

192 FERC ¶ 61,045
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Mark C. Christie, Chairman;
David Rosner, Lindsay S. See,
and Judy W. Chang.

New York Independent System Operator, Inc.

Docket No. ER25-1931-000

ORDER GRANTING WAIVER REQUEST

(Issued July 11, 2025)

1. On April 10, 2025, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure,¹ New York Independent System Operator, Inc. (NYISO) submitted a request for waiver of section 6.1.15 of NYISO's Open Access Transmission Tariff (OATT)² and section 7.4 of NYISO's Market Administration and Control Area Services Tariff (Services Tariff).³ NYISO seeks waiver to permit it to correct and resettle certain annual charges under the OATT for the billing months of October 2023 through March 2024. As discussed below, we grant NYISO's request for waiver of section 7.4 of the Services Tariff.

I. Background

2. Section 6 of the OATT contains the rules and procedures related to Rate Schedules. Specifically, section 6.1.15 of the OATT requires transmission customers to pay a charge for the recovery of annual charges assessed to NYISO by the Commission pursuant to Part 382 of the Commission's regulations (annual FERC fee).⁴ NYISO assesses charges for the recovery of the annual FERC fee based on transmission customers' participation in both physical and non-physical market activity. The annual FERC fee is allocated 94% to physical market activity and 6% to non-physical market

¹ 18 C.F.R. § 385.207(a)(5) (2024).

² NYISO, NYISO Tariffs, NYISO OATT, 6.1.9-6.1.15 OATT Schedule 1 - ISO Annual Budget Charge (7.0.0), § 6.1.15.

³ NYISO, NYISO Tariffs, NYISO MST, 7.4 MST Billing Disputes (4.0.0), § 7.4.1.

⁴ 18 C.F.R. pt. 385.

activity.⁵ As relevant here, of the charges for physical market activity, 28% are assessed to injection units (Suppliers) and 72% to withdrawal units (Loads).⁶

3. Section 7 of the Services Tariff contains the rules and procedures related to billing and payment between NYISO and customers purchasing wholesale energy and other services from NYISO's market. Section 7.4 of the Services Tariff establishes the processes and timeframes for review, challenge, and correction of customer invoices.⁷ Section 7.4.1.1. of the Services Tariff provides, in relevant part:

Settlement information . . . shall be subject to review, comment, and challenge by a Customer and correction or adjustment by the ISO for errors at any time for up to five (5) months from the date of the initial invoice for the month in which service is rendered⁸

4. Section 7.4 of the Services Tariff provides, in relevant part:

For purposes of this Section 7.4, "finalized" data and invoices shall not be subject to further correction, including by the ISO, except as ordered by the Commission or a court of competent jurisdiction; *provided, however*, that nothing herein shall be construed to restrict any stakeholder's right to seek redress from the Commission in accordance with the Federal Power Act.⁹

II. Waiver Request

5. NYISO states that, when preparing its settlement software to assess the annual FERC fee to transmission customers for the October 1, 2023 to September 30, 2024 federal fiscal year, it inadvertently instructed the settlement software to assess 28% to Loads and 72% to Suppliers for physical market activity, which is the inverse of the allocation required by section 6.1.15.1 of the OATT.¹⁰ NYISO avers that this error

⁵ NYISO, NYISO Tariffs, NYISO OATT, 6.1.9-6.1.15 OATT Schedule 1 - ISO Annual Budget Charge (7.0.0), § 6.1.15.

⁶ *Id.* § 6.1.15.1.

⁷ NYISO, NYISO Tariffs, NYISO MST, 7.4 MST Billing Disputes (4.0.0), § 7.4.

⁸ *Id.* § 7.4.1.1

⁹ *Id.* § 7.4 (emphasis in original).

persisted undetected on monthly invoices for billing months October 2023 through October 2024, and, as a result, Suppliers were overcharged and Loads undercharged for their portion of the physical market activity fee.¹¹ NYISO states that it identified the error on November 18, 2024, and corrected invoices dating to April 1, 2024, in accordance with NYISO's ordinary billing procedures.¹²

6. NYISO explains, however, that pursuant to the timelines for correcting billing invoices provided in section 7.4 of the Services Tariff, it cannot fix the misallocation of physical market activity charges for the billing months of October 2023 through March 2024 absent an order from the Commission. NYISO asserts that, as a result, approximately \$3.8 million was inaccurately allocated to Suppliers when that amount should have been charged to Loads.¹³

7. NYISO requests waiver of section 6.1.15 of the OATT and section 7.4 of the Services Tariff to permit NYISO to correct and resettle the physical market activity charge, i.e., the allocation between Suppliers and Loads for the billing months of October 2023 through March 2024.¹⁴ NYISO contends that the Commission may grant retroactive tariff waivers when there exists sufficient notice that a filed rate is subject to change outside of an otherwise applicable time bar.¹⁵ NYISO asserts that although the Commission has previously held that waiver requests seeking to correct billing invoices that fall outside of the time limitations provided for in section 7.4 of the Services Tariff are retroactive in nature, that tariff provision provides market participants with the requisite notice that otherwise finalized settlements may be subject to revision.¹⁶

¹⁰ Waiver Request at 2.

