

New York Independent System Operator, Inc.) **Docket No. ER18-____-000**

Pursuant to Rule 207(a)(5) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),¹ the New York Independent System Operator, Inc. (“NYISO”) hereby respectfully requests limited and temporary waivers of Sections 2.2.2, 19.2.3, 19.8.3, 19.8.4 and 19.8.5 of its Open Access Transmission Tariff (“OATT”).² The requested waivers relate to the requirement described in these tariff provisions that the NYISO must make all transmission capacity not used to serve existing and valid Transmission Congestion Contracts (“TCCs”) and certain transmission agreements that pre-dated the NYISO’s commencement of operations (referred to herein as “grandfathered transmission agreements”)³ available for sale in NYISO-administered TCC auctions. In requesting these waivers, the NYISO seeks authority to reserve 256 MW of transmission capacity from the upcoming Centralized TCC Auction to be conducted in advance of 2018-2019 Winter Capability Period (referred to herein as the “2018 autumn Centralized TCC Auction”).⁴

⁴ The 2018 autumn Centralized TCC Auction is currently anticipated to begin in early- to mid-August 2018. This waiver request also recognizes the potential need to reserve the transmission capacity at issue from the Reconfiguration Auction that will offer TCCs that may commence as early as November

The NYISO previously awarded certain Historic Fixed Price TCCs that became effective on November 1, 2008. These Historic Fixed Price TCCs are currently scheduled to permanently expire on October 31, 2018 (*i.e.*, the Historic Fixed Price TCCs remain valid through and including October 31, 2018 and will expire effective on November 1, 2018). In response to a prior commitment and requests from Load Serving Entities (“LSEs”) that have purchased Historic Fixed Price TCCs (including those with Historic Fixed Price TCCs that are currently scheduled to permanently expire on October 31, 2018), the NYISO, in coordination with its stakeholders, has been working to develop a proposal to provide such LSEs an opportunity to purchase extensions of their Historic Fixed Price TCCs after the expiration of the initial full term thereof (*i.e.*, 10 or 12 years, as specified in Section 19.2.1.1 of the OATT).⁵ As a result of these efforts, a Historic Fixed Price TCC extension proposal was recently approved by stakeholders at the June 20, 2018 Business Issues Committee meeting and June 26, 2018 Management Committee meeting.⁶

The proposal recently approved by the NYISO’s stakeholders would provide eligible LSEs the opportunity to extend their Historic Fixed Price TCCs for one-year at a time, with the first available extensions beginning on November 1, 2018. For the reasons described herein,

1, 2018 (referred to herein as the “November 2018 Reconfiguration Auction”). The November 2018 Reconfiguration Auction is expected to occur in early- to mid-October 2018.

⁵ See, *e.g.*, NYISO, *Historic Fixed Price TCC Extensions* (presented at the June 26, 2018 Management Committee meeting), available at: http://www.nyiso.com/public/webdocs/markets_operations/committees/mc/meeting_materials/2018-06-26/Historic%20Fixed%20Price%20TCC%20Extensions.pdf.

⁶ The NYISO staff intends to present this proposal to its Board of Directors (“Board”) for approval at the Board’s July 2018 meeting. If approved by the Board at its July 2018 meeting, the NYISO would then submit the proposal to the Commission for review under Section 205 of the Federal Power Act in late July 2018.

absent the requested waivers, the NYISO would be unable to accommodate offering Historic Fixed Price TCC extensions with a November 1, 2018 effective date.

The requested waivers are consistent with Commission precedent because they are needed to remedy a concrete problem, are narrowly tailored, and will not have adverse consequences. The requested waivers would only apply for the upcoming 2018 autumn Centralized TCC Auction and, to the extent necessary, the November 2018 Reconfiguration Auction. Notably, however, if: (i) the Board does not approve the Historic Fixed Price TCC extension proposal recently approved by the NYISO's stakeholders; (ii) the Commission does not accept the proposal; or (iii) the proposal is accepted by the Commission and eligible LSEs elect to purchase less than the full quantity of Historic Fixed TCCs available for extension in 2018, the NYISO will make any transmission capacity not utilized for Historic Fixed Price TCC extensions available to support the sale of TCCs in the first available TCC auction following any of the aforementioned events.

The NYISO respectfully requests that the Commission act expeditiously, and abbreviate to the maximum extent practicable any notice and comment procedures, to facilitate issuance of an order addressing the requested waivers on or before July 25, 2018. The NYISO has discussed this waiver request with its stakeholders. Stakeholders have not indicated any opposition.

