

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New York Independent System Operator, Inc.)
)

Docket No. RM16-5-001

**REQUESTS FOR CLARIFICATION AND ALTERNATIVE REQUESTS FOR
REHEARING OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Section 313(a) of the Federal Power Act¹ and Rules 713 and 2007 of the Commission’s Rules of Practice and Procedure,² the New York Independent System Operator, Inc. (“NYISO”) requests rehearing of the Commission’s November 17, 2016, *Final Rule on Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators* in the above-captioned proceeding (“Final Rule”).³ The Final Rule requires each independent system operator (“ISO”) and regional transmission organization (“RTO”): (1) to cap each resource’s incremental energy offer at the higher of \$1,000/MWh or that resource’s verified cost-based incremental energy offer;⁴ and (2) to cap verified cost-based incremental energy offers at \$2,000/MWh when calculating locational marginal prices (“LMP”).

As discussed below, the NYISO respectfully requests rehearing of the Final Rule’s directive that RTOs/ISOs are expected to use cost-based incremental energy offers above \$2,000/MWh to determine merit-order dispatch.⁵ In addition, the NYISO seeks clarification, or in the alternative rehearing, that the caps imposed in accordance with the Final Rule may be

¹ 16 U.S.C. § 8251(a).

² 18 C.F.R. § 385.713.

³ *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Final Rule, 157 FERC ¶ 61,115 (2016) (“Final Rule”).

⁴ Final Rule at P 42.

⁵ Final Rule at P 90.

uniformly applied to both incremental energy offers and minimum generation offers in New York.

I. COMMUNICATIONS

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II. SPECIFICATION OF ERRORS/STATEMENT OF ISSUES

In accordance with Rule 713(c),⁷ the NYISO submits the following specifications of error and statement of the issues on which it seeks rehearing of the Final Rule:

- To the extent that Commission denies the NYISO's requested clarification and intended for the Final Rule to require ISOs/RTOs to dispatch resources with verified incremental energy offers above \$2,000/MWh in merit order, it must reverse that determination on rehearing. Such a requirement would be inconsistent with reasoned decisionmaking because it is not based on record evidence (since the Commission did not seek comment on the matter), would represent an unexplained departure from Commission policy and precedent, would impose substantial costs on the NYISO while bringing no offsetting benefits, and would create a harmful divergence between schedules and pricing in the NYISO-administered markets.⁸

⁶ Waiver of the Commission's regulations (18 C.F.R. § 385.203(b)(3) (2014)) is requested to the extent necessary to permit service on counsel for the NYISO in Rensselaer, NY and Washington, D.C.

⁷ 18 C.F.R. § 385.713(c).

⁸ See, e.g., *Motor Vehicle Mfr. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 at 43 (1983); *National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 at 839 (D.C. Cir. 2006); *NorAM Gas Transmission Co. v. FERC*, 148 F.3d

- To the extent that Commission denies the NYISO’s requested clarification and intended for the Final Rule to require ISOs/RTOs to apply a different offer cap to incremental energy offers from minimum generation offers it must reverse that determination on rehearing. Such a requirement was not adequately considered or explained by the Final Rule, would result in unjustifiably inconsistent treatment of similar offers, and would create perverse incentives for market participants, and would therefore be inconsistent with reasoned decisionmaking.⁹

III. BACKGROUND

On November 17, 2016, the Commission issued the Final Rule which directed each ISO/RTO to establish three requirements in their tariffs. Specifically:¹⁰

- (1) A resource’s incremental energy offer must be capped at the higher of \$1,000/MWh or that resource’s cost-based incremental energy offer. For the purpose of calculating Locational Marginal Prices, Regional Transmission Organizations and Independent System Operators must cap cost-based incremental energy offers at \$2,000/MWh. (“Offer cap structure requirement”)
- (2) The costs underlying a resource’s cost-based incremental energy offer above \$1,000/MWh must be verified before that offer can be used for purposes of calculating Locational Marginal Prices. If a resource submits an incremental energy offer above \$1,000/MWh and the costs underlying that offer cannot be verified before the market clearing process begins, that offer may not be used to calculate Locational Marginal Prices and the resource would be eligible for a make-whole payment if that resource is dispatched and the resource’s costs are verified after-the-fact. A resource would also be eligible for a make-whole payment if it is dispatched and its verified cost-based incremental energy offer exceeds \$2,000/MWh. (“Verification requirement”)
- (3) All resources, regardless of type, are eligible to submit cost-based incremental energy offers in excess of \$1,000/MWh. (“Resource neutrality requirement”).

