

160 FERC ¶ 61,124
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

New York Independent System
Operator, Inc.

Docket No. ER17-758-000

ORDER GRANTING TARIFF WAIVER

(Issued September 27, 2017)

1. On January 6, 2017, the New York Independent System Operator, Inc. (NYISO) requested waiver (Waiver Request) of sections 17.1.1, and 17.1.4 of its Market Administration and Control Area Services Tariff (Services Tariff) as they relate to NYISO's Transmission Shortage Cost provisions,¹ and section 2.20, the definition of Transmission Shortage Cost,² from February 11, 2016 until NYISO revises the Services Tariff to resolve the inconsistencies between these tariff sections and the application of

¹ Section 17.1 of the Services Tariff addresses NYISO's calculation of Locational Based Marginal Prices (LBMP) for Suppliers and Loads in the Real-Time Market. Section 17.1.1 establishes the LBMP Calculation Method. Section 17.1.4 determines the Transmission Shortage Cost. These tariff sections took effect on February 11, 2016. *See N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER15-485-000, (Jan. 15, 2015) (delegated letter order); *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER15-485-001, (Mar. 3, 2016) (delegated letter order).

² Section 2.20 of the Services Tariff defines Transmission Shortage Cost:

A series of quantity/price points that defines the maximum Shadow Price of a particular Constraint that will be used in calculating LBMP. The Transmission Shortage Costs are set at \$350/MWh for shortages above zero and less than or equal to 5 MW, \$2350/MWH for shortages above 5MW and less than or equal to 20MW, and \$4000 for shortages above 20 MW.

these rules in NYISO's software.³ For the reasons discussed below, we will grant NYISO's waiver request.

I. Background

2. NYISO states that, in February 2016, it implemented Services Tariff provisions establishing graduated Transmission Shortage Cost pricing to improve market efficiency during transmission shortages. NYISO explains that the new provisions apply various limits on the Shadow Prices⁴ used by NYISO's software to resolve transmission constraints, depending on the characteristics of the transmission facility and the severity of the constraint. NYISO states that Transmission Shortage Cost values are used in its dispatch and pricing algorithms to establish an upper bound on the Shadow Price used to calculate LBMPs. NYISO's graduated Transmission Shortage Cost provisions establish a series of upper bounds for a Shadow Price based on the severity of the transmission constraint shortage as measured in MW.⁵

3. NYISO states that, on August 29, 2016, its Market Monitoring Unit, Potomac Economics, Ltd. (MMU), reported that the application of NYISO's new Transmission Shortage Cost provisions was not consistent with the approved Services Tariff. Stakeholders requested additional information, and NYISO commenced an internal analysis of its Transmission Shortage Cost software.⁶

4. On October 6, 2016, after consultation with MMU, NYISO issued a Notice of Potential Market Problems. The notice stated that the software deployed to implement the Transmission Shortage Cost provisions does not apply the provisions under certain circumstances, which are not specifically described in Services Tariff §§ 2.20, 17.1.1, and 17.1.4. It stated also that NYISO is working to quantify whether the inconsistencies between the Services Tariff and the Transmission Shortage Cost software may have

³ Waiver Request at 13.

⁴ NYISO's Services Tariff defines a Shadow Price as the "marginal value of relieving a particular Constraint which is determined by the reduction in system cost that results from an incremental relaxation of that Constraint." Services Tariff at § 2.19.

⁵ See Docket No. ER15-1061, N.Y. Indep. Sys. Operator, Inc., Proposed Tariff Revisions to Ancillary Service Demand Curve and Transmission Shortage Cost (Feb. 18, 2015) and *N.Y. Indep. Sys. Operator Inc.*, 151 FERC ¶ 61,057 (2015).

⁶ Waiver Request at 7.

materially impacted the market since implementation of the tariff sections, in February 2016.⁷

5. At a November 3, 2016 stakeholder meeting, NYISO, in consultation with MMU, determined that inconsistencies between the Services Tariff and the Transmission Shortage Cost software constituted a Market Problem⁸ because of the material impact on the NYISO-administered markets. NYISO stated that prices differed materially from what they would have been had the graduated Transmission Shortage Cost pricing been applied to all transmission constraints. NYISO advised stakeholders that it would ask the Commission to waive the applicable tariff sections and that it would assess whether to make software changes to conform the software to the current tariff.⁹

6. Subsequently, after evaluating the situation, NYISO states that it determined that, rather than making conforming software changes, it should instead work through its normal, shared governance process to revise the Services Tariff and to develop appropriate software that will apply the graduated Transmission Shortage Cost pricing to transmission constraints on all facilities with a non-zero Constraint Reliability Margin (CRM) value.¹⁰ NYISO concluded that it also needs to reassess the current second step value¹¹ because this price may be excessive in certain instances and could result in significant adverse consumer impacts.