¹¹ *Id.*

¹² *Id.* at 3.

¹³ *Id.* at 2.

¹⁴ *Id.* at 8-9.

¹⁵ *Id.* at 5 (citing *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821, 824-25 (D.C. Cir. 2021); *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1230 (D.C. Cir. 2018)).

¹⁶ *Id.* (citing *Consol. Edison Co. of N.Y., Inc.*, 187 FERC ¶ 61,047, at P 24 (2024); *NRG Power Mktg. LLC*, 178 FERC ¶ 61,055, at P 10 (2022) (*NRG*); *Consol. Edison Co. of N.Y., Inc.*, 168 FERC ¶ 61,047, at P 11 (2019); *Niagara Mohawk Power Corp.*, 123 FERC ¶ 61,314, at PP 24-25 (2008) (*Niagara Mohawk*)).

8. NYISO states that rebalancing the annual FERC fee charges for those months pursuant to the percentage allocation prescribed by section 6.1.15 of the OATT would effectuate the intent of the annual FERC fee allocation provisions as accepted by the Commission and would achieve an equitable outcome for all parties involved. NYISO argues that there is no reason to allow the readily correctible misallocation of FERC fees to stand.¹⁷

9. NYISO contends that its waiver request satisfies the Commission's criteria for granting waiver. First, NYISO argues that it acted in good faith in its administration of section 6.1.15 of the OATT and section 7.4 of the Services Tariff. NYISO states that it inadvertently reversed the percentage allocation between charges to Suppliers and charges to Loads when preparing for the October 2023 to September 2024 federal fiscal year. NYISO avers that it acted diligently to address the issue once a market participant informed it of the discrepancy. NYISO states that it began correcting all invoices that remained open for unilateral correction by NYISO under section 7.4 of the Services Tariff. In addition, NYISO explains that it implemented new controls to prevent the issue from occurring in the future.¹⁸

10. Second, NYISO asserts that its requested relief is limited in scope because it involves NYISO's process to charge a single fee under its Commission-accepted tariffs. Specifically, NYISO states that the waiver would return the annual FERC fee charge allocation to the percentage split established by the OATT. NYISO states that its one-time waiver request applies only to the period from October 2023 through March 2024 and that NYISO already had tariff authority to unilaterally correct the error for later months. NYISO asserts that granting the waiver would affect just \$3.8 million in fees divided across all Suppliers and Loads in the NYISO region.¹⁹

11. Third, NYISO argues that its requested waiver addresses a concrete problem, i.e., the inadvertent reversal of the 28%/72% allocation in NYISO's billing system. NYISO asserts that the waiver would allow NYISO to correct the allocation split and to charge transmission customers based on the percentage allocation they should have been subjected to in the first instance under the express and unambiguous terms of the OATT. NYISO states that a \$3.8 million error constitutes a concrete problem even though the financial impact on individual stakeholders will be relatively limited. NYISO states that

¹⁷ *Id.* at 4.

¹⁸ NYISO states that it embedded the correct annual FERC fee allocation percentages into the invoicing system to avoid having to manually enter them each fiscal year. *Id.* at 6 & n.10.

¹⁹ *Id.* at 6-7.

there is no economic justification for allowing the reversed annual FERC fee allocation to remain in place, especially when the error is being corrected for the period after March 2024.²⁰

12. Finally, NYISO asserts that its requested relief will not create undesirable consequences, such as harm to third parties, because the waiver will address an issue that impacted all transmission customers that engage in physical market activity and each party should be assessed the correct portion of the annual FERC fee charges. NYISO states that all stakeholders were on notice that NYISO was supposed to apply the 28%/72% allocation ratio set forth in section 6.1.15 of the OATT. NYISO notes that, to that end, it routinely provides stakeholders with information regarding the anticipated level of annual FERC fees. Moreover, NYISO states that the annual FERC fee allocation can be corrected without impacting parties that were or are not subject to annual FERC fee charges. NYISO asserts that, by contrast, denying the waiver would require it to leave the incorrect settlements in place and force transmission customers to accept the inaccurate settlements.²¹

III. Notice and Responsive Pleadings

13. Notice of NYISO's filing was published in the *Federal Register*, 90 Fed. Reg. 16117 (Apr. 17, 2025), with interventions and protests due on or before May 1, 2025. The New York State Public Service Commission filed a notice of intervention. Calpine Corporation; Solar Energy Industries Association; the City of New York; and Multiple Intervenors²² filed timely motions to intervene. The City of New York and Multiple Intervenors (collectively, the New York Consumer Advocates) filed a protest.