In addition, the Final Rule stated that the Commission “expects” ISOs/RTOs to use incremental energy offers above \$2,000/MWh to determine merit-order dispatch.¹¹ As is

1158, 1165 (D.C. Cir. 1998); *citing K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1303 (D.C. Cir. 1992); *West Deptford Energy, LLC v. FERC*, 766 F.3d 10, 12 (D.C. Cir. 2014).

⁹ *Id.*

¹⁰ Final Rule at P 42.

discussed below it is unclear whether this “expectation” is intended to constitute another requirement.

IV. REQUESTS FOR CLARIFICATION AND ALTERNATIVE REQUESTS FOR REHEARING

A. The Commission Should Clarify that the Final Rule Does Not Require All ISOs/RTOs to Use Cost-Based Incremental Energy Offers Above \$2,000/MWh to Determine Merit Order Dispatch or, in the Alternative, Should Grant Rehearing

1. The Final Rule’s “Expectation” that All ISOs/RTOs Will Use Cost-Based Incremental Energy Offers above \$2,000/MWh to Determine Merit-Order Dispatch Is Unreasonable and Is Not Based on Record Evidence

As noted above, Paragraph 42 of the Final Rule establishes three “requirements” that each RTO/ISO must establish in its Tariffs, *i.e.*, the Offer Cap Structure, Verification, and Resource Neutrality requirements. The NYISO is prepared to propose necessary revisions to its Market Administration and Control Area Services Tariff (“Services Tariff”) and to develop the necessary software, processes and procedures to comply with the requirements in Paragraph 42 (subject to certain clarifications that the NYISO requests in other sections of this filing). However, the NYISO has concerns about its ability to implement an aspect of the Final Rule that is not explicitly identified as a “requirement” in Paragraph 42.

Paragraphs 86 and 87 of the Final Rule determined that a \$2,000/MWh “hard cap” on offers used to calculate LMPs was necessary. The NYISO is capable of implementing, and will propose to implement, a \$2,000/MWh hard cap on offers that are used to calculate Locational-Based Marginal Prices (“LBMPs”) (the NYISO equivalent of LMPs) in its compliance filing.

¹¹ Final Rule at P 90.

The NYISO also intends to submit proposed Tariff¹² rules to comply with the Commission's instruction that it should pay uplift to Generators whose verified costs exceed \$2,000/MWh.

However, in Paragraph 90 of the Order the Commission states "With respect to the treatment of cost-based incremental energy offers above \$2,000/MWh, we **expect** RTOs/ISOs to use such offers to determine merit-order dispatch. We note that the Commission allowed this approach when accepting PJM's current offer cap structure..." [Emphasis added.]

The *Notice of Proposed Rulemaking* in this proceeding did not seek comment on whether ISOs and RTOs should be required to use incremental energy offers in excess of the \$2,000/MWh hard cap to determine merit-order dispatch.¹³ As set forth below, the NYISO believes it is important for the Commission to have a full understanding of why it is not necessary or reasonable to impose such a requirement on the NYISO given its fundamental incompatibility with the NYISO's *ex ante* pricing rules. Because the Commission did not seek prior comment, parties were denied an opportunity to address this question during the rulemaking process. Accordingly, the Final Rule's "expectation" that incremental energy offers above \$2,000/MWh would be used to determine merit-order dispatch in all ISOs/RTOs is not based on record evidence and treating such an expectation as a requirement would not constitute reasoned decisionmaking.¹⁴

¹² Capitalized terms not otherwise defined herein shall have the meaning specified in Section 2 of the NYISO Market Administration and Control Area Services Tariff ("Services Tariff").

