

December 17, 2018

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. ER17-1561-00_
Amended Compliance Filing to Establish a Modified Effective Date for its FERC
Order No. 831 Tariff Revisions, and Request for Limited Waiver

Dear Secretary Bose:

In accordance with the requirements of the Federal Energy Regulatory Commission's ("Commission's") November 9, 2017 *Order on Compliance*¹ and February 1, 2018 Letter Order² in this proceeding, on December 4, 2018 the New York Independent System Operator, Inc. ("NYISO") submitted its "Initial Compliance Filing" to provide notice of an expected effective date of December 18, 2018, for the tariff amendments to comply with Order No. 831.³ The NYISO now submits this Amended Compliance Filing to delay the requested effective date by one day, until December 19, 2018. The NYISO also provides notice to the Commission of an implementation issue that it recently discovered, and requests a limited waiver of certain provisions of the Order No. 831 tariff amendments until the software issue is corrected in early 2019.

¹ *New York Indep. Sys. Operator, Inc.*, 161 FERC ¶ 61,151 at PP 1, 12 and Ordering Paragraph (C) ("NYISO is hereby directed to submit a filing with no less than two weeks' notice of the proposed effective date, as discussed in the body of this order.").

² *New York Indep. Sys. Operator, Inc.*, Docket No. ER17-1561-001, Letter Order at p. 2 (February 1, 2018) ("In accordance with the requirements of the November 9, 2017 Order, NYISO will submit a filing providing no less than two weeks' notice of the effective date of the tariff revisions.").

³ *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 831, 81 Fed. Reg. 87,770 (Dec. 5, 2016), 157 FERC ¶ 61,115 (2016); *Order on Rehearing and Clarification*, Order No. 831-A, 82 Fed. Reg. 53,403 (Nov. 16, 2017), 161 FERC ¶ 61,156 (2017).

I. December 19 Effective Date

The *Order on Compliance* accepted the NYISO's proposal for a flexible effective date of no later than December 31, 2018. The NYISO hereby notifies the Commission and its Market Participants that it now intends to implement the offer cap requirements in its software on December 19, 2018. The first Day-Ahead Market day that will incorporate the new offer cap rules will be December 21, 2018. The dates indicated in this Amended Compliance Filing are one day later than the dates that the NYISO proposed in its December 4, 2018 Initial Compliance Filing.

The one-day delay is necessary because the NYISO's efforts to complete quality assurance testing on the new software have identified minor concerns that the NYISO needs to both correct and re-test before the offer cap software can be deployed. The NYISO is not certain that it will be able to complete all necessary testing by December 18, 2018 so it has made the prudent decision to delay implementation of the offer cap rules until December 19, 2018. The December 19, 2018 effective date requested in this Amended Compliance Filing is consistent with the range of flexible effective dates that the Commission authorized in its *Order on Compliance*.

II. Request for Limited Waiver

The NYISO also provides notice to the Commission of an issue related to the NYISO's implementation of the offer cap tariff amendments. Specifically, to comply with the Commission's requirement that Generator Bids that exceed \$1,000/MWh reflect the Generator's verified costs, Section 23.7.2.1 of NYISO's Market Administration and Control Area Services Tariff ("Services Tariff") requires the NYISO to use cost-based reference levels when reviewing Incremental Energy and Minimum Generation Bids that exceed \$1,000/MWh. The Tariff provisions that NYISO proposes to make effective on December 19, 2018, state that when one component of an Incremental Energy Bid or a Minimum Generation Bid exceeds \$1,000/MWh, then the NYISO will use cost-based reference levels to test the entire Incremental Energy Bid or Minimum Generation Bid. While quality assurance testing the software developed to implement this Tariff requirement, the NYISO identified a concern that it is in the process of correcting. In particular, when a Minimum Generation Bid or a component of an Incremental Energy Bid exceeds \$1000/MWh, the software currently replaces both the Incremental Energy reference level and the Minimum Generation reference level with cost-based reference levels. This implementation could cause the NYISO to violate the reference level hierarchy set forth in sections 23.3.1.4.1, 23.3.1.4.1.1 (bid-based), 23.3.1.4.1.2 (LBMP-based) and 23.3.1.4.1.3 (cost based/negotiated) of the Services Tariff because it could cause the NYISO to use a cost-based reference level to test Bids that are less than \$1,000/MWh that should instead be tested against bid-based or LBMP-based reference levels.

