

162 FERC ¶ 61,018
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

New York Independent System
Operator, Inc.

Docket No. ER18-604-000

ORDER GRANTING WAIVER

(Issued January 12, 2018)

■ On January 4, 2018, New York Independent System Operator, Inc. (NYISO) requested a temporary, limited waiver of Sections 21.4 and 21.5.1 of its Market Administration and Control Area Services Tariff (Services Tariff) to enable NYISO to consider incremental energy and minimum generation offers that exceed \$1,000/MWh where generators' demonstrated costs exceed that limit.¹ NYISO requests waiver from January 4, 2018, through February 28, 2018, for the real-time market, and January 5, 2018, through February 28, 2018, for the day-ahead market to enable NYISO to preserve reliability and ensure generators are able to recover demonstrated costs to operate due to extreme winter weather and the resulting high fuel costs for natural gas-fired generators. As discussed below, the Commission finds good cause to grant the requested waiver for the time periods requested.

I. Background and Waiver Request

■ Sections 21.4 and 21.5.1 of NYISO's Services Tariff set forth offer restrictions that limit day-ahead and real-time energy offers to plus or minus \$1,000/MWh and require NYISO to reject offers that exceed the restrictions.² The Commission issued a final rule in November 2016 that required regional transmission organizations and independent system operators (RTOs/ISOs) to reform their offer caps. Order No. 831 requires each RTO/ISO to: (1) cap each resource's incremental energy offer at the higher of \$1,000/MWh or that resource's verified cost-based incremental energy offer; and

¹ NYISO, Services Tariff, Attachment F, §§ 21.4, 21.5.1 (7.0.0).

² *Id.*

(2) cap verified cost-based incremental energy offers at \$2,000/MWh when calculating locational marginal prices.³ On November 9, 2017, the Commission accepted in part, and rejected in part, NYISO's Order No. 831 compliance filing, which increased the maximum day-ahead and real-time incremental energy and minimum generation offer restriction applied to resources in the New York Control Area to equal the higher of: (a) \$1,000/MWh; or (b) a resource-specific, verified, cost-based reference level, not to exceed the \$2,000/MWh hard cap required by Order No. 831.⁴ NYISO's revised offer restrictions to comply with the reforms required by Order No. 831 will not go into effect until NYISO submits a further compliance filing notifying the Commission of its intended effective date. As the Commission discussed in the November 9, 2017 order, NYISO will submit a subsequent filing at least two weeks in advance of its intended effective date of between October 1, 2018, and December 31, 2018.⁵ Therefore, the offer restrictions in Sections 21.4 and 21.5.1 of NYISO's Services Tariff remain in effect at this time.

■ NYISO states that New York is experiencing extreme cold weather conditions that began on December 25, 2017, during which temperatures have been 24 degrees below average for New York City at this time of year. According to NYISO, this has resulted in a spike in natural gas prices that could cause some generators' actual costs to exceed the offer restrictions. NYISO states that the January 5, 2018 day-ahead index price for natural gas at the Transco Z6 NY hub, which determines the natural gas prices incurred by generators in and around New York City, exceeded \$48.99/MMBtu, more than double the highest price posted for that hub in 2016 and 2017, and more than five times the highest price seen at the Transco Z6 NY hub in January or February of 2017. NYISO explains that average January and February 2017 prices at the Transco Z6 NY hub were \$3.62/MMBtu and \$2.89/MMBtu, respectively. During cold weather in 2016-2017, NYISO states that the Transco Z6 NY natural gas price ranged only from \$2.04/MMBtu to \$7.62/MMBtu, with only one day higher at \$17.78/MMBtu. According to NYISO, natural gas trades at prices greater than \$100/MMBtu for Transco Z6 NY have already been observed for the January 6, 2018 gas day, and prices greater than \$90/MMBtu have already been observed for other trading hubs used by New York generators on that day.⁶

³ *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 831, FERC Stats. & Regs. ¶ 31,387, at P 1 (2016), *order on reh'g and clarification*, Order No. 831-A, 161 FERC ¶ 61,156 (2017).

