New York ISO
Independent System Operator

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October 16, 2020

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., *Exigent Circumstances Filing Requesting Authority Under Section 205 of the Federal Power Act to Address Prospectively a Gas Pricing Logic Alignment Issue Affecting the Net Energy and Ancillary Services Revenue Offset Values Embedded in the 2017-2021 Installed Capacity Demand Curves, Request for Shortened Notice and Comment Period, Request for Expedited Action, Notice of Intent to Implement, and Contingent Request for Commission Action Under Section 206 of the Federal Power Act*, Docket No. ER21-___-000

Dear Ms. Bose:

In accordance with Section 205 of the Federal Power Act ("FPA"),[1] the 2005 *Guidance Order on Expedited Tariff Revisions for Regional Transmission Organizations and Independent System Operators* ("Guidance Order") issued by the Federal Energy Regulatory Commission ("Commission"), and Section 19.01 of the Independent System Operator Agreement ("ISO Agreement"),[2] the New York Independent System Operator, Inc. ("NYISO") respectfully submits this exigent circumstances filing. The purpose of this filing is to prospectively address a gas pricing alignment logic issue (the "Gas Pricing Logic Issue") that was recently determined to have been incorporated into the currently effective Installed Capacity ("ICAP") Demand Curves.[3]

The Gas Pricing Logic Issue has been part of the currently effective ICAP Demand Curves since they were first implemented on May 1, 2017. If not addressed, it will continue to have an effect for the balance of the current Capability Year, which will conclude on April 30, 2021. The NYISO has engaged stakeholders on a resolution to the Gas Pricing Logic Issue as part of its ongoing review of the ICAP Demand Curves for the 2021-2025 reset period, and expects that resolution to be reflected in the ICAP Demand Curve reset filing to be submitted for Commission acceptance in November 2020.

[1] 16 U.S.C. §824d (2020).

[2] The ISO Agreement is available at: https://nyisoviewer.etariff.biz/ViewerDocLibrary/MasterTariffs/58TariffSections/ISO%20Agreement%20FID777%20clean%20090215_12918.pdf.

[3] Capitalized terms that are not otherwise defined herein shall have the meaning specified in in the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff").

The Gas Pricing Logic Issue has impacted reference point prices calculated for each ICAP Demand Curve for each Capability Year dating back to May 1, 2017.[4] In general, the Gas Pricing Logic Issue's price impacts were relatively limited and were not unidirectional, *i.e.*, the issue has sometimes made reference point prices lower and sometimes higher than they otherwise would have been. As noted below, in Section III.C, the net impact has been somewhat lower capacity prices than would have otherwise occurred, with the greatest impacts in New York City.

Because the logic underlying the Gas Pricing Logic Issue is embedded in currently effective models, inputs and assumptions previously approved by the Commission for determining the ICAP Demand Curves during the 2017-2021 reset period,[5] the NYISO does not believe that the Gas Pricing Logic Issue constitutes a violation of the filed rate doctrine. Thus, there does not appear to be any legal basis, or practically available method, for revisiting those price impacts retroactively. However, the NYISO believes that the issue should be addressed prospectively for the upcoming 2020/2021 Winter Capability Period. That period will begin on November 1, 2020 and run through April 30, 2021.

The NYISO is making this exigent circumstances filing at the direction of its independent Board of Directors ("Board") because it is the most expeditious and effective way to address the Gas Pricing Logic Issue for the 2020/2021 Winter Capability Period. It is requesting that the Commission waive the standard notice period and allow the proposed revisions to become effective on October 21, 2020, *i.e.*, one day before the certification deadline for the November 2020 ICAP Spot Market Auction (the "November Auction"). Making the tariff revisions effective on that date will enable the NYISO to address the Gas Pricing Logic Issue for that auction and facilitate its correction for the entirety of the 2020/2021 Winter Capability Period. The NYISO is requesting a shortened notice and comment period and expedited action to maximize regulatory certainty for itself and for stakeholders.[6]

As discussed in Section IV below, the prospective tariff revisions set forth in this filing are just, reasonable, and not unduly discriminatory. The NYISO believes that they have consensus stakeholder support. The NYISO's independent Market Monitoring Unit ("MMU") also supports the NYISO's proposed remedial action for the 2020/2021 Winter Capability Period.

Section 19.01 of the ISO Agreement specifies that tariff revisions filed under the Board's exigent circumstances authority must expire no later than 120 days after filing unless ratified by the NYISO's Management Committee or approved by the Commission under the "just and reasonable" standard of FPA Section 206. The NYISO plans to seek ratification of the proposed tariff revisions at the October 28, 2020 Management Committee meeting. The NYISO anticipates

[4] *See* Section III.C below and Attachment IV.

[5] *New York Independent System Operator, Inc.*, 158 FERC ¶ 61,028 at P 17 and 166 (2017); and Services Tariff Sections 5.14.1.2.2 and 5.14.1.2.2.2.

[6] As noted below, the NYISO informed stakeholders that it planned to make this filing, and seek a shortened notice and comment period at the October 7, 2020 meeting of its Installed Capacity Working Group ("ICAPWG"). Stakeholders therefore have prior notice that the NYISO intended to make this request.

it will obtain the requisite stakeholder approval of the proposed tariff revisions at that time.[7] However, if the Management Committee does not ratify the proposed revisions, then the NYISO requests that the Commission accept this filing under Section 206 of the FPA so that it will not expire after 120 days.

Finally, the NYISO respectfully informs the Commission that, unless it is instructed otherwise by the Commission, it intends to implement the revisions proposed herein on October 21, 2