

187 FERC ¶ 61,066  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;  
Allison Clements and Mark C. Christie.

New York Independent System Operator, Inc.

Docket No. ER24-1800-000

ORDER GRANTING WAIVER REQUEST

(Issued May 6, 2024)

1. On April 18, 2024, pursuant to Rule 207(a)(5) of the Commission’s Rules of Practice and Procedure,<sup>1</sup> New York Independent System Operator, Inc. (NYISO) filed a request for waiver of sections 5.11.4 and 5.11.4(c) of its Market Administration and Control Area Services Tariff (Services Tariff), which specify the relevant considerations with which NYISO shall compute Locational Minimum Installed Capacity Requirements (LCR).<sup>2</sup> NYISO states that it seeks waiver to clarify that NYISO may revise the LCR for Load Zone J, i.e. New York City, for the upcoming 2024-2025 Capability Year. As discussed below, we grant NYISO’s waiver request.<sup>3</sup>

**I. Background**

2. Each year, the New York State Reliability Council, L.L.C. (NYSRC) establishes the New York Control Area Installed Reserve Margin for the upcoming Capability Year, which spans the period beginning May 1 of a given year and ending April 30 of the following year. The Installed Reserve Margin is expressed as a percentage, and NYISO multiplies this value by the forecasted peak load for the New York Control Area to calculate the statewide Minimum Installed Capacity (ICAP) Requirement for each Capability Year, which is expressed in megawatts. Under NYISO’s capacity market

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<sup>1</sup> 18 C.F.R. § 385.207(a)(5) (2023).

<sup>2</sup> LCRs are defined as: “The portion of the [New York Control Area] Minimum Installed Capacity Requirement provided by Capacity Resources that must be electrically located within a Locality . . . in order to ensure that sufficient Energy and Capacity are available in that Locality and that appropriate reliability criteria are met.” NYISO, NYISO Tariffs, NYISO MST, § 2.12 (MST Definitions – L) (11.0.0). Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in the Services Tariff.

<sup>3</sup> Waiver Request at 1.

rules, Load Serving Entities (LSE) must purchase a specified amount of capacity each Capability Year, and in transmission-constrained areas, defined as Localities, LSEs must fulfil the respective LCR, which is the specified portion of their purchase obligations that must be met with capacity resources located within the Locality.<sup>4</sup>

3. NYISO explains that it sets LCRs using an economic optimization algorithm to minimize the total cost of capacity for the New York Control Area.<sup>5</sup> Section 5.11.4 of the Services Tariff specifies that LCRs shall be computed taking into account all relevant considerations and in accordance with ISO Procedures.<sup>6</sup> Section 5.11.4(c) of the Services Tariff provides, in relevant part, that NYISO shall compute the LCR:

so that the transmission security limits determined by the ISO in accordance with this paragraph and ISO Procedures, are respected. The ISO will determine these limits using inputs consistent with the NYSRC Installed Reserve Margin base case for the Capability Year to which the Locational Minimum Installed Capacity Requirements will apply.<sup>7</sup>

4. NYISO states that the relevant ISO Procedures for section 5.11.4 of the Services Tariff is a document titled, “Locational Minimum Installed Capacity Requirements Determination Process” (LCR Determination Process).<sup>8</sup> Sections 2.1 and 2.2 of the LCR Determination Process provide further details on how the approved Installed Reserve Margin is used in calculating the LCR and describes how NYISO’s economic optimization algorithm operates, including its use of transmission security limits.

<sup>4</sup> *Id.* at 4-5. NYISO has designated three such Localities: the G-J Locality, which is composed of load zones G, H, I, and J in the Lower Hudson Valley; New York City (Zone J), which is nested within the G-J Locality; and Long Island (Zone K).

<sup>5</sup> *Id.* at 5.

<sup>6</sup> NYISO, NYISO Tariffs, NYISO MST, § 5.11 (MST Requirements Applicable to LSEs) (19.0.0), § 5.11.4.

<sup>7</sup> NYISO, NYISO Tariffs, NYISO MST, § 5.11 (MST Requirements Applicable to LSEs) (19.0.0), § 5.11.4(c). NYISO states that transmission security limit floor values are input constraints used in the LCR optimization process to ensure the LCRs are set at or above a floor that accounts for reliability requirements to maintain transmission security. Waiver Request at 6.

<sup>8</sup> Waiver Request at 6 (citing N.Y. Indep. Sys. Operator, Inc., *Locational Minimum Installed Capacity Requirements Determination Process* (2021), <https://www.nyiso.com/documents/20142/21537892/LCR-determination-process-2021.pdf>).