¹³ See *Offer Caps In Markets Operated by Regional Transmission Organizations and Independent System Operators*, Notice of Proposed Rulemaking, 154 FERC ¶ 61,038 at P 73 (2016).

¹⁴ See *Illinois Commerce Commission v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009) ("we are not authorized to uphold a regulatory decision that is not supported by substantial evidence on the record as a whole, or to supply reasons for the decision that did not occur to the regulators."); *National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831, 839-40 (D.C. Cir. 2006) ("if we find that the claimed record evidence does not support the Order, we cannot uphold it.").

2. There Are Fundamental Differences Between PJM's and the NYISO's Market Design and Pricing Rules

PJM employs a secondary *ex post* process to determine LMPs that is separate and distinct from the process PJM uses to determine resource schedules. The NYISO uses a common *ex ante* process to determine both resource schedules and LBMPs. PJM's design accommodates discrepancies between schedules and prices. The NYISO's design encourages consistency between schedules and prices. Requiring the NYISO to use a different offer to commit and dispatch resources from the offer the NYISO uses to determine LBMPs will cause prices to diverge from schedules and introduce foreign *ex post* market design elements into the NYISO's established Energy Market design.

The Commission should not impose a solution that PJM developed to be compatible with its own pricing method, market rules and software capabilities on the NYISO and other ISOs/RTOs that employ different pricing methods, have different market rules and use different software to implement their markets. The Commission has repeatedly recognized that ISOs and RTOs do not (and need not) have identical software and that their markets can produce compatible results even if they do not employ identical market rules.¹⁵ The Commission has also recognized that the practical ability of each ISO or RTO to implement software changes, including the potential costs, often justifies allowing ISOs/RTOs to comply with Commission mandates in ways that accommodate regional circumstances rather than insisting on "one-size fits all" solutions.¹⁶ To the extent that the Final Rule is intended to depart from these

¹⁵ See, e.g., *New York Independent System Operator, Inc.*, 142 FERC ¶ 61,202 at PP 24-26 (2013) ("NYISO's compliance obligation does not require NYISO to redesign its market. [footnote omitted] This would be particularly unnecessary here where, as NYISO points out, it would be costly and economically inefficient to do so.").

¹⁶ *Id.* See also, *New York Independent System Operator, Inc.*, 133 FERC ¶ 61,246 at P 25 (2010).

Commission policies it does so without explanation and thus would not constitute reasoned decisionmaking.¹⁷

3. Developing the Capability to Perform a Merit Order Dispatch Using Offers that Exceed the \$2,000/MWh Offer Cap May Not Provide Significant Benefits to the NYISO's Stakeholders or to the Markets it Administers

Since July of 2000 the NYISO has employed a \$1000/MWh “hard” offer cap that applies to both incremental energy and minimum generation offers. Although the NYISO twice (out of an abundance of caution) requested Tariff waivers to permit it to pay demonstrated incremental energy or minimum generation costs in excess of the \$1000/MWh offer cap if necessary, no resource has ever demonstrated to the NYISO that it actually incurred incremental energy or minimum generation cost in excess of the NYISO’s currently effective \$1,000/MWh cap. The NYISO’s longstanding implementation of its \$1,000/MWh offer cap is not capable of using incremental energy or minimum generation offers that exceed the cap to determine merit-order dispatch. It is a true “hard cap.”

The NYISO currently employs commitment, dispatch and pricing algorithms that all utilize the same offers. Allowing resources to be committed and scheduled based on validated incremental energy offers above \$2,000/MWh, but then capping the offers when developing LBMPs and Ancillary Service prices would be challenging for the NYISO.

