

March 30, 2011

By Electronic Delivery

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: *New York Independent System Operator, Inc., Docket No. ER11-____ - ____*
Filing to Revise the Calculation of Bid Production Cost Guarantees for
Suppliers with Bilateral Contracts and Generators that are Regulation
Suppliers and a Request for Waiver**

Dear Ms. Bose:

In accordance with Section 205 of the Federal Power Act and Part 35 of the Commission's regulations, the New York Independent System Operator, Inc. ("NYISO") respectfully submits tariff revisions to its Market Administration and Control Area Services Tariff ("Services Tariff") to revise and clarify the calculation methodology for Bid Production Cost Guarantees ("BPCGs") paid to Generators and Transmission Customers importing Energy to the NYCA ("importers") when they schedule Bilateral Transactions from their Generator bus or Proxy Generator Bus, respectively.¹ The NYISO is also proposing amendments to revise the calculation of BPCGs paid to Generators providing real-time only Regulation Service and requesting a waiver of its existing tariff with regard to this issue. These tariff revisions have been approved by the stakeholder Management Committee and the NYISO Board of Directors.

I. Documents Submitted

1. This filing letter;
2. A clean version of the proposed revisions to the NYISO's Services Tariff ("Attachment I"); and
3. A blacklined version of the proposed revisions to the NYISO's Services Tariff ("Attachment II").

¹ Capitalized terms not otherwise defined herein shall have the meaning specified in the Services Tariff or, if not defined therein, in the NYISO's Open Access Transmission Tariff.

II. Background and Justifications for Amendments

A. Revisions to the BPCG Calculation for Generator and Importers with Bilateral Transactions

The NYISO uses its Day-Ahead and real-time commitment and scheduling software to, among other purposes, schedule sales in the Locational Based Marginal Pricing (“LBMP”) Energy Market and schedule Transmission Service for Bilateral Transactions. When the NYISO establishes Generator schedules, it is indifferent to any Bilateral Transactions the Generator may have sourced at its Generator bus. Generator schedules, as a general matter, are based only on the economics of the Generator and the state of the Transmission System. Similarly, when the NYISO schedules Import Transactions it is indifferent to whether the Import is to the LBMP Market or to a designated Load bus and schedules it, as a general matter, solely on the economics of the Decremental Bid supplied by the importing Transmission Customer and the state of the Transmission System.

On the other hand, when the NYISO determines eligibility for, or calculates, a BPCG it does take into account whether the Energy schedule of the Generator or the importer is supporting a Bilateral Transaction. Generators are eligible for BPCG payments if the revenue from their Day-Ahead and/or real-time Ancillary Service and Energy sales to the LBMP Market is insufficient to cover their bid-in Energy, Minimum Generation and start-up costs. If the Generator’s Energy schedule for the day entirely supports a Bilateral Transaction, the Generator is not selling Energy to the LBMP Market and it is ineligible for a BPCG payment. If its schedule supports both a Bilateral Transaction and sales to the LBMP Market, that portion of its costs and revenues that supports the Bilateral Transaction schedule is ignored in the BPCG calculation. Similarly, if a Transmission Customer’s import schedule entirely supports a Bilateral Transaction, the importer is ineligible for a BPCG payment as it is not selling Energy to the LBMP Market.²

The NYISO is proposing a set of BPCG-related amendments to align the treatment Generators and importers with Bilateral Transactions receive from both the scheduling and the BPCG eligibility and calculation software. That is, the NYISO proposes to hold the BPCG calculation indifferent to whether the schedule of the Generator or importer supports Bilateral Transactions. This revised BPCG calculation will eliminate the risk that NYISO-provided schedules for Generators and importers will produce insufficient revenues to support recovery of their bid-in production costs. To the extent this assumed risk is incorporated in their Bids, these amendments should also reduce bid-in costs and benefit the Loads (and thus consumers). Generators and importers will be assured that all their bid-in costs not otherwise recovered

² Transmission Customers submitting Import schedules do so either in the LBMP Market or as a Bilateral Transaction; the NYISO does not offer the opportunity for a single Import Transaction to be partially scheduled as a Bilateral and partially as an LBMP Market sale.

through daily revenue will be covered through a BPCG payment for the day.³ Transmission Customers with Import schedules will be assured that their BPCG eligibility and calculation methodologies are consistent with those provided to internal Generators.