The NYISO is in the process of addressing the identified concern in order to ensure that Minimum Generation Bids and Incremental Energy Bids under Section 23.7.2.1 are treated separately for purposes of reference level development, and expects to have its corrected

software developed and in place by January 31, 2019. Until then, the NYISO respectfully requests a waiver of Section 23.7.2.1 to allow the NYISO (x) to apply cost-based reference levels to Minimum Generation Bids in circumstances where elements of the Incremental Energy Bids exceed \$1,000/MWh, or (y) to apply cost-based reference levels to Incremental Energy Bids in circumstances where the Minimum Generation Bid exceed \$1,000/MWh.⁴ This waiver is necessary to allow the NYISO to implement, and receive the benefits of, the new offer cap tariff provisions that are scheduled to go into effect on December 19, 2018.

The NYISO respectfully submits that it satisfies the criteria that the Commission examines when evaluating a request for a tariff waiver.⁵ The NYISO has acted in good faith in moving to implement the offer cap tariff amendments by the implementation deadline, and the adoption of software that treats Minimum Generation Bids and Incremental Energy Bids as connected for purposes of cost-based reference level comparison and potential Bid Restrictions was inadvertent. The NYISO also is moving quickly to correct its software and, as indicated above, it expects that the corrected software will be able to be implemented by January 31, 2019.

The requested waiver is of a limited scope, and is required to remedy a concrete problem. The NYISO only requests the waiver until January 31, 2019, when it expects to have the revised software in place. The waiver is required to allow the NYISO to implement, and obtain the benefits of, its offer cap tariff requirements. The NYISO is not able to fix and test the software before the end of January 2019, but requires the software to implement the offer cap tariff amendments. It would be imprudent to wait until after December and January are over to implement the offer cap tariff changes because such a delay would deprive the NYISO's markets of the benefits of the enhanced offer caps through a substantial portion of the winter period.

Finally, the NYISO's requested waiver is unlikely to have significant adverse impacts on market participants. The likelihood that the described concern will actually occur is low because it can only arise if (a) a Generator's costs exceed \$1,000/MWh, and (b) a component of the

⁴ The NYISO does not believe that the Commission's rules or precedents prohibit it from including its request for limited waiver in this filing. The NYISO recognizes that the Commission generally does not permit the submission of Federal Power Act ("FPA") Section 205 filings in combination with FPA Section 206 filings. To the extent that this principle is applicable here, and out of an abundance of caution, the NYISO submits that this filing is nevertheless permissible. The Commission has recognized exceptions to that general prohibition in circumstances where the FPA Section 205 filing is "closely and plainly related to the Commission's compliance requirements." *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,169 at P 15 (2005). The NYISO respectfully submits that its waiver request is "closely and plainly related" to the tariff amendments that are to go into effect on December 19, and that, for purposes of efficiency, the Commission should accept this tariff waiver request.

⁵ See, e.g., *Indianapolis Power & Light Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,047, at P 64; (2014); *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,178, at P 38 (2014), *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).

Generator's Incremental Energy costs exceed \$1,000/MWh but its Minimum Generation Costs are less than \$1,000/MWh, or its Minimum Generation Costs exceed \$1,000/MWh but no component of its Incremental Energy Costs exceed \$1,000/MWh. Furthermore, the issue is unlikely to cause harm because it merely substitutes one permitted method of calculating Generator reference levels for another. The impact of the substitution will be case specific and should be relatively minor.

For these reasons, the NYISO respectfully requests that the Commission grant a limited waiver of Section 23.7.2.1 of the Services Tariff to allow the NYISO to immediately implement its enhanced Order No. 831 offer cap tariff provisions, and to give the NYISO the requisite time to fix the software issue. The NYISO commits to making a subsequent filing with the Commission to provide notice when it has addressed the described tariff implementation concern. The NYISO further commits that it will have the revised software developed and in place by January 31, 2019.

III. Documents Submitted

Along with this filing letter, the NYISO respectfully submits the following document:

1. A clean version of the accepted revisions to the Services Tariff ("Attachment I").

IV. Notice of Effective Date

The NYISO hereby provides notice to the Commission that it expects to implement the software on December 19, 2018. The first Day-Ahead Market day that will incorporate the new offer cap rules will be December 21, 2018.

Attachment I provides a clean version of the relevant tariff revisions with an effective date of December 19, 2018.⁶

V. Service

The NYISO will send an electronic link to this filing to the official representative of each party to this proceeding, 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.

⁶ Should the NYISO determine that it will be unable to implement the Order No. 745 compliance tariff revisions on December 19, 2018, it will promptly notify its Market Participants and the Commission.

VI. Conclusion

The New York Independent System Operator, Inc. respectfully requests that the Commission accept this Amended Compliance Filing and permit its offer cap tariff revisions to take effect on December 19, 2018. The NYISO also respectfully requests that the Commission grant a limited waiver of Section 23.7.2.1 of the Services Tariff, as described above, until such time as the NYISO develops and implements revised software. As discussed above, the NYISO commits that this will occur no later than January 31, 2019.

Respectfully submitted,

/s/ Alex M. Schnell

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