Specifically, the LCR Determination Process procedures specify that NYISO prepares an “aligned” base case model reflecting the NYSRC-approved Installed Reserve Margin and target loss of load expectation, and then uses this base case to determine LCRs for the upcoming Capability Year.<sup>9</sup>

5. NYISO conducts three types of capacity auctions: (1) Capability Period Auctions; (2) Monthly Auctions; and (3) ICAP Spot Market Auctions. Capability Period Auctions and Monthly Auctions are voluntary auctions that do not use the ICAP Demand Curves or LCRs. In contrast, the ICAP Spot Market Auctions are mandatory auctions and ensure that the minimum capacity requirements in the New York Control Area and the Localities, as set by the ICAP Demand Curves and LCRs, are being met to maintain grid reliability. The ICAP Spot Market Auctions are held monthly immediately preceding the obligation period, i.e., calendar month, and determine LSEs’ purchases and ICAP suppliers’ obligations to provide capacity for that period.<sup>10</sup>

6. Section 5.14.1 of the Services Tariff provides that the exact date of the ICAP Spot Market Auction shall be established in the ISO Procedures.<sup>11</sup> NYISO states that, for the upcoming May 2024 Spot Market Auction, which is the first ICAP Spot Market Auction in the 2024-2025 Capability Year, the certification deadline is April 22, 2024. NYISO states that the offer period for the May 2024 ICAP Spot Market Auction opens on April 24, 2024, and ends on April 25, 2024, and NYISO is currently scheduled to post the auction results by 5:00 PM on April 29, 2024.<sup>12</sup>

## **II. Waiver Request**

7. NYISO states that it requests a prospective waiver of sections 5.11.4 and 5.11.4(c) of the Services Tariff to the extent they prohibit NYISO from correcting an erroneous transmission security limit floor value that, if corrected, produces a different target loss of load expectation from the initial “aligned” base case from the Installed Reserve Margin study.<sup>13</sup> NYISO states that the LCR Determination Process referenced by section 5.11.4 expressly requires use of such “aligned” base case and the target loss of load expectation

<sup>9</sup> *Id.* at 9-10.

<sup>10</sup> *Id.* at 7-8; *see* NYISO, NYISO Tariffs, NYISO MST, § 5.14 (MST Installed Capacity Spot Market Auction and Installed Capacity Supplier Deficiencies) (38.0.0), § 5.14.1.1.

<sup>11</sup> NYISO, NYISO Tariffs, NYISO MST, § 5.14 (MST Installed Capacity Spot Market Auction and Installed Capacity Supplier Deficiencies) (38.0.0), § 5.14.1.

<sup>12</sup> Waiver Request at 9.

<sup>13</sup> *Id.* at 14-15.

therewith. NYISO explains that adjustments to the “aligned” base case are necessary to correct the LCR for Load Zone J for the May 2024 ICAP Spot Market Auction and future auctions in the 2024-2025 Capability Year, which runs from May 1, 2024, to April 30, 2025.<sup>14</sup> NYISO explains that its initial LCR study for the 2024-2025 Capability Year, as approved by NYISO’s stakeholder Operating Committee on January 18, 2024, identified that the transmission security limit floors were binding in all three Localities, resulting in LCRs equal to the transmission security limit floors.<sup>15</sup>

8. NYISO states that while conducting unrelated work, it determined that the derating factor used in calculating the transmission security limit floor value for Load Zone J for the 2024-2025 Capability Year was incorrect because it was based on data from 2017-2021 instead of 2018-2022.<sup>16</sup> NYISO explains that, starting with the 2023-2024 Capability Year, the transmission security limit floor uses a market forced outage rate which considers five years of historical performance. NYISO states that for the 2024-2025 Capability Year, the applicable five-year period should use data from 2018-2022, which is consistent with the five-year period used in determining historical performance of thermal generation resources in the NYSRC study establishing the Installed Reserve Margin.<sup>17</sup> NYISO states that using the correct derating factor produces a transmission security limit floor value, which is also the LCR, for Load Zone J of 80.4%, instead of the previously calculated value of 81.7%.<sup>18</sup>

9. NYISO argues that its waiver request satisfies the Commission’s criteria for granting waiver.<sup>19</sup> First, NYISO asserts that it acted in good faith because, immediately after discovering the error and determining that the error constituted a potential market problem, NYISO reported the matter on April 10, 2024, to the Commission’s Office of Enforcement and Potomac Economics, Ltd., the Market Monitoring Unit for NYISO (MMU), as required by section 3.5.1 of the Services Tariff.<sup>20</sup> NYISO states that, on April

<sup>14</sup> NYISO notes that the procedural requirements from which it seeks waiver are not expressly stated in sections 5.11.4 and 5.11.4(c) of the Services Tariff, nor do these sections establish an express date prior to each Capability Year by when the LCRs must be finalized; however, NYISO argues that section 5.11.4 and 5.11.4(c) of the Services Tariff require that NYISO must compute and revise LCRs in accordance with ISO Procedures. *Id.* at 15-16.

