

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

**New York Independent System
Operator, Inc.**

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Docket No. ER18-___-000

**PETITION FOR TEMPORARY TARIFF WAIVERS, REQUEST FOR SHORTENED
NOTICE AND COMMENT PERIOD, AND
REQUEST FOR EXPEDITED COMMISSION ACTION BY JANUARY 10, 2018**

The New York Independent System Operator, Inc. (“NYISO”) respectfully submits this “Petition” pursuant to Rule 207¹ of the Commission’s Rules of Practice and Procedure for temporary waivers of Sections 21.4 and 21.5.1 of its Market Administration and Control Area Services Tariff (“Services Tariff”). Granting these requested waivers will temporarily enable the NYISO to consider Incremental Energy and Minimum Generation² offers that exceed \$1000/MWh and compensate Generators that are able to demonstrate that they actually incurred variable costs in excess of \$1000/MWh to provide Incremental Energy or Minimum Generation.

As discussed below, extreme winter weather and extreme natural gas market conditions have driven certain gas-fired Generators’ fuel costs to levels that could exceed \$1000/MWh. The requested waivers are therefore necessary to ensure the reliable operation of the New York State Power System and that Generators are made whole for their costs of producing Energy. The waivers are consistent with Commission precedent³ because they are needed to remedy a concrete problem, are narrowly drawn, and will not have adverse consequences.

¹ 18 CFR § 385.207 (2017).

² Capitalized terms that are not defined in this Petition have the meaning ascribed to them in Section 2 of the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”).

³ *See, e.g.*, New York Independent System Operator, Inc., 146 FERC ¶ 61,061 (2014) (granting petition seeking waiver to allow NYISO pay demonstrated actual costs of offers that exceeded \$1,000/MWh).

The NYISO requests that these temporary waivers be made effective immediately in the Real-Time Market, *i.e.*, starting today, January 4, 2018, and remain in effect through February 28, 2018, *i.e.*, for the remainder of the coldest portion of the winter season, and in the Day-Ahead Market from January 5, 2018 through February 28, 2018. The NYISO also respectfully asks that the Commission grant any other waivers, or authorize any other actions, that it deems necessary to enable the NYISO to preserve reliability and ensure that Generators are made whole for their costs during this period.

The NYISO respectfully requests that the Commission act expeditiously, and either waive or abbreviate to the maximum extent possible any notice and comment procedures, so that it may issue an order granting the requested waivers by January 10, 2018.⁴

I. THE NEED FOR EMERGENCY ACTION

The extreme cold weather that New York (and much of the Eastern United States) is experiencing has caused a significant spike in natural gas prices. These extreme natural gas prices are, in turn, significantly increasing the cost of producing electric Energy in New York. The purpose of this waiver filing is to protect the reliability of the New York State Power System by providing New York Control Area (“NYCA”) Generators that must operate on natural gas the opportunity to recover the actual costs that they incur to operate should those costs exceed the \$1,000/MWh Bid Restriction⁵ that limits the NYISO’s authority to consider Incremental Energy Bids and Minimum Generation Bids that exceed this amount.

⁴ The NYISO’s external Market Monitoring Unit, Potomac Economics, has indicated that it supports this filing.

⁵ *See* NYISO Market Services Tariff Section 21.4.

Commission Order No. 831⁶ instructed the NYISO to increase its offer cap to \$2,000/MWh to address circumstances similar to those addressed in this petition. In the NYISO's compliance filings, including the pending submittal filed December 8, 2017, the NYISO committed to implement software necessary to support its Order No. 831 obligations by the end of 2018.⁷

II. DESCRIPTION OF REQUEST FOR WAIVERS

A. Background—Extremely Cold Weather and High Natural Gas Prices Are Increasing the Cost of Producing Electricity in New York

New York is in the throes of a cold snap that began on December 25, 2017. It is not expected to end until January 8, 2018, or later. Daily low temperatures in New York City during this cold snap are expected to range from 3 degrees to 30 degrees Fahrenheit. This is approximately 24 degrees below average for New York City at this time of year.

The natural gas prices that the NYCA is experiencing during this cold snap could cause some NYCA Generators' costs to exceed the \$1,000/MWh Bid Restriction. The January 5, 2018 day-ahead index price for natural gas at the Transco Z6 NY⁸ hub was more than \$48.99/MMBtu. \$48.99/MMBtu is more than double the highest price posted for that hub in 2016 and 2017. The January 5, 2018 day-ahead index price is six times higher than the \$6.96/MMBtu average price at the Transco Z6 NY hub in December 2017. During January and February 2017, the average Transco Z6 NY natural gas prices were \$3.62/MMBtu and \$2.89/MMBtu respectively. During

⁶ See Order No. 831, *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 157 FERC ¶ 61,115 (2016); *on reh'g*, Order No. 831-A, 161 FERC ¶ 61,156 (2017); *New York Independent System Operator, Inc.*, 161 FERC ¶ 61,151 (2017).