⁴ *N.Y. Indep. Sys. Operator, Inc.*, 161 FERC ¶ 61,151, at PP 16, 19 (2017).

⁵ *Id.* PP 1, 12.

⁶ NYISO Transmittal at 3-4.

■ Accordingly, NYISO requests a temporary, limited waiver of Sections 21.4 and 21.5.1 of its Services Tariff from January 4, 2018, through February 28, 2018, for the real-time market, and January 5, 2018, through February 28, 2018, for the day-ahead market.⁷ NYISO contends that granting the waiver will enable NYISO to protect reliability by compensating natural gas-fired generators for the actual costs they incur to operate at times when natural gas prices are extremely high, should those costs exceed \$1,000/MWh. NYISO argues that failure to implement measures to permit generation owners to recover the costs they incur to operate could reduce participation in the markets that NYISO administers, which could be detrimental to reliability.⁸

■ NYISO states that, if the waiver is granted, it will reimburse affected generation resources for their demonstrated, actual costs of producing incremental energy and/or minimum generation that exceed the \$1,000/MWh offer restriction through uplift via a Bid Production Cost Guarantee payment.⁹ NYISO explains that the supplemental payment will be available for both day-ahead and real-time market commitments, and that additional costs incurred to commit generators needed for reliability will be recovered in accordance with the rules set forth in Rate Schedule 1 of NYISO's Open Access Transmission Tariff (OATT). According to NYISO, until it implements its Order No. 831 compliance obligations (by the end of 2018), it is unable to permit, and is not seeking authority to permit, offers in excess of \$1,000/MWh to set prices in its day-ahead or real-time markets.¹⁰

■ NYISO proposes to require generators (or the market party responsible for offering the generator) that will incur variable costs in excess of \$1,000/MWh to comply with the following: (1) submit an offer at \$1,000/MWh for the (portion of) energy for which costs will exceed that price; (2) submit an email to NYISO specifying the fuel costs it expects to incur; and (3) submit to NYISO documentation substantiating the fuel costs incurred.¹¹ NYISO states that it will determine eligibility to recover costs in excess of \$1,000/MWh after-the-fact and the recovery will be limited to demonstrated, actual

⁷ *Id.* at 2.

⁸ *Id.* at 6.

⁹ A Bid Production Cost Guarantee (BPCG) payment is a payment made to a generator that is equal to the difference between its offer and the Locational Based Marginal Price (LBMP) when the generator is dispatched out of economic merit order by NYISO or the local transmission owner, e.g., for reliability.

¹⁰ NYISO Transmittal at 4.

¹¹ *Id.* at 5.

production costs incurred. NYISO states that generators will be expected to offer into NYISO's markets based on the lowest cost fuel available and NYISO will notify the market parties of their obligations to comply with the Commission's Market Behavior Rules¹² and Market Mitigation Measures set forth in Attachment H to NYISO's Services Tariff.¹³

■ NYISO states that the requested waiver: (1) is made in good faith to address weather and market conditions that threaten the reliability of the New York State Power System, and NYISO has committed to implement its Order No. 831 compliance by the end of 2018; (2) is limited in scope and duration, relies on existing tariff mechanisms as much as possible, and includes safeguards against overcompensating generators; (3) addresses a concrete problem because, absent waiver, certain generators might be required to provide service needed to support reliability without being able to recoup a portion of the incremental operating costs that they incur; and (4) will not have undesirable consequences because, while costs ultimately paid by loads will increase, these costs are necessary to ensure continued, reliable electric service during extreme weather conditions. NYISO requests that the Commission issue an order by January 10, 2018.¹⁴

II. Notice of Filing and Responsive Pleadings

■ Notice of NYISO's filing was published in the *Federal Register*, 83 Fed. Reg. 1347 (2018), with interventions and protests due on or before January 11, 2018. NRG Power Marketing LLC and GenOn Energy Management, LLC; Exelon Corporation; and New York Transmission Owners¹⁵ filed motions to intervene. The New York State Public Service Commission file a notice of intervention. The Independent Power Producers of New York, Inc. (IPPNY) filed a motion to intervene and comments.