I. BACKGROUND

Historic Fixed Price TCCs were developed and implemented as part of the NYISO's compliance with Order Nos. 681 and 681-A.⁷ This product provides the opportunity for LSEs with grandfathered transmission agreements to obtain Historic Fixed Price TCCs for a period of

⁷ *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, 116 FERC ¶ 61,077 (2006); and *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681-A, 117 FERC ¶ 61,201 (2006).

up to 10 years (or, in the limited case of certain LSEs, 12 years) following the expiration or termination of such agreements.⁸

The Historic Fixed Price TCC product accepted by the Commission did not provide any right for eligible LSEs to extend their Historic Fixed Price TCCs after the expiration of their initial full term (*i.e.*, 10 or 12 years). The NYISO, however, had previously committed to explore development of such an extension option with its stakeholders.⁹

The NYISO awarded the first Historic Fixed Price TCCs pursuant to the OATT in 2008. These Historic Fixed Price TCCs are currently scheduled to permanently expire on October 31, 2018. The NYISO worked diligently with its stakeholders over the past several months to develop a proposal that would provide LSEs that previously purchased Historic Fixed Price TCCs the opportunity to extend their Historic Fixed Price TCCs after the initial full term thereof has expired. The result of this collaborative effort is the Historic Fixed Price TCC extension proposal recently approved by the NYISO's stakeholders.¹⁰ For LSEs with Historic Fixed Price TCCs that are currently scheduled to permanently expire on October 31, 2018, the proposal would provide an opportunity for such LSEs to purchase extensions that would commence on November 1, 2018. This initial Historic Fixed Price TCC extension offering would provide 14

⁸ See, e.g., *New York Independent System Operator, Inc.*, 123 FERC ¶ 61,044 (2008); Docket No. ER07-521-003, *New York Independent System Operator, Inc.*, Compliance Filing (May 16, 2008); *New York Independent System Operator, Inc.*, 125 FERC ¶ 61,206 (2008); and *New York Independent System Operator, Inc.*, 127 FERC ¶ 61,042 (2009).

⁹ See, e.g., Docket No. ER07-521-000, *New York Independent System Operator, Inc.*, Post-Technical Conference Reply Comments of the New York Independent System Operator, Inc. at 5-6 (November 9, 2007); and *New York Independent System Operator, Inc.*, 123 FERC ¶ 61,044 at P 63 (2008).

¹⁰ See, e.g., NYISO, *Historic Fixed Price TCC Extensions* (presented at the June 26, 2018 Management Committee meeting), available at: http://www.nyiso.com/public/webdocs/markets_operations/committees/mc/meeting_materials/2018-06-26/Historic%20Fixed%20Price%20TCC%20Extensions.pdf.

LSEs the opportunity to potentially purchase up to 256 MW of extensions that would have a November 1, 2018 effective date.¹¹

II. REQUEST FOR WAIVER

The Commission has granted waivers of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver addresses a concrete problem; (3) the waiver is of limited scope; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹² The requested waivers meet these criteria.

The NYISO has acted in good faith. The Historic Fixed Price TCC extension proposal recently approved by stakeholders was undertaken in response to: (i) a prior commitment by the NYISO; and (ii) requests by LSEs that have purchased Historic Fixed Price TCCs, including those that are facing permanent expiration of their Historic Fixed Price TCCs over the next two years. In developing the proposal with stakeholders, it was noted that the proposal would be intended to facilitate an opportunity for LSEs with Historic Fixed Price TCCs that otherwise would permanently expire on October 31, 2018 to obtain an extension commencing November 1, 2018. The NYISO also informed stakeholders that this waiver request would be necessary to accommodate a November 1, 2018 effective date for such Historic Fixed Price TCC extensions.

The requested waivers address a concrete problem. Despite expeditiously pursuing the development of a Historic Fixed Price TCC extension proposal with stakeholders, it will not be possible to complete the required process of reviews and approvals to implement the proposal,

¹¹ This value is the aggregate maximum number of Historic Fixed Price TCCs that qualifying LSEs would be eligible to purchase under the Historic Fixed Price TCC extension proposal recently approved by the NYISO's stakeholders.

¹² See, e.g., *New York Independent System Operator, Inc.*, 160 FERC 61,124 at P 22 (2017).

including Commission review, prior to the commencement of the 2018 autumn Centralized TCC Auction, which is anticipated to begin in early- to mid-August 2018.¹³

Absent the requested waivers, Sections 2.2.2, 19.2.3, 19.8.3, 19.8.4 and 19.8.5 of the OATT would require the NYISO to make all transmission capacity not used to serve existing and valid TCCs and grandfathered transmission agreements, including the transmission capacity associated with the Historic Fixed Price TCCs currently scheduled to permanently expire on October 31, 2018, available to support the sale of TCCs in the upcoming 2018 autumn Centralized TCC Auction. If utilized to support TCCs sold during the 2018 autumn Centralized TCC Auction, the subsequent purchase of Historic Fixed Price TCC extensions to become effective on November 1, 2018 could result in the NYISO having effectively oversold the amount of available transmission capacity in the New York Control Area. Any such over-sale of transmission capacity could: (i) violate the tariff requirement that the set of existing and valid TCCs awarded by the NYISO for any given time period be simultaneously feasible (*i.e.*, capable of being accommodated without violating the effective limits applied to facilities and constraints modeled in the Day-Ahead Market); and (ii) result in adverse consequences, such as persistent Congestion Rent Shortfalls.