⁷ See NYISO's May 8, 2017 compliance filing in Docket No. ER17-1561 at 16-17; *New York Independent System Operator, Inc.*, 161 FERC ¶ 61,151 at Ordering Paragraph (C).

⁸ Transco Z6 NY is the natural gas pipeline index price that determines the natural gas price incurred by Generators in and around New York City.

the cold weather in winter 2016 – 2017 the Transco Z6 NY natural gas price ranged from approximately \$2.04/MMBtu to \$7.62/MMBtu, with only one day higher at \$17.78/MMBtu. The average Transco Z6 NY price for the entire 2016 – 2017 winter was \$3.52/MMBtu. The January 5, 2018 day-ahead index price of \$48.99/MMBtu is more than five times the highest price seen at the Transco Z6 NY hub in January or February of 2017 (\$7.62/MMBtu).

Natural gas trades at prices greater than \$100/MMBtu for Transco Z6 NY have already been observed for the January 6, 2018 gas day. Natural gas trades at prices greater than \$90/MMBtu have already been observed for other trading hubs that are used by New York generators on that day.

B. The NYISO Proposes to Permit Generators to Submit and Recover Actual Costs they Incur to Provide Incremental Energy and Minimum Generation

If the Commission grants the NYISO's waiver request, the NYISO will reimburse affected generation resources for their demonstrated, actual costs of producing Incremental Energy and/or Minimum Generation that exceed the \$1,000/MWh Bid Restriction, via a Bid Production Cost Guarantee. The supplemental payment will be available for both Day-Ahead and Real-Time Market commitments. Additional costs incurred to commit Generators that are needed for reliability will be recovered in accordance with the rules set forth in Rate Schedule 1 of the NYISO's Open Access Transmission Tariff.⁹ Until it implements its Order No. 831 compliance obligations (by the end of 2018) the NYISO is not able to permit, and is not seeking authority to permit Incremental Energy offers in excess of \$1,000/MWh to set prices in its Day-Ahead or Real-Time Markets.

⁹ See Section 4.1.8 of the Services Tariff.

The NYISO proposes to require Generators that will incur variable costs in excess of \$1,000/MWh to provide Incremental Energy or Minimum Generation to the NYISO to comply with the requirements set forth below in order to be eligible to recover their actual, demonstrated costs in excess of the Bid Restriction:

1. The Market Party responsible for offering the Generator must submit a Bid of \$1,000/MWh for the (portion of the) Minimum Generation and Incremental Energy MWhs that it expects to incur an incremental cost of greater than \$1,000/MWh to provide; and
2. The Market Party responsible for offering a Generator that expects to incur incremental costs in excess of \$1,000/MWh to provide Minimum Generation or Incremental Energy must submit an e-mail to the NYISO's Stakeholder Services Department at Stakeholder_Services@NYISO.com specifying the fuel cost it expects to incur¹⁰; and
3. When it obtains documents substantiating the fuel costs incurred, the Market Party responsible for offering a Generator must e-mail supporting documentation to the NYISO's Stakeholder Services Department at the address provided above. The Market Party must submit documents evidencing the actual fuel costs it incurred.

Eligibility to recover costs in excess of the \$1,000/MWh cap will be determined after-the-fact and will be limited to demonstrated, actual production costs incurred. Generators will be expected to offer into the NYISO's markets based on the lowest cost fuel available. The NYISO will notify Market Parties responsible for offering generation into its markets of their obligations

¹⁰ The NYISO requests that e-mail notice also be provided to the responsible Market Participant's stakeholder services representative, but this additional notice is not mandatory.

to comply with the Commission's Market Behavior Rules (18 C.F.R. § 35.41) and the requirements of the Market Mitigation Measures that are set forth in Attachment H to the NYISO's Services Tariff.

C. The NYISO Requests a Temporary, Limited Waiver of the Requirement that it Reject All Incremental Energy and Minimum Generation Bids that Exceed that +/- \$1,000/MWh Limit

The NYISO requests a temporary, limited waiver of the provisions of Sections 21.4 and 21.5.1 of Attachment F to its Services Tariff that require it to summarily reject Day-Ahead and Real-Time Market Incremental Energy Bids and Minimum Generation Bids that exceed the +/- \$1,000/MWh Bid Restriction. Granting the requested waiver will enable the NYISO to compensate Market Parties for the actual costs they incur to produce Incremental Energy and Minimum Generation from their Generators at times when natural gas prices are extremely high.

Granting the NYISO's requested waiver is appropriate because it will provide assurance to NYCA generation owners that they will have a reasonable opportunity to recover the costs they incur to provide Incremental Energy and/or Minimum Generation. Failure to implement measures to permit generation owners to recover the costs they incur to supply Incremental Energy and/or Minimum Generation could reduce participation in the markets that the NYISO administers. Such a result could be detrimental to reliability.