The commitment, dispatch and pricing architecture that underlies the NYISO’s Energy and Ancillary Services markets was designed based on the premise that prices and schedules should be aligned. The NYISO only acquires one offer per hour from each Supplier in both its Day-Ahead Market and its Real-Time Market. The NYISO uses the offers it receives each hour

¹⁷ See *Greater Boston Television Corp. v. Federal Communications Commission*, 444 F.2d. 841, 852 (D.C. Cir. 1970) (“an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute.”).

in all of its Energy market processes, including its market mitigation (conduct and impact testing), economic commitment, economic dispatch, price setting dispatch, price validation, and settlement processes. For the NYISO to cap verified incremental energy and minimum generation offers above \$2,000/MWh to \$2,000/MWh only for purposes of setting LBMPs and Ancillary Service market clearing prices, while using an uncapped set of verified offers to determine its merit-order dispatch, would require changes to the NYISO's software that would be resource intensive and potentially costly.

The changes NYISO would need to make to its market software include re-engineering the price validation tools that it currently relies on to ensure that market clearing prices are just and reasonable.¹⁸ In order to validate market clearing prices the NYISO performs a check to ensure that schedules and prices are consistent. The check compares a resource's offer to the LBMP and verifies that the resource's schedule was consistent with its offer. Using different offers to perform price setting from the offers that are used to schedule and dispatch resources would make validation of prices and schedules more complex and require more resources to be redirected from other key efforts.

Hence, implementing the Commission's instruction would prevent the NYISO from making market improvements that are more likely to actually provide day-to-day benefits to its Transmission Customers and to the markets it administers. The NYISO has *never* paid a demonstrated offer cost in excess of \$1,000/MWh and the NYISO may *never*, in fact, be called upon to perform a merit-order dispatch that requires it to select between several verified, cost-based offers that *each* exceed \$2,000/MWh. The NYISO's limited resources could be better

¹⁸ The NYISO's price validation rules are set forth in Attachment E to its Market Administration and Control Area Services Tariff.

spent completing projects that are more certain to benefit consumers and the markets it administers.

4. The Importance of Aligning Prices with Schedules Under the NYISO's Market Design

In 2008 and 2009 the NYISO submitted and the Commission accepted a pair of filings that were designed (a) to better align scheduling and pricing outcomes in the NYISO's Day-Ahead SCUC process,¹⁹ and (b) to better align real-time pricing outcomes with Generator output at times when a Generator's actual energy output diverges from its energy schedule.²⁰ Each of these filings addressed stakeholder concerns that arose due to inconsistencies between the NYISO's scheduling and pricing solutions that exposed Market Participants to financial risk or losses. On page 2 of its filing in Docket No. ER09-466 the NYISO explained:

[D]ifferences between the price-setting and schedule setting logic result in some resources receiving Day-Ahead schedules that are inconsistent with their [offer] price and are, therefore, uneconomic. While internal generators and import transactions experiencing schedule modifications as a result of this redispatch are eligible for bid production cost guarantee ("BPCG") payments, as necessary, to compensate them for the difference between Day-Ahead revenues and their Day-Ahead offers, export and wheel-through transactions, price-capped load, and virtual resources are not eligible for BPCG. As a result these resources may not be fully compensated in the Day-Ahead Market, to the level of their bids and offers.

Below the NYISO provides a numerical example to illustrate how the Commission's instruction to use a different set of offers to determine LBMPs from the offers that are used to schedule resources could introduce concerns similar to the concerns NYISO addressed at the request of its stakeholders in 2009.

¹⁹ See *New York Independent System Operator, Inc.*, Docket No. ER09-466-000 (December 23, 2008). Accepted in a letter order issued pursuant to delegated authority on February 6, 2009.

²⁰ See *New York Independent System Operator, Inc.*, Docket No. ER09-686-000 (February 10, 2009). Accepted in a letter order issued pursuant to delegated authority on March 11, 2009.