7. On December 21, 2016, NYISO discussed with stakeholders its proposed plan of action. NYISO provided an initial plan to extend the graduated Transmission Shortage

⁷ *Id.* at 8.

⁸ A Market Problem is defined as an issue which requires notification to Market Participants including market design flaws, software implementation, and modeling anomalies or errors, market data anomalies or errors, and economic inefficiencies that have a material effect on the ISO-administered markets or transmission service. Services Tariff at § 2.13. Section 3.5.1 of the Services Tariff establishes various notification and procedures applicable to potential Market Problems.

⁹ Waiver Request at 10-11.

¹⁰ *Id.* at 11. The CRM defines a value below the maximum physical limit on the facility that is used as the facility's effective limit when making economic commitment and dispatch determinations. *See* Waiver Request at 5 n.9.

¹¹ The current value of the second step of the three-step graduated Transmission Constraint Pricing is \$2,350/MWh, which defines the maximum Shadow Price of a shortage above 5MW and less than or equal to 20MW.

Cost pricing to all transmission facilities with a non-zero CRM value. NYISO stated that its staff “is working on an expedited basis to obtain the necessary stakeholder approval for a Section 205 filing [12] and submit it to the Commission by April 30, 2017.” NYISO added that, were it unable to meet this schedule, it would instead submit a status report on its efforts.¹³ NYISO stated that it would also work with stakeholders to explore potential, longer-term enhancements to the Transmission Shortage Cost provisions, which could include the development of more constraint-specific pricing values, a lengthy process that it included in its 2017 project priority list.¹⁴

II. Waiver Request

8. NYISO asks the Commission to waive the relevant tariff provisions from February 11, 2016 until the Services Tariff is revised to resolve the inconsistency with the software. NYISO urges the Commission to permit it to proceed under its normal, shared governance stakeholder process. It asserts that to do otherwise would be inappropriate because of issues with the current tariff provisions, such as the failure to describe expressly the Transmission Shortage Cost provisions for transmission facilities with a zero CRM value and the failure to explain the interaction of the preexisting logic for resolving transmission constraint infeasibilities with the graduated Transmission Shortage Cost provisions. NYISO urges that being permitted to continue to use its current software until its Services Tariff is revised is preferable to any interim measures that may be available.¹⁵

9. NYISO asserts that its request for tariff waiver satisfies the Commission’s four criteria for granting waiver of tariff requirements: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) granting the waiver would remedy a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹⁶

10. First, NYISO contends that it has acted and is acting in good faith. Although stakeholders agreed, at the time, to the current tariff provisions that pertain to Transmission Shortage Cost, NYISO now realizes that it inadequately explained the

¹² See 16 U.S.C. § 824d (2012).

¹³ Waiver Request at 12.

¹⁴ *Id.* at 11-12.

¹⁵ *Id.* at 11, 13-14.

¹⁶ *Id.* at 13 & n.14.

pre-existing logic for its software and the interaction of this logic with the graduated Transmission Shortage Cost provisions. NYISO states that it is keeping its stakeholders informed, and that it has worked and is working diligently to address MMU's concerns regarding implementation of the graduated Transmission Shortage Cost provisions and also to eliminate the inconsistency between the software and the relevant tariff language.¹⁷

11. Second, NYISO argues that its waiver request is of limited duration and scope because the waiver would apply "for a relatively short time" -from February 11, 2016 until tariff revision and software revision are implemented. NYISO states that it has developed a schedule for obtaining stakeholder approval of the tariff revisions and expects to submit the filing to the Commission by April 30, 2017, or else submit a progress report.¹⁸

12. Third, NYISO asserts that waiving the designated tariff sections will remedy a concrete problem. Making immediate software changes simply to align with the current tariff language, it claims, would introduce additional market uncertainty into this already complex matter. Citing section 20.3 of its Services Tariff, NYISO points out that it is not permitted to correct prices that have not been reserved within prescribed timeframes, except as the Commission may direct. This provides market certainty and confidence as to the finality of market outcomes and avoids untimely, retroactive price corrections. Thus, NYISO asks the Commission not to require it to recalculate previously calculated prices. NYISO states that it is not possible to determine accurately what market outcomes would have been but for the tariff-software inconsistency at issue. NYISO asserts that recalculating prices would require making assumptions about how market participants would have acted under market conditions different than those that actually existed.¹⁹

13. Finally, NYISO urges that granting the requested tariff waivers will not harm third parties or have other undesirable consequences. Rather, it states that market certainty will be promoted. NYISO adds that applying the graduated Transmission Shortage Cost provisions, as the Services Tariff currently requires, could produce undesirable outcomes that would harm consumers.²⁰

¹⁷ *Id.* at 14.