¹² 18 C.F.R. § 35.41 (2017).

¹³ NYISO Transmittal at 6.

¹⁴ *Id.* at 7-8.

¹⁵ Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Power Supply Long Island, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

■ IPPNY filed comments in support of the requested waiver. IPPNY states that the requested waiver must be granted expeditiously to give generators certainty that they will recover their costs should those costs exceed \$1,000/MWh and to ensure that adequate supply is available to meet demand during the recent and ongoing extreme cold weather conditions.¹⁶

III. Discussion

A. Procedural Matters

■ Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁷ the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Commission Determination

■ For the reasons discussed below, we grant NYISO's waiver request. The Commission has granted waiver 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.¹⁸

■ We find that NYISO has demonstrated good cause to grant the request for a tariff waiver because NYISO's requested waiver satisfies the aforementioned conditions. We find that the NYISO acted in good faith by addressing a potential reliability concern promptly. The requested waiver is limited to the period from January 4, 2018, through February 28, 2018, for the real-time market, and January 5, 2018, through February 28, 2018, for the day-ahead market. The waiver addresses the concrete problem that generators might be required to provide service to reliably serve load, but without being able to recoup the incremental operating costs that they incur, which could discourage generators from offering service at a time when they are needed. Finally, although granting waiver may result in increased costs to load and increased cost to certain market participants if generators incur verifiable actual energy production costs above \$1,000/MWh, we find that it is appropriate to allow generators to recover such costs in

¹⁶ IPPNY January 10, 2018 Comments at 4.

¹⁷ 18 C.F.R. § 385.214 (2017).

¹⁸ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Servs., L.P.*, 154 FERC ¶ 61,082, at P 12 (2016); *New York Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

this exigent circumstance. We note that NYISO's revised offer restrictions, to comply with the reforms required by Order No. 831, are expected to go into effect by the end of 2018.¹⁹

■ As discussed above, in order to receive cost recovery for the variable costs in excess of the \$1,000/MWh offer cap, NYISO provides requirements for the Market Party responsible for offering a Generator.²⁰ We expect NYISO will provide all parties the applicable submission deadlines in order to comply with these requirements.

■ Granting the requested waiver is consistent with the Commission's 2014 order granting NYISO waiver of Sections 21.4 and 21.5.1 of NYISO's Services Tariff under similar exigent circumstances to allow generators to recover demonstrated costs that they actually incurred to operate where those variable costs exceeded the \$1,000/MWh offer restriction.²¹ After implementing the reforms required by Order No. 831, NYISO will no longer require temporary waivers because these reforms are intended to provide for a long-term solution to the issues associated with NYISO's offer cap.

■ We note that under the Services Tariff, NYISO's Market Monitoring and Analysis Department (MMA) is responsible for implementing the requirements of the NYISO tariffs and markets and therefore to verify the after-the-fact analysis of costs submitted as well as to respond to information requests from the Commission.²² Consistent with the 2014 order, we direct NYISO to submit an informational filing by March 28, 2018, that identifies: (1) the total amount of energy that received compensation pursuant to the terms of the instant waiver; (2) the demonstrated costs of such energy in total and on a unit cost basis; and (3) information detailing requests for compensation pursuant to the instant waiver that were rejected by NYISO and the reason for its rejection.

¹⁹ *N.Y. Indep. Sys. Operator, Inc.*, 161 FERC ¶ 61,151 at PP 1, 12.

²⁰ NYISO Transmittal at 5.

²¹ *N.Y. Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,061, at PP 1, 20 (2014). Note that "[n]o energy received compensation pursuant to the terms of the [2014] waiver." NYISO, Informational Filing, Docket No. ER14-1138-000, at 2 (filed Mar. 28, 2014).

²² See NYISO, Services Tariff, Attachment O, § 30.3.3 (3.0.0).

The Commission orders:

(A) NYISO's request for limited waiver of Sections 21.4 and 21.5.1 of the Services Tariff from January 4, 2018, through February 28, 2018, is hereby granted, as discussed in the body of this order.

(B) NYISO is directed to make an informational filing no later than March 28, 2018, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.