14. The New York Consumer Advocates oppose NYISO's waiver request. The New York Consumer Advocates argue that NYISO has historically treated finalized invoices as final with only limited exceptions in order to balance billing accuracy with market participant billing certainty. According to the New York Consumer Advocates, NYISO has only reopened finalized invoices in the case of extraordinary circumstances resulting in a significant injustice.²³ The New York Consumer Advocates contend that no such circumstances exist here, as the misallocation of \$3.8 million in fees divided

²⁰ *Id.* at 7.

²¹ *Id.* at 7-8.

²² Multiple Intervenors is an unincorporated association of approximately 55 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State.

²³ New York Consumer Advocates Protest at 3-4.

between withdrawal and injection units has a negligible effect on market participants and granting NYISO's request would create considerable uncertainty as to the standard applicable to the potential modification of invoices deemed final.²⁴

15. The New York Consumer Advocates argue that NYISO and the Commission have previously taken the position that reopening invoices deemed final should require a finding of extraordinary circumstances resulting in significant injustice.²⁵ For example, the New York Consumer Advocates state that the Commission granted a request to direct NYISO to adjust billing invoices that included duplicative charges caused by a software error for energy purchases over a six-month period.²⁶ The New York Consumer Advocates state that NYISO argued, and the Commission agreed, that granting the requested relief to correct erroneous billing settlements beyond the ordinary time bar was appropriate because of the existence of extraordinary circumstances resulting in significant injustice.²⁷

16. The New York Consumer Advocates also argue that the Commission has denied a request to order NYISO to reopen and resettle bills that had been finalized pursuant to section 7.4 of the Services Tariff to correct numerous individually small but cumulatively large metering errors between 1999 and 2008.²⁸ The New York Consumer Advocates state that, in that proceeding, NYISO opposed reopening and modifying erroneous finalized invoices, stressed the need for billing certainty, and argued for the extraordinary circumstances standard.²⁹ The New York Consumer Advocates state that the Commission found that "the appropriate remedy for the relatively minor billing errors was to correct the cause of the errors prospectively . . . and take steps to ensure that these types of errors both do not reoccur and will be quickly discovered if they do reoccur."³⁰

17. The New York Consumer Advocates contend that, in the instant proceeding, NYISO improperly relies on the Commission's four tariff waiver criteria, which are meant only for ordinary waivers of tariff provisions. According to the New York Consumer Advocates,

²⁴ *Id.* at 4.

²⁵ *Id.* at 5.

²⁶ *Id.* (citing *Niagara Mohawk*, 123 FERC ¶ 61,314).

²⁷ *Id.* at 5-6 (citing *Niagara Mohawk*, 123 FERC ¶ 61,314 at PP 1-2, 16, 25).

²⁸ *Id.* (citing *N.Y. State Elec. & Gas Corp.*, 133 FERC ¶ 61,094 (2010) (*NYSEG*)).

²⁹ *Id.* at 6-7 (citing *NYSEG*, 133 FERC ¶ 61,094 at PP 35, 55).

³⁰ *Id.* at 7-8 (quoting *NYSEG*, 133 FERC ¶ 61,094 at P 64 (internal quotation marks omitted)).

requiring the higher threshold of extraordinary circumstances to waive section 7.4 of the Services Tariff reflects the fact that billing certainty is crucial to the effective functioning of NYISO's markets. The New York Consumer Advocates argue that the amount involved—\$3.8 million in misallocated charges across all withdrawal and injection units in NYISO—is *de minimis*, and therefore denying NYISO's request would not measurably harm market participants.³¹ The New York Consumer Advocates assert that, in contrast, granting waiver would create uncertainty as to when NYISO may seek to reopen final invoices and that it would be easier for NYISO to reopen a broader array of finalized bills using the less stringent four-criteria waiver test.³² Finally, the New York Consumer Advocates request that, should the Commission grant NYISO's waiver request, the Commission clarify when final invoices can be opened and modified and the standard the Commission will apply to future waiver requests of the same kind.³³

IV. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2024), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

19. We grant NYISO's request for waiver of section 7.4 of the Services Tariff to permit NYISO to correct and resettle the annual FERC fee charge for the billing months of October 2023 through March 2024. As an initial matter, because NYISO seeks to correct and resettle the annual FERC fee charge outside of the time limitations set forth in the Services Tariff, NYISO's waiver request is retroactive. However, section 7.4 of the Services Tariff provides that "'finalized' data and invoices shall not be subject to further correction, including by [NYISO], except as ordered by the Commission"³⁴ This provision provides sufficient notice to customers that finalized invoices could be subject to further correction by order of the Commission outside of the otherwise applicable time bar.³⁵ The Commission has granted

³¹ *Id.* at 8-9.