¹⁸ *Id.* at 14-15.

¹⁹ *Id.* at 15-16 (citing *N.Y. Indep. Sys. Operator, Inc.*, 115 FERC ¶ 61,026, at P 55 (2006)).

²⁰ *Id.* at 17.

III. Notice and Responsive Pleadings

14. Notice of NYISO's Waiver Request was published in the *Federal Register*, 82 Fed. Reg. 5558 (Jan. 18, 2017), with comments and protests due on or before January 27, 2017. The New York Public Service Commission filed a notice of intervention. The New York State Utility Intervention Unit (UIU), the New York Transmission Owners (NYTOs),²¹ Saracen Energy East LP (Saracen), Exelon Corp., NRG Power Marketing LLC, MMU and GenOn Energy Management, LLC filed timely motions to intervene. MMU and BioUrja Power, LLC (BioUrja Power) filed late interventions.²² UIU, NYTOs, MMU and Saracen filed comments supporting the Waiver Request.

IV. Comments

15. UIU states that premature modifications to the Services Tariff or the Transmission Shortage Cost software will not serve consumer interests. UIU agrees with NYISO's description of its difficulties with both the Services Tariff and the rules currently coded into the Transmission Shortage Cost software. UIU supports granting the requested tariff section waivers because this will give NYISO the time to complete necessary additional analysis on the application of the graduated Shadow Price caps, and will enable NYISO and MMU to analyze the appropriateness of the price cap values, especially the \$2,350/MWh value. Lastly, waiver will allow NYISO to communicate fully to stakeholders the implications of proposed changes.²³

16. Nevertheless, UIU is concerned with the significant, adverse consumer impacts that NYISO identified in connection with application of the \$2,350/MWh value. UIU asks the Commission to require NYISO, after future tariff revision and software implementation, to provide consumers with a full evaluation of the cost impacts from

²¹ The New York Transmission Owners consist of: Central Hudson Gas & Electric Corp, Consolidated Edison Co. of New York, Inc., Niagara Mohawk Power Corp. d/b/a National Grid, New York Power Authority, New York State Electric & Gas Corp., Orange and Rockland Utilities, Inc., Power Supply Long Island, and Rochester Gas and Electric Corp.

²² BioUrja Power's intervention was received on January 31, 2017. MMU's intervention was received at 5:22 p.m. on January 27, 2017.

²³ UIU Intervention at 3-4.

software issues and shortage price values for the full period from February 11, 2016, through the implementation date of the new tariff language and software changes.²⁴

17. NYTOs believe that NYISO is acting in good faith, that the requested tariff section waivers are limited in scope, address a concrete problem, and will not have undesirable consequences. They agree with allowing NYISO to continue to use its current software until NYISO can, after appropriate stakeholder review, develop revisions to the Services Tariff and implementing software. NYTOs state that this is preferable to any other interim measures that may be available.

18. Saracen supports the requested tariff section waivers so that there is transparency into, and certainty regarding, NYISO's processes in the interim period until a longer-term, stakeholder- and MMU-supported solution can be reached. Saracen agrees that this is a complex issue that needs proper consideration. Nevertheless, Saracen asks the Commission to require a specific deadline, perhaps one year from the date that tariff waivers are granted, for compliance with any further tariff revisions, including any software changes for long-term solutions. Alternatively, Saracen asks the Commission to set a firm timeline to resolve NYISO's processes for pricing transmission shortages. It asks further for full transparency to market participants of all components of NYISO's resolution of transmission shortage pricing.²⁵ Lastly, Saracen asks the Commission to provide guidance regarding use of the Transmission Shortage Cost provisions. Saracen points out that NYISO anticipated that the tariff provisions adopted in February 2016 would provide more efficient pricing for transmission shortages but, that NYISO now states that it does not believe that these provisions are appropriate in all circumstances.²⁶

19. MMU supports NYISO's request for waiver of the relevant tariff sections. MMU agrees with NYISO's findings that the current Transmission Shortage Cost software is not fully consistent with tariff sections 17.1.1 and 17.1.4, and that it is inadequately described in the Services Tariff. MMU also details its concerns with the software.²⁷ MMU states that any attempt to re-calculate prices would cause significant financial risk for market participants and would undermine confidence in the NYISO market. MMU believes that no instantaneous fix would bring NYISO's real-time software into compliance with the Services Tariff without creating other problems. Therefore, it

²⁴ *Id.* at 4.