Example of Inconsistency Between Scheduling and Pricing Dispatches—CTS Import Transaction Scheduled Inconsistent with Its Offer and Paid Less than Its Cost of Providing Energy

	MW	Spread Bid (\$/MWh)	Neighboring ISO/RTO Price (\$/MWh)	Scheduling or “Physical” Dispatch		Pricing Dispatch	
				Cost (\$/MWh)	Dispatch (MW)	Cost (\$/MWh)	Dispatch (MW)
Gen1	350			\$1,800	350	\$1,800	350
Gen2	200			\$2,500	0	\$2,000	50
NYCA Load	-400				-400		-400
CTS Import Transaction	100	\$50	\$2,150	\$2,200	50	\$2,200	0
Gen-Load Balance					0		0
Marginal Price				\$2,200		\$2,000	

In the NYISO’s simplified example, a spread-bid that is identified as a 100 MW CTS Import Transaction is submitted with a \$50/MWh spread offer. The NYISO’s scheduling dispatch that is used to schedule resources and transactions schedules 50 MW of the import offer to serve NYCA load because the \$2,200/MWh price of the CTS Import Transaction²¹ is cheaper than the \$2,500/MWh cost of Gen2. Because the CTS Import Transaction has unscheduled MWh available, the price is set at \$2,200 in the physical pass. In the pricing pass Gen2’s offer is capped at \$2,000/MWh, which is less than the price at which the CTS Import Transaction offered to provide Energy to New York, so the pricing pass commits Gen2 to produce 50 MW at a price of \$2,000/MWh instead of scheduling the CTS Import Transaction. Because Gen2 is committed in the pricing pass and has unscheduled MW available, the LBMP is set at \$2,000/MWh in the pricing pass.

The CTS Import Transaction is scheduled inconsistent with its offer in this example. The CTS Import Transaction offered to import Energy to New York if the price in New York was at

²¹ \$2,150/MWh ISO-NE or PJM price + \$50/MWh spread offer = \$2,200/MWh CTS Import Transaction offer price.

least \$50/MWh more than the price in New England; a condition that was satisfied in the scheduling pass. However, the NYISO settles the CTS Import Transaction based on the \$2,000/MWh New York price determine in the pricing pass. In the example the CTS Import Transaction pays ISO-NE or PJM \$2,150/MWh for 50 MWh of Energy, but only receives \$2,000/MWh from the NYISO for the Energy it imports, resulting in a \$150/MWh loss.²² The NYISO does not pay uplift to CTS transactions, so the Market Participant that scheduled the CTS Import Transaction does not receive its offer price or recover the cost it incurred to schedule the CTS Import Transaction.

The NYISO's simple example illustrates how implementing an offer cap that only limits the offer prices that are used to determine LBMPs can cause a significant divergence between the NYISO's scheduling dispatch and its price-setting dispatch. The example shows how Market Participants can be harmed by the divergence between schedules and prices that would result if the NYISO is required to implement a \$2,000/MWh cap on the offers it uses to determine LBMPs, but is required to use verified incremental energy costs that exceed \$2,000/MWh to determine merit-order dispatch schedules.

5. Request for Clarification

The NYISO respectfully requests that the Commission clarify that the *expectation* stated in Paragraph 90 of the Final Rule that cost-based incremental energy offers above \$2,000/MWh should be used to determine merit-order dispatch was *not* intended to impose a mandate on all ISOs and RTOs, but rather reflects the Commission's desire and assumption that ISOs/RTOs that can practicably meet the stated expectation will do so. That is, Paragraph 90 does not create a binding requirement that ISOs/RTOs must adopt, even if doing so is impracticable or

²² \$150/MWh * 50 MWh = \$7,500 loss.

fundamentally inconsistent with an ISO's or RTO's Energy market rules. The NYISO's requested clarification is consistent with the Final Rule's use of the term "expects" rather than requires in Paragraph 90 (and is distinct from the Commission's use of "requires" in Paragraph 42). The NYISO's request is also consistent with Paragraph 94 of the Order which states that "We expect that any issues regarding the implementation of this final rule will be raised by RTOs/ISOs on compliance, and the Commission will address them at that time."