³² *Id.* at 9.

³³ *Id.* at 10.

³⁴ NYISO, NYISO Tariffs, NYISO MST, 7.4 MST Billing Disputes (4.0.0), §§ 7.4.1.1.1, 7.4.1.1.4.

³⁵ See *Consol. Edison Co. of N.Y., Inc.*, 187 FERC ¶ 61,047 at P 24 (granting waiver to allow NYISO to correct metering data beyond the invoice correction time bar,

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.³⁶ We find that the circumstances of NYISO's waiver request satisfy these criteria.

20. First, we find that NYISO acted in good faith in promptly correcting the annual FERC fee allocation error for all invoices that remained open for unilateral correction by NYISO once it became aware of the discrepancy. NYISO states that it also implemented new controls to prevent the issue from occurring in the future.³⁷ Second, we find that the waiver request is limited in scope because NYISO seeks one-time waiver of section 7.4 of the Services Tariff to allow it to correct the annual FERC fee allocation for the discrete period of October 2023 through March 2024. Third, we find that the waiver request addresses a concrete problem because it will allow NYISO to correct the allocation split and to charge transmission customers based on the percentage allocation they should have been subjected to in the first instance under the express and unambiguous terms of the NYISO OATT. Finally, we find that the waiver request will not have undesirable consequences, such as harming third parties. Instead, the waiver will ensure that billing invoices reflect the actual cost Suppliers and Loads should pay pursuant to the OATT for billing months October 2023 through March 2024.

21. We view NYISO's request for waiver of section 6.1.15 of the OATT as an attempt to correct errors of past non-compliance with the provision at issue. Upon consideration, we will exercise our discretion in addressing such matters,³⁸ and, given the facts, we take no action with respect to these instances of NYISO's past non-compliance with section 6.1.15 of the OATT.³⁹

consistent with section 7.4 of the Services Tariff); *NRG*, 178 FERC ¶ 61,055 at P 10 (same); *Consol. Edison Co. of N.Y., Inc.*, 168 FERC ¶ 61,047 at P 11 (same); *see also Niagara Mohawk*, 123 FERC ¶ 61,314 at PP 24-25 (directing NYISO to correct metering invoices from three years prior, pursuant to section 7.4 of the Services Tariff).

³⁶ *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).

³⁷ Waiver Request at 6.

³⁸ *See, e.g., Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153,159 (D.C. Cir. 1967) (“[T]he breadth of agency discretion is, if anything, at zenith when the action assailed relates primarily . . . to the fashioning of policies, remedies and sanctions . . . in order to arrive at maximum effectuation of Congressional objectives.”).

³⁹ 16 U.S.C. § 825h.

22. We disagree with New York Consumer Advocates that the Commission's standard for granting waiver of section 7.4 of the Services Tariff is an "extraordinary circumstances" standard. The precedent on which the New York Consumer Advocates rely did not involve a request for waiver of section 7.4 of the Services Tariff and, therefore, did not establish a standard for evaluating such requests. Rather, those cases arose from petitions for declaratory order asking the Commission to direct NYISO to use section 7.4 to fix inaccurate billing invoices that NYISO asserted it could not unilaterally correct.⁴⁰

The Commission orders:

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

By the Commission.

(S E A L)

Carlos D. Clay,
Deputy Secretary.

⁴⁰ See *Niagara Mohawk*, 123 FERC ¶ 61,314 at PP 1, 24-25; *NYSEG*, 133 FERC ¶ 61,094 at PP 3, 44-45. The New York Consumer Advocates also cite to the Commission's findings that a request for waiver of an OATT provision to allow NYISO to forgo correcting invoices was not necessary and, separately, declining to direct NYISO to make such corrections because extraordinary circumstances did not exist. New York Consumer Advocates Protest at n.19 (citing *N.Y. Indep. Sys. Operator, Inc.*, 128 FERC ¶ 61,086 (2009)). However, again, the Commission did not apply an "extraordinary circumstances" standard to the question of whether to waive a tariff provision. See *N.Y. Indep. Sys. Operator, Inc.*, 128 FERC ¶ 61,086 at PP 19-23.