<sup>15</sup> *Id.* at 10.

<sup>16</sup> *Id.* at 11.

<sup>17</sup> *Id.* at 6-7.

<sup>18</sup> *Id.* at 11.

<sup>19</sup> *Id.* at 16-17.

10, 2024, it issued a Notice of Potential Market Problem to inform all stakeholders of the issue, and, on April 11, 2024, it commenced discussions with its stakeholders. NYISO also explains that, on April 15, 2024, it presented results from its supplemental analysis accounting for the corrected LCR for Load Zone J and proposed a remedial action plan to correct the LCR for Load Zone J on a prospective basis.<sup>21</sup> NYISO contends that it acted swiftly to analyze the error and to determine its impact and potential remedial measures, and is taking steps to better understand how the error happened and avoid its recurrence.<sup>22</sup>

10. Second, NYISO argues that the waiver request is limited in scope. Specifically, NYISO asserts that the requested waiver is “the narrowest feasible solution to the problem created by the [transmission security limit] floor value computation error for Load Zone J.”<sup>23</sup> NYISO states that it has confirmed that the correction to the LCR is only necessary for Load Zone J for the upcoming Capability Year. NYISO asserts that it is not seeking waiver with respect to, or proposing to modify, earlier auction results or address other impacts of the error at this time. NYISO states that the correction of the LCR for Load Zone J will not cause any reliability issues or require any changes to the previously determined Installed Reserve Margin value for the 2024-2025 Capability Year to maintain compliance with the New York Control Area reliability criteria.<sup>24</sup>

11. Third, NYISO asserts that the waiver request addresses a concrete problem. NYISO explains that the transmission security limit floor calculation was inconsistent with ISO Procedures. NYISO estimates that leaving the error in the LCR uncorrected could result in increased capacity procurement costs for LSEs in Load Zone J of up to \$15-20 million per month during the 2024-2025 Capability Year.<sup>25</sup> NYISO contends that such an outcome is inconsistent with section 5.11.4(a) of the Services Tariff, which requires LCRs be calculated in a way that would “minimize the total cost of capacity at the prescribed level of excess.”<sup>26</sup>

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<sup>20</sup> *Id.* at 13 (citing NYISO, NYISO Tariffs, NYISO MST, § 3.5 (MST ISO Procedures) (6.0.0), § 3.5.1), 17.

<sup>21</sup> *Id.* at 13-14, 17.

<sup>22</sup> *Id.* at 17.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 16-18.

<sup>25</sup> *Id.* at 18.

<sup>26</sup> *Id.* (quoting NYISO, NYISO Tariffs, NYISO MST, § 5.11 (MST Requirements Applicable to LSEs) (19.0.0), § 5.11.4(a)).

12. Fourth, NYISO argues that the requested waiver would not have undesirable consequences, such as harming third parties. NYISO argues that although the correction may result in lower capacity prices in Load Zone J, which may be contrary to the economic interests of some market participants, no stakeholder has a legitimate interest in preventing an error from being corrected for that reason. NYISO asserts that all market participants will benefit from capacity auction prices that accurately reflect NYISO's methodology for computing transmission security limit floor values for LCRs.<sup>27</sup>

13. NYISO explains that the LCR also serves as the basis for various downstream processes related to the administration of the capacity market, including determination of Capacity Accreditation Factors, the availability of capacity import rights, and the translation of ICAP Demand Curves to Unforced Capacity terms for purposes of conducting the monthly ICAP Spot Market Auctions for the 2024-2025 Capability Year.<sup>28</sup> NYISO states that, at this time, it is not proposing to make changes or seek waivers related to any of the downstream processes, because it would not be feasible for NYISO to make such adjustments prior to the May 2024 ICAP Spot Market Auction.<sup>29</sup> NYISO contends that the potential financial impacts of revising the results of the downstream processes appear limited based on the information currently available.<sup>30</sup> NYISO asserts that it will continue to collaborate with its stakeholders to assess the feasibility, implications, timelines and required actions to pursue any corrective action for the downstream processes on a prospective basis.<sup>31</sup>

14. NYISO requests that the Commission act as expeditiously as possible to issue an order granting waiver, as the start of the May 2024 ICAP Spot Market Auction is imminent. NYISO states that, unless it is instructed to do otherwise on or before April 19, 2024, it intends to implement the corrected LCR for Load Zone J by April 22, 2024, the certification deadline for the upcoming May 2024 ICAP Spot Market Auction. NYISO asserts that, given the likely significant impact of the error on auction results if not corrected, NYISO believes it must take corrective action as soon as possible.<sup>32</sup>

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<sup>27</sup> *Id.* at 18-19.