Accordingly, the NYISO respectfully requests the Commission waive the identified Services Tariff requirements for a period commencing January 4, 2018 and concluding at the end of the day on February 28, 2018 for the Real-Time Market, and commencing January 5, 2018 and concluding at the end of the day on February 28, 2018 for the Day-Ahead Market.

III. COMPLIANCE WITH THE COMMISSION'S WAIVER PRECEDENT

The Commission has traditionally granted tariff waiver requests when: (i) the underlying error (if any) was made in good faith; (ii) the waiver request is limited in scope; (iii) a concrete problem needed, or needs, to be remedied, and (iv) the request did not have undesirable consequences such as harming third parties.¹¹

All of these criteria are satisfied in this proceeding. The requested waivers address weather and market conditions that threaten the reliability of the New York State Power System. There can be no question that the NYISO is acting in good faith by taking prompt action to ensure that Generators are given the opportunity to recover demonstrated, actual costs of producing Incremental Energy and Minimum Generation. When initially implemented, the Bid Restrictions that the NYISO is seeking to waive did not contemplate the extreme natural gas prices that are currently driving up the cost of producing electric Energy. The NYISO has committed to implement its FERC Order No. 831 compliance revisions to address the concern raised in this petition by the end of 2018.

The requested waivers are limited in scope to the minimum necessary to address the issues facing the NYCA. As described above, the requested waivers include safeguards against over-compensating Generators and are limited in duration. The NYISO's proposal relies on existing tariff mechanisms, such as the existing Bid Production Cost Guarantee rules, as much as possible.

The requested waivers address a "concrete problem." Absent the requested waivers, certain Generators might be required to provide service needed to support reliability without

¹¹ See, e.g., *New York Independent System Operator, Inc.*, 144 FERC ¶ 61,147 at P 8 (2013); *New York Independent System Operator, Inc.*, 139 FERC ¶ 61,108 at P 14 (2012); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184 at P 13 (2011); *ISO New England, Inc.*, 134 FERC ¶ 61,182 at P 8 (2011); *California Independent System Operator Corp.*, 132 FERC ¶ 61,004 at P 10 (2010); *accord ISO New England Inc. –EnerNOC, Inc.*, 122 FERC ¶ 61,297 (2008); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008).

being able to recoup a portion of the incremental operating costs that they incur. This would present Generators with an undesirable financial incentive not to offer to provide service at a time when the Generator is needed.

Finally, the requested waivers will not have undesirable consequences, such as harming the legitimate interests of third parties. Increasing payments to Generators so that they are made whole for the actual costs they incur to provide Minimum Generation and Incremental Energy that the NYISO schedules will increase the costs ultimately paid by Loads. However, such increased costs should not be viewed as “harming” Loads because they are necessary to ensure continued, reliable electric service during extreme weather conditions, as explained above.

IV. REQUEST FOR EXPEDITED COMMISSION ACTION BY JANUARY 10, 2018 AND FOR PROCEDURAL WAIVERS

The NYISO respectfully requests that the Commission act expeditiously and issue an order granting the requested waivers by January 10, 2018. The NYISO also requests that the Commission either waive or shorten to the maximum extent possible any notice and comment periods that would otherwise apply to this petition, so that it may issue an order by that date and make the temporary waivers effective on the dates specified above. Commission action within that time frame will permit Generators to recover their actual, demonstrated costs through the NYISO-administered markets and ameliorate a threat to reliability. It would also be consistent with other Commission orders granting independent system operators expedited waivers to address unexpected winter-related natural gas market issues.¹²

¹² See, e.g., *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,003 (2014) (Accepting requested waivers to facilitate gas-electric communications and coordination in the face of “extreme” winter weather conditions three days after the waiver request was filed).

Similarly, there is ample justification to allow the temporary waivers for the Real-Time and Day-Ahead Markets to take effect on January 4 and January 5, respectively. As discussed above, severe weather conditions and extreme natural gas prices could prevent Generators that must operate on natural gas from having an opportunity to recover their actual costs. This market issue will be addressed by the end of 2018 when the NYISO completes its implementation of Order No. 831's requirements. Making the requested temporary waivers effective on the NYISO's proposed effective dates will address this issue on an interim basis while also supporting reliability.

V. COMMUNICATIONS

All communications and service in this proceeding should be directed to:

Robert E. Fernandez, General Counsel
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VI. SERVICE

This filing will be posted on the NYISO's website at www.nyiso.com. In addition, the NYISO will e-mail an electronic link to this filing to each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, and to the New Jersey Board of Public Utilities.

VII. CONCLUSION

For the reasons specified above, the New York Independent System Operator, Inc. respectfully petitions the Commission to expeditiously issue an order granting the temporary waivers requested herein by January 10, 2018.

Respectfully submitted,

/s/ Alex M. Schnell
Alex M. Schnell, Assistant General Counsel/
Registered Corporate Counsel
New York Independent System Operator, Inc.

Dated: January 4, 2018

cc: Michael Bardee
Anna Cochrane
James Danly
Jette Gebhart
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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 4th day of January, 2018.

/s/ Joy A. Zimmerlin

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