motion to Rescind.⁷

6. TC Ravenswood, LLC (Ravenswood) filed an answer to the Motion to Rescind and a protest of the February 17, 2011 Filing. Independent Power Producers of New York (IPPNY) and the New York City Suppliers⁸ filed answers in opposition to the Motion to Withdraw. Parties are generally concerned with issues in the, then pending, requests for clarification and rehearing and with uncertainty regarding the rates that will be in effect for the May 1, 2011 ICAP Spot Market Auction.⁹

7. We grant NYISO's Motion to Withdraw its February 17, 2011 Filing that it states was inadvertent. As noted above, March 9, 2011 Order denied NYISO's request for clarification that the January 28, 2011 Order intended that NYISO file an interim rate, as reflected in the February 17, 2011 Filing. The March 9, 2011 Order stated that the January 28, 2011 Order did not provide for or authorize any escalation of the current demand curves during the suspension period.¹⁰ Thus the February 17, 2011 Filing is not in compliance with the January 28, 2011 Order. Additionally, Protestors' objections are either addressed or rendered moot by the March 9, 2011 Order and by the issuance of this order that accepts NYISO's March 28, 2011 Filing as discussed below.

8. On March 28, 2011, NYISO submitted a filing in compliance with the January 28, 2011 Order, that proposes to modify section 5.14.1.2 of its Services Tariff to establish that the currently effective ICAP demand curve rates will continue to be in effect from

⁷ Pursuant to 18 C.F.R. § 35.17(a)(2) (2010), if an answer in opposition to a motion to withdraw a tariff filing is made within 15 days of the motion, the withdrawal is not effective until an order accepting the withdrawal is issued.

⁸ New York City Suppliers for purposes of this filing consists of Astoria Generating Company, L.P., the NRG Companies, and TC Ravenswood, LLC.

⁹ We note that, in the March 9, 2011 Order, the Commission denied the requests of IPPNY and Ravenswood for expedited rehearing. *See supra* P 3.

¹⁰ March 9, 2011 Order, 134 FERC ¶ 61,178, at P 16.

May 1, 2011.¹¹ The filing proposes that the rates will remain in effect until a date established by Commission order.¹² NYISO requests an effective date of April 21, 2011 for the revised tariff record so that the existing rates will be in place for the May 1, 2011 ICAP Spot Market Auction. NYISO also requests that the Commission grant any waivers and shorten comment periods, as necessary, to issue an order on this filing by April 4, 2011. NYISO states that prompt action will provide NYISO's market participants clarity and certainty regarding the ICAP demand curves to be in effect during the interim period until the Commission acts on the compliance filing. NYISO states that the proposed revisions are purely ministerial echoes of substantive determinations that the Commission has already made; therefore, no party will be harmed by expedited action.

9. Notice of NYISO's March 28, 2011 Filing was issued on March 29, 2011 with comments due on or before March 31, 2011. No protests or comments were filed in this docket. New York City Suppliers (NYC Suppliers) filed a limited protest to the March 28, 2011 Filing, but inadvertently filed its protest in Docket No. ER11-2224-004 which relates to the March 29, 2011 Compliance Filing. NYC Suppliers contend that the March 28, 2011 Filing does not comply with the January 28, 2011 Order's suspension language and urges the Commission to act on the March 29, 2011 Compliance Filing, which would render moot the concerns NYISO raises in this filing.

10. We grant waiver and accept NYISO's March 28, 2011 proposed revisions to its Services Tariff, to be effective April 21, 2011, as requested, subject to further action by the Commission. We find that NYISO's filing reflects ministerial changes to the Services Tariff in order maintain the existing ICAP demand curves beyond April 30, 2011, consistent with the January 28, 2011 Order, until replaced by rates effective on a date set when the Commission acts on NYISO's filing to comply with the January 28, 2011 Order, which NYISO recently filed on March 29, 2011. We find that parties were on notice with the issuance of the January 28, 2011 Order and the March 9, 2011 Order that NYISO's current demand curve rates could remain in effect after April 30, 2011, without escalation, until a date set by further Commission Order, if the Commission does not act before May 1, 2011, to place revised demand curve rates into effect on that date.

¹¹ Currently, section 5.14.1.2 provides that the currently effective demand curve rates remain in effect only until April 30, 2011. Accordingly, unless section 5.14.1.2 is revised effective May 1, 2011, to reflect ICAP rates, there will be no ICAP rates in effect in the tariff after April 30, 2011.

¹² On March 29, 2011 in Docket No. ER11-2224-004, NYISO filed additional compliance with the January 28, 2011 Order (March 29, 2011 Compliance filing).

As such, we find good cause to grant waiver of the 60-day notice requirement in order to provide certainty for participants in the May 1, 2011 ICAP Spot Market Auction.

By direction of the Commission.

Kimberly D. Bose,
Secretary.