<sup>28</sup> *Id.* at 3.

<sup>29</sup> *Id.* at 3, 17, 19.

<sup>30</sup> *Id.* at 3.

<sup>31</sup> *Id.* at 4, 14, 17, 19.

<sup>32</sup> *Id.* at 2.

### III. Notice and Responsive Pleadings

15. Notice of NYISO's filing was published in the *Federal Register*, 89 Fed. Reg. 32,409 (Apr. 26, 2024), with interventions and protests due on or before April 23, 2024. Timely motions to intervene were filed by the MMU; Independent Power Producers of New York, Inc. (IPPNY);<sup>33</sup> NRG Business Marketing LLC; Calpine Corporation; Ravenswood Operations, LLC (Ravenswood); and the City of New York (New York City). The MMU, IPPNY, Ravenswood, and New York City filed comments. On April 26, 2024, New York Transmission Owners (NYTOs)<sup>34</sup> filed a motion to intervene out-of-time.

16. The MMU, IPPNY, Ravenswood, and New York City support granting NYISO's requested waiver to correct the LCR for Load Zone J for the 2024-2025 Capability Year.<sup>35</sup> New York City states that it supports NYISO's requested waiver because requiring customers to purchase additional capacity to satisfy the initial LCR of 81.7% is unnecessary and would burden customers with costs beyond the amount required to meet the reliability standard.<sup>36</sup> The MMU supports NYISO's proposal to correct the LCR and not Capacity Accreditation Factors so that the May 2024 ICAP Spot Market Auction and all future auctions may be completed prior to the delivery period and produce just and reasonable prices.<sup>37</sup>

17. The MMU asserts that the scope of NYISO's waiver request is reasonable given that the direct effects of the error are an increased transmission security limit floor value and LCR for Load Zone J, which the MMU estimates would result in increased capacity costs of \$17 million for May 2024. The MMU asserts that it is important to ensure that the auction can be conducted ahead of the delivery period and the market participants have certainty regarding the auction clearing price, purchases, and sales resulting from

<sup>33</sup> IPPNY is a not-for-profit trade association representing the independent power industry in New York State, and its members include suppliers and marketers that participate in the NYISO's energy and capacity markets.

<sup>34</sup> The NYTOs include: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Long Island Power Authority; New York Power Authority; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation.

<sup>35</sup> MMU Comments at 2; IPPNY Comments at 3; Ravenswood Comments at 2; New York City Comments at 1.

<sup>36</sup> New York City Comments at 2-3.

<sup>37</sup> MMU Comments at 6.

the auction. The MMU asserts that the magnitude of the error's impact on Capacity Accreditation Factors would likely be very small because it would have no effect on thermal resources, which constitute the majority of resources in New York, and it would likely have small effects on other types of units, including storage resources, energy-limited resources, and intermittent resources.<sup>38</sup>

18. The MMU, IPPNY, and Ravenswood explain that NYISO presented preliminary updated Capacity Accreditation Factors for energy storage resources with a four-hour duration to stakeholders at the April 19, 2024 Operating Committee meeting, which according to the MMU, are thought to be the most sensitive to changes in the resource mix in the resource adequacy model.<sup>39</sup> The MMU, IPPNY, and Ravenswood state that NYISO found the overall effects of changes in the Capacity Accreditation Factor for the 4-hour energy storage resources ranged from a maximum of 2.33% in Rest of State to a minimum of -1.35% in New York City, which the MMU argues is proportionally smaller than the primary direct effect of the LCR.<sup>40</sup>

19. While IPPNY, Ravenswood, and New York City request that the Commission grant NYISO's waiver request, they underscore the need for NYISO to expeditiously complete the assessment of downstream factors and implement them for as many months of the 2024-2025 Capability Year as reasonably practicable.<sup>41</sup> Ravenswood argues that, while NYISO suggests that the impacts of the calculation error on other market constructs are limited, the outcome cannot be known until NYISO's work is completed and the materiality of the impacts can be meaningfully assessed by market participants.<sup>42</sup> IPPNY argues that accurate calculation of all market parameters is imperative to achieve market efficiency.<sup>43</sup> New York City likewise argues that NYISO should similarly take corrective action in every instance where the error exists, and contends that limiting corrective action to instances where the effect of the error is "meaningful" or "material" is problematic because those are subjective terms.<sup>44</sup> Ravenswood asserts that, given the

<sup>38</sup> *Id.* at 3-4.