6. Alternative Request for Rehearing

In the alternative, the NYISO requests rehearing of Paragraph 90's statement that "[w]ith respect to the treatment of cost-based incremental energy offers above \$2,000/MWh, we expect RTOs/ISOs to use such offers to determine merit-order dispatch." It would be inconsistent with administrative law precedent governing rulemakings, and with reasoned decisionmaking for the Commission to establish a new requirement without having sought or received comments on the underlying issues.²³ Moreover, the Commission has not demonstrated that Paragraph 90's "requirement" must be imposed uniformly across all of the ISOs and RTOs in order to produce just and reasonable rates or for ISO/RTO tariffs, including the NYISO's, to be just and reasonable. Nor has the Commission adequately considered or explained the burdens that such a requirement would impose on the NYISO, the absence of offsetting benefits, or the potential for it to create divergences between NYISO prices and schedules.

Accordingly, if the Commission denies clarification then it should modify the Final Rule on rehearing to establish that for both price-setting and resource scheduling (commitment and dispatch) purposes, ISOs and RTOs may implement a "hard" offer cap of \$2,000/MWh that would apply uniformly. That is, the Commission should eliminate any requirement that

²³ See *Illinois Commerce Commission v. FERC*, 576 F.3d. at 477 *National Fuel Gas Supply Corp. v. FERC*, 468 F.3d at 839-40; *Greater Boston Television Corp. v. Federal Communications Commission*, 444 F.2d. at 852.

ISOs/RTOs use cost-based incremental energy offers above \$2,000/MWh to determine merit order dispatch.

B. The Commission Should Clarify that NYISO May Propose to Apply Conforming Offer Caps to Minimum Generation Offers in its Compliance Filing

The NYISO Services Tariff applies a \$1,000 per MWh offer cap to all Day-Ahead and real-time Energy Bids²⁴ including Incremental Energy Bids, Minimum Generation Bids, Decremental Bids, Price Cap Load Bids, Sink Price Cap Bids and real-time CTS Interface Bids.²⁵ In practice, all Incremental Energy Bids, Minimum Generation Bids, Import Bids, Export Bids, Wheel-Through Bids and Load Bids in the NYISO-administered markets are subject to the \$1,000 per MWh offer cap set forth in Attachment E to the Services Tariff. The Final Rule only addresses offer caps for incremental energy offers, although the NYISO asked the Commission to include minimum generation offers in its NOPR comments²⁶ and obtained a waiver of the \$1,000/MWh price cap on minimum generation offers from the Commission in its previous waiver requests.²⁷ The NYISO respectfully requests that the Commission clarify that, in its compliance filing the NYISO may propose to consistently apply the offer cap to both incremental energy and minimum generation offers. Granting this request will enable the NYISO to maintain the consistency that exists in its Services Tariff today.

²⁴ The NYISO's Tariffs refer to both offers to sell and bids to buy as "Bids."

²⁵ See Services Tariff Section 21.5.1 ("The Bid Restriction established in Section 21.4 shall apply to Day-Ahead and real-time Energy Bids, Minimum Generation Bids, Decremental Bids, Price Cap Load Bids, Sink Price Cap Bids and real-time CTS Interface Bids, as applicable." Decremental Bids and Sink Price Cap Bids refer to Import and Export Bids/offers and Price Cap Load Bids identify the maximum price above which an Internal Load is not willing to be scheduled in the Day-Ahead Market.).

²⁶ See *Comments of the New York Independent System Operator, Inc.*, Docket No. RM16-5-000 at n. 2 (April 4, 2016).

²⁷ See *New York Independent System Operator, Inc.*, 146 FERC ¶ 61,061 at PP 2-4, 20 (2014).

If Suppliers are subject to costs that produce verified, cost-based incremental energy offers that exceed \$1,000 per MWh, the same cost drivers are likely to impact minimum generation offers and to drive cost-based minimum generation offers above \$1,000 per MWh as well. Under the offer construct the NYISO employs, the offer cap on minimum generation offers should be identical to the incremental energy offer cap for all of the reasons the Commission explains in its Final Rule. Granting the NYISO's requested clarification is appropriate because it will provide assurance to Suppliers that they will have a reasonable opportunity to recover all of the incremental costs they may incur to supply Energy.