²⁵ Saracen Intervention at 3.

²⁶ *Id.* at 5.

²⁷ MMU Intervention at 3-6,

supports NYISO's request to leave the current Transmission Shortage Cost software in place, until an alternative process can be vetted, filed, and accepted by the Commission.²⁸ MMU continues that NYISO has begun working with stakeholders on proposed modifications that could be filed by April 30th and implemented shortly thereafter.²⁹ MMU supports NYISO's short-term, initial plan, but recommends that the Commission require NYISO to file its proposed, short-term tariff improvements by April 30, 2017 to ensure that the current pricing inefficiencies do not continue indefinitely if stakeholders cannot agree on a solution.³⁰

V. April 21, 2017 Filing

20. On April 21, 2017, NYISO filed, in Docket No. ER17-1453-000, tariff revisions intended to resolve the inconsistencies stated herein. MMU filed comments in support of the proposed tariff revisions.³¹ On June 14, 2017, the Commission accepted NYISO's proposed tariff revisions, under delegated authority, to be effective June 20, 2017, as NYISO requested.³²

VI. Discussion

A. Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We grant MMU and BioUrja's late

²⁸ *Id.* at 6-7.

²⁹ *Id.* at 2-3 (citing Waiver Request at 11-12).

³⁰ *Id.* at 8.

³¹ MMU, Motion to Intervene and Comments, Docket No. ER17-1453-000, at 2, 4 (filed May 12, 2017).

³² *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER17-1453-000 (June 14, 2017) (delegated letter order).

interventions, but we remind parties of the Commission's filing requirements under Rule 214(b)(3).³³

B. Commission Determination

22. We grant NYISO's waiver request as discussed below. The Commission has granted waivers of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.³⁴ We find that NYISO's Waiver Request satisfies these conditions.

23. First, we find that NYISO has acted in good faith and worked diligently with MMU and its stakeholders to resolve the inconsistency between the Transmission Shortage Cost tariff provisions and the software. NYISO specifically states that it expects to submit a section 205 filing with tariff revisions by April 30, 2017.³⁵ As stated above, NYISO submitted its filing with tariff revisions on April 21, 2017.³⁶

24. We also find that granting the waiver addresses a concrete problem because it is necessary to remedy the inconsistency and to prevent market harm. NYISO, MMU, and commenters note that making immediate changes to the software to align it with the existing tariff provisions could have resulted in market uncertainty and brought harm to market participants. Since becoming aware of the inconsistency, NYISO worked with stakeholders and MMU to find a short-term resolution while continuing to address a long-term plan of action. Finally, we find no undesirable consequences resulting from this waiver. Indeed, all commenters support NYISO's waiver request. Saracen and MMU express concern about granting an open-ended waiver and ask that the Commission set a defined expiration date. The Commission's acceptance of NYISO's April 21, 2017 filing, in Docket No. ER17-1453-000, moots these concerns because it established tariff revisions to resolve the inconsistency stated herein. Therefore, we grant

³³ "If a motion to intervene is filed after the end of any time period established [for the filing], such a motion must, in addition to complying with paragraph (b)(1) of this section, show good cause why the time limitation should be waived." 18 C.F.R. § 385.214(b)(3) (2017).

³⁴ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P14 (2016); *Calpine Energy Serv., L.P.*, 154 FERC ¶ 61,082, at P 12 (2016); *N.Y. Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

³⁵ See *supra* P 7.

³⁶ See *supra* P 20.

NYISO waiver of its above-described Services Tariff provisions from February 11, 2016 until June 20, 2017, the effective date of NYISO's tariff revisions.

25. We deny as beyond the scope of this proceeding UIU's request to require NYISO to prepare a full evaluation of the cost impacts to consumers from the inconsistency between the Services Tariff and NYISO's actual implementation of the Transmission Shortage Cost provisions. However, we encourage NYISO to continue to communicate transparently with its stakeholders.

26. We deny Saracen's request that the Commission require NYISO to resolve how it will price transmission shortages on a long-term basis and implement corresponding computer software within one year from the date of this order. The interim provisions that NYISO filed were intended to address the tariff inconsistency at issue in this proceeding. If NYISO and its stakeholders believe that further market design changes are necessary, NYISO may propose such changes to the Commission via a section 205 filing. Saracen's request that the Commission dictate a time limit on NYISO making long-term changes, other than those required to address the instant issue of inconsistency between the tariff and the software, is beyond the scope of this proceeding.

The Commission orders:

NYISO's Waiver Request is hereby granted, from February 11, 2016 to June 20, 2017, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.