<sup>39</sup> *Id.* at 5; IPPNY Comments at 2; Ravenswood Comments at 4.

<sup>40</sup> MMU Comments at 5; IPPNY Comments at 2; Ravenswood Comments at 4 n.10.

<sup>41</sup> IPPNY Comments at 3; Ravenswood Comments at 2, 6; New York City Comments at 3.

<sup>42</sup> Ravenswood Comments at 6.

<sup>43</sup> IPPNY Comments at 3.

<sup>44</sup> New York City Comments at 3.



specific facts and circumstances, it agrees that the LCR for Zone J should be corrected for all months in the 2024-2025 Capability Year, but asks that the Commission require NYISO to expeditiously provide updated analyses and file changes to address the remaining calculation errors as well, no later than the July ICAP Spot Market Auction.<sup>45</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2023), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

21. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we grant NYTOs' late-filed motion to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

##### **B. Substantive Matters**

22. We grant NYISO's request for waiver of sections 5.11.4 and 5.11.4(c) of the Services Tariff, to the extent they prohibit NYISO from correcting an erroneous transmission security limit floor value, to correct the LCR for Load Zone J for the 2024-2025 Capability Year, starting with the May 2024 ICAP Spot Market Auction. 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.<sup>46</sup> We find that the circumstances of NYISO's waiver request satisfy these criteria.

23. First, we find that NYISO acted in good faith. The record demonstrates that NYISO timely informed its MMU, its stakeholders, and the Commission's Office of Enforcement once it discovered the calculation error in the transmission security limit value for Load Zone J.<sup>47</sup> NYISO expeditiously worked through its proposed remedial action plan with its stakeholders and then promptly filed the instant waiver request to correct the LCR for Load Zone J on a prospective basis.

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<sup>45</sup> Ravenswood Comments at 2, 6, 7.

<sup>46</sup> See, e.g., *Citizens Sunrise Transmission LLC*, 171 FERC ¶ 61,106, at P 10 (2020); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

<sup>47</sup> Waiver Request at 13.

24. Second, we find that NYISO's requested waiver is limited in scope because NYISO seeks a one-time waiver of sections 5.11.4 and 5.11.4(c) of the Services Tariff to correct the LCR for Load Zone J for the 2024-2025 Capability Year, such that the LCR is calculated consistent with NYISO's methodology as outlined in the ISO Procedures. As NYISO explains, this approach is the narrowest feasible solution to the problem created by the transmission security limit floor value computation error, and NYISO's waiver request does not seek to modify earlier auction results.

25. Third, we find that the waiver addresses a concrete problem. Absent waiver, NYISO would be required to use in its ICAP Spot Market Auctions during the 2024-2025 Capability Year an LCR for Load Zone J that is based on the incorrect historical data. Such use would be inconsistent with the methodology in the Services Tariff and ISO Procedures and could result in excessive capacity procurement costs of up to \$15-20 million per month during the 2024-2025 Capability Year.<sup>48</sup>

26. Finally, we find that the waiver request will not have undesirable consequences, such as harming third parties, because it will allow NYISO to use an LCR for Load Zone J that is calculated using the correct historical data according to NYISO's methodology in the ISO Procedures.

27. With respect to arguments that the Commission should additionally order NYISO to correct the error with regard to the downstream processes for the ICAP Spot Market Auctions for the 2024-2025 Capability Year, we find that such requests are beyond the scope of the instant waiver request. Here, NYISO requests waiver of sections 5.11.4 and 5.11.4(c) of the Services Tariff to correct the LCR for Load Zone J for the 2024-2025 Capability Year, starting with the May 2024 ICAP Spot Market Auction. Further, NYISO explains that it is not feasible at this time to implement corrective action for the downstream processes, but states that it will continue to assess the impacts of the calculation error on the downstream processes and pursue any required action on a prospective basis.<sup>49</sup> While we do not direct NYISO to make such correction, we encourage NYISO to expeditiously complete its assessment of the calculation error's impact on the downstream processes and continue working with its stakeholders to determine an appropriate solution.

The Commission orders:

NYISO's waiver request is hereby granted, as discussed in the body of this order.

By the Commission.

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<sup>48</sup> *Id.* at 2, 18.

<sup>49</sup> *Id.* at 4, 14, 17.

( S E A L )

Debbie-Anne A. Reese,  
Acting Secretary.