This revision will also eliminate the need to calculate BPCGs by incorporating administratively determined distinctions between the portion of Generator's Energy, Minimum Generation and start-up costs that support its Bilateral Transaction and the portion that supports sales to the LBMP Market in its BPCG calculations. Since the Bids provided by Generators do not differentiate between costs to support Bilateral Transactions and costs to support sales into the LBMP Market, the NYISO's separation of their costs into these two buckets, in order to perform its BPCG calculations, is purely administrative and does not necessarily reflect the segregation the Generator would have made.

These amendments will improve the efficiency of Bilateral Transactions and the LBMP markets, and improve the BPCG calculation methodology by eliminating the need to administratively segregate Generator-submitted costs between the two. For these reasons, the NYISO, with the support of its stakeholders, believes that the Commission should accept the proposed revisions as just and reasonable.

B Revisions to the Calculation of BPCGs Paid to Generators Providing Real-Time-Only Regulation Service

The NYISO is also proposing amendments to the Services Tariff to support software changes to create a consistent BPCG calculation for Regulation Service providers whether they are scheduled in the Day-Ahead or Real-Time Markets. The current BPCG software calculation for real-time Regulation Service providers excludes the bid-in incremental Energy cost associated with the unit's Regulation Schedule as these costs were expected to be included in the real-time Regulation Service availability bid. The Day-Ahead BPCG calculation, on the other hand, includes these costs. The tariff revisions submitted in this filing will support software changes to include all bid-in Energy costs from real-time only Regulation Service providers in their BPCG calculations.

Consistent BPCG calculations for Regulation Service providers regardless of whether they were scheduled Day-Ahead or in real-time will promote efficient Regulation Service availability and Energy Bids from these Suppliers. The NYISO and its stakeholders have resolved to revise the BPCG-calculation methodology by modifying the real-time BPCG calculation to include both the cost and revenue components of the incremental Energy associated with the units' Regulation Service schedule.

³ As is described in greater detail in the next Section, because Bilateral Transaction revenue is not revealed to the NYISO, the BPCG tariff amendments and software will assume that Bilateral Transaction revenue is equal to LBMP revenues otherwise available for the same interval and megawatt hours.

III. Request for Waiver

Until September 30, 2010, the Services Tariff was ambiguous in describing the real-time BPCG calculation for Generators, including Regulation Service providers, and did not clearly indicate that bid-in Energy costs should be included.⁴ The NYISO resolved this ambiguity with revised tariff language in ER10-1866-000, effective September 30, 2010, to clearly include all bid-in Energy costs in real-time BPCG calculations. The NYISO inadvertently failed, however, to include a separate description of the real-time BPCG calculation for real-time only Regulation Service providers as it excludes the bid-in cost of Energy for the megawatts of their Regulation Service offer. All bid-in Energy costs will be included in the BPCG calculation for real-time only Regulation Service providers only after the tariff amendments that are the subject of this filing, and related software, are in effect. The NYISO is requesting an effective date of June 1, 2011.

Out of an abundance of caution, therefore, the NYISO requests that the Commission grant it a waiver of the tariff provisions in effect between September 30, 2010 and June 1, 2011, to the extent it may be necessary. The Commission has previously evaluated a number of issues in determining whether to authorize a tariff waiver. These include whether: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem needs to be remedied; and (4) the waiver will not have undesirable consequences, such as harming third parties.⁵ To the extent that the Commission determines that a waiver is necessary to resolve this issue, the NYISO requests that the Commission consider the following:

The amendments to the NYISO Services Tariff that became effective September 30, 2010 properly indicated that BPCG calculations, both Day-Ahead and real-time, protect the

⁴ See: Day-Ahead and real-time BPCG calculations described in Section 4.23 (later numbered 4.10) of the Services Tariff effective from 2002 until 2010: real-time BPCG was available to these Generators only if their LBMP and Ancillary Service revenues were less than their minimum generation and Start-Up Bids. On the other hand, a Day-Ahead BPCG was described as available to protect min gen, start up bids and the "net Energy Bid Price" of such Suppliers. Services Tariff Rate Schedule 3 also indicated only start-up costs, minimum Load costs, and Availability Bids were covered by a real-time BPCG for Regulation Service providers.

⁵ See, e.g., *California Independent System Operator Corp.*, 116 FERC ¶ 61,226 at P 8 (2006) (granting limited waiver of tariff provisions governing sanctions for failing to timely submit generator outage and other information in order to allow California ISO to ensure that market participants were not inappropriately penalized); *New York Independent System Operator, Inc.*, 112 FERC ¶ 61,347 at P 7 (2005) (granting the NYISO a discrete tariff waiver in order to recalculate certain charges); *Great Lakes Gas Transmission Limited Partnership*, 102 FERC ¶ 61,331 at P 16 (2003) ("Great Lakes has shown good cause for its Emergency Waiver request and has shown that the impact on non-exempt customers whose supply may be curtailed will be de minimus."); *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330 at P 5 (2003) ("The Commission finds that in this instance, good cause has been shown to waive TransColorado's Fuel Gas Reimbursement provision in Section 12.9 of its FERC Gas Tariff, First Revised Volume I, as requested."); *Northern Border Pipeline Co.*, 76 FERC ¶ 61,141 at 61,780 (1996) (granting one-time waiver request). See also *Wisvest-Connecticut LLC v. ISO-New England, Inc.*, 101 FERC ¶ 61,372 at P 24 (2002) (finding that ISO-NE roles requiring assessment of deficiency penalty should not be applied in this case because market participant's error giving rise to the penalty was "an inadvertent mishap").

incremental Energy costs submitted by BPCG-eligible Generators. The NYISO simply overlooked the need to continue to reflect, in the September 30, 2010 effective tariff sheets, the fact that the real-time BPCG calculations for real-time only Regulation Service providers will remain inconsistent with this tariff language until the new software, that is the subject of this filing, is in place, June 1, 2011. The waiver applies to a small subset of New York Generators and is needed only for nine months, until the new software is in place, June 1, 2011. Moreover, Market Participants have been on notice of this discrepancy in real-time BPCG calculations since November 2009.⁶ While the BPCG calculation is a concrete problem that requires attention, any additional BPCG to which Generators with real-time only Regulation Service schedules would have otherwise been entitled since September 2010, would have been *de minimus*. In most instances, Generators with real-time only Regulation Service schedules were scheduled to manage in-day reliability and these units are now, as a general matter, scheduled Day-Ahead where all their incremental energy costs are covered in their Day-Ahead BPCG. (See *Letter Order* ER08-1422-000, September 18, 2008; and *Order Accepting Tariff Revisions*, 130 FERC ¶ 61,017, January 7, 2010)

IV. Description of Proposed Tariff Revisions

A. Revisions to the Services Tariff to Amend Generator and Importer BPCG Calculations

The NYISO proposes to add a new term, “Imputed LBMP Revenue” to the Services Tariff, defined as:

Imputed LBMP Revenue: Revenue developed for calculating a Generator or Import Bid Production Cost guarantee, for any interval, which equals the product of (i) the Bilateral Transaction scheduled MW in the Day-Ahead Market or real-time market, as appropriate, from the Generator bus or Proxy Generator Bus, as appropriate, for the interval, (ii) the LBMP, in units of \$/MWh, either Day-Ahead or real-time as appropriate, at the Generator or Proxy Generator Bus for that interval and (iii) the length of the interval, in units of hours.

This proposed new term is a necessary element in amending the BPCG methodology to include costs and revenues for those portions of a Generator or importer’s schedule that support Bilateral Transactions. If these amendments are accepted, the NYISO will include, for eligible entities, both Imputed LBMP Revenue and the revenue earned in the LBMP Market to determine whether a BPCG is needed to cover any shortfall between revenue and bid-in production costs. If the total revenue is insufficient to cover all bid-in production costs, the NYISO will calculate a BPCG payment to cover the shortfall.

⁶ See: Presentations to the Market Issues Working Group November 11, 2009, January 13, 2011 and January 24, 2011.

The NYISO also proposes several amendments to Section 4.6.6 of the Services Tariff, the section that describes BPCG payments. The NYISO proposes an amendment to Section 4.6.6.1 and 4.6.6.2 to indicate that a Day-Ahead BPCG calculation includes Day-Ahead Imputed LBMP Revenue for Generators and Transmission Customers scheduling Imports, respectively. The NYISO also proposes deleting the language in Section 4.6.6.2 that limited BPCG payments to Suppliers scheduling Import sales to the LBMP Market.

Similarly, the NYISO is proposing to amend Sections 4.6.6.3 and 4.6.6.4 to indicate that the BPCG calculation for Generators in Real-Time Dispatch (“RTD”) intervals other than Supplemental Event Intervals, and in Supplemental Event Intervals, respectively, includes real-time Imputed LBMP Revenues. The NYISO also proposes amending Section 4.6.6.5 to indicate that the BPCG calculation for Suppliers scheduling Imports will include real-time Imputed LBMP Revenue, and that BPCG payments are no longer limited to Suppliers scheduling Import sales to the LBMP Market.⁷ The NYISO also proposes a grammatical correction to Section 4.6.6.6.

B. Revisions to the Calculation of BPCGs Paid To Generators Providing Real-Time Only Regulation Service

The NYISO proposes to clarify Section 4.6.6.1 of the Services Tariff, which describes Day-Ahead BPCG calculations for Generators, to explicitly recognize that the Day-Ahead BPCG calculation includes the bid-in cost of Energy provided by megawatts scheduled for Regulation Service, if any.

The NYISO also proposes amending Sections 4.6.6.3 and 4.6.6.4, the sections of the Services Tariff that describe the BPCG calculation for Generators in RTD intervals other than Supplemental Event intervals, and in Supplemental Event intervals, respectively, to indicate that the real-time BPCG calculation includes the bid-in cost of Energy provided by megawatts scheduled in real-time for Regulation Service, if any.

V. Effective Date

The NYISO requests an effective date sixty days from the date of this filing, June 1, 2011.

⁷ Amendments to Section 15.3.4.2 and 15.3.5.4, the sections of Rate Schedule 3 that describe other payments for Regulation Service providers in both the Day-Ahead and the real-time Markets, since the Management Committee approved these tariff revisions, have obviated the need to further amend these sections to explicitly include in their Day-Ahead BPCG calculation Day-Ahead Imputed LBMP Revenue, if any.

VI. Requisite Stakeholder and Board Approvals

The NYISO's Management Committee approved the proposed amendments included in this filing at its February 24, 2011 meetings. The NYISO's independent Board of Directors approved the proposed amendments at its March 14, 2011 meetings

VII. Communications and Correspondence

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

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- Designated to receive service.

VIII. Service

The NYISO will send an electronic link to this filing to the official representative of 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. In addition, the complete filing will be posted on the NYISO's website at www.nyiso.com.

IX. Conclusion

Wherefore, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this filing to be effective June 1, 2011 and waive its inadvertent tariff violation to the extent the Commission deems it necessary.

Respectfully submitted,

/s/ Mollie Lampi

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