The requested waivers are also narrowly tailored in scope and duration, and are not expected to result in undesirable consequences. The waivers are limited to only the 256 MW of transmission capacity that could potentially be available to support the sale of Historic Fixed

¹³ As previously noted, the NYISO intends to seek Board approval of the proposal at the Board's July 2018 meeting, which is currently scheduled to occur July 16-17, 2018. This represents the earliest opportunity for NYISO staff to seek Board approval of the proposal. Assuming Board approval at its July 2018 meeting, the NYISO would then file the proposal for Commission review in late July 2018. Without seeking a waiver of the statutory 60-day notice requirement for Section 205 filings, the proposal would not become effective until late-September 2018, if ultimately accepted by the Commission. This timing is well after commencement of the 2018 autumn Centralized TCC Auction.

Price TCC extensions in 2018. The reservation of this capacity would also apply only for the 2018 autumn Centralized TCC Auction, and, if necessary, the November 2018 Reconfiguration Auction.

The amount of transmission capacity at issue is minimal compared the total transmission capacity supporting the sale of new TCCs in recent Centralized TCC Auctions. In fact, the 256 MW at issue represents approximately 1% of the average, total transmission capacity supporting new TCCs sold during the prior four Centralized TCC Auctions. The minimal amount of transmission capacity at issue is further limited to six discrete transmission paths in upstate New York.¹⁴

Given the minimal nature of the transmission capacity at issue, the requested waivers are not expected to result in undesirable consequences for other Market Participants seeking to purchase TCCs in the upcoming 2018 autumn Centralized TCC Auction. To the contrary, absent the requested waivers, the NYISO would be unable to accommodate offering Historic Fixed Price TCC extensions with an effective date of November 1, 2018 to the 14 LSEs that would otherwise qualify to purchase extensions in 2018 under the proposal recently approved by stakeholders.

Notwithstanding anything to the contrary herein, if: (1) the Board does not approve the Historic Fixed Price TCC extension proposal recently approved by the NYISO's stakeholders; (2) the Commission does not accept the proposal; or (3) the proposal is accepted by the Commission and qualifying LSEs elect to purchase less than the full quantity of Historic Fixed

¹⁴ The transmission paths are as follows: (1) 105 MW from the Niagara hydroelectric generation facility ("Niagara") to Load Zone E (Mohawk Valley); (2) 89 MW from Niagara to Load Zone A (West); (3) 23 MW from Niagara to Load Zone C (Central); (4) 23 MW from Niagara to Load Zone D (North); (5) 14 MW from the James A. FitzPatrick nuclear generation facility ("FitzPatrick") to Load Zone E (Mohawk Valley); and (6) 2 MW from FitzPatrick to Load Zone C (Central).

Price TCCs available for extension with an effective date of November 1, 2018, the NYISO will make any transmission capacity not used to support the sale of such Historic Fixed Price TCC extensions available to support the sale of TCCs in the next available TCC auction following the occurrence of any of the events described above.

III. REQUEST FOR EXPEDITED ACTION

The NYISO respectfully requests that the Commission act expeditiously and issue an order granting the requested waivers on or before July 25, 2018. The NYISO also requests that the Commission shorten, to the maximum extent practicable, any applicable notice and comment periods that would otherwise apply to this waiver request in order to facilitate issuance of an order by the aforementioned date. This timing is necessary to: (i) allow the NYISO to proceed with activities required for the timely commencement of the 2018 autumn Centralized TCC Auction; and (ii) provide Market Participants a clear understanding of the treatment to be applied to the 256 MW of transmission capacity at issue in advance of the 2018 autumn Centralized TCC Auction. Without clarity on the treatment of the transmission capacity at issue by this date, the NYISO may be required to delay the start of the 2018 autumn Centralized TCC Auction and/or reconsider the continued viability of offering extensions with a November 1, 2018 effective date.

IV. COMMUNICATIONS AND CORRESPONDENCE

Please direct all communications and service in this proceeding to:

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V. CONCLUSION

For the foregoing reasons, the NYISO respectfully requests that the Commission grant the limited and temporary waivers requested herein on or before July 25, 2018.

Respectfully submitted,
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