Applying different offer caps to incremental energy offers and minimum generation offers could incentivize Suppliers to artificially shape their offers to conform to the differing offer caps, instead of offering in a manner that accurately reflects a resource's costs. Offers that do not accurately reflect how costs are incurred will produce less optimal commitment, dispatch and prices, to the detriment of consumers.

Minimum generation and incremental energy offers should be subject to the same offer cap. If minimum generation offer caps are lower than incremental energy offer caps, Generators may not offer to supply Energy if they do not expect to be able to recoup the costs that they must incur to operate at their minimum generation level.

Consistent with Paragraph 94 of its Order, the Commission should clarify that individual ISOs/RTOs will be permitted to apply the same offer cap to minimum generation offers that it applies to incremental energy offers in their compliance filings. Alternatively, if the Final Rule was intended to prevent ISOs/RTOs from applying a uniform offer cap to Energy market products that are presently subject to uniform offer caps under their tariffs, then NYISO respectfully requests rehearing. Applying a consistent offer cap to incremental energy and

minimum generation offers is appropriate because the variable cost of providing both Energy products is generally driven by the same market forces. By contrast, adopting different offer caps for the two products could incentivize Suppliers to artificially modify their bidding strategies in a manner that will produce a less efficient commitment in order to recover costs. Such behavior would be inefficient and could reduce participation in the NYISO's Energy market. The Final Rule did not consider, or address the NYISO's concerns. Therefore, failing to grant rehearing would not constitute reasoned decisionmaking.²⁸

C. The Commission Should Clarify What Must Be Included in Adders When Paying Documented Costs After-the-Fact

Paragraph 146 of the Final Rule states:

[I]f a resource's incremental energy offer above \$1,000/MWh is not verified but that resource is nonetheless dispatched, that resource would be eligible to receive an uplift payment to recover its verified costs. The basis of the uplift payment would be the difference between a given resource's energy market revenues and that resource's actual short-run marginal costs of the MWs dispatched, as verified after-the-fact by the RTO/ISO or Market Monitoring Unit.³³¹

Footnote 331 specifies that "Any such uplift payment, which is paid after-the-fact, must be based on a resource's actual short-run marginal costs."

Paragraph 207 of the Final Rule further states that "adders above cost" should not be included when calculating the uplift a resource receives after-the-fact because the resource's cost-based incremental energy offer above \$1,000/MWh could not be verified prior to the market clearing process.

The NYISO is concerned about the possibility that the submission of legitimate verifiable costs in excess of the \$1,000/MWh cap close in time to the relevant Day-Ahead or Real-Time Market close could deny the NYISO sufficient time to perform the necessary cost verification

²⁸ See n.23, *supra*.

and cause a resource's offer that exceeds the \$1,000/MWh offer cap to be "mitigated" (reduced) to a "competitive" level that does not include the as-yet unverified, additional costs. Mitigating the offer because the NYISO was not given sufficient time to verify the costs could cause the resource to be committed when it otherwise would not have been, or to receive a schedule that is substantially larger (in MWh) than the schedule the resource would have received if the NYISO had been given sufficient time to verify the costs it submitted.

In order to ensure that all resources have an appropriate incentive to timely submit the information that an ISO or RTO would require to verify cost-based offers that exceed the \$1,000/MWh cap, the NYISO requests that the Commission further clarify that only actual, documented, out-of-pocket costs should be paid after-the-fact and that no risk-related adders or opportunity costs should be allowed when cost information is not submitted in a sufficiently timely manner to permit review and verification by the ISO or RTO. The NYISO intends to propose a rule that is consistent with this clarification request in its individual compliance filing in response to the Final Rule.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully requests that the Commission grant the requested clarifications, or in the alternative grant rehearing, of the Final Rule as specified above.

Respectfully submitted,

s/Ted J. Murphy
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December 19, 2016

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 19th day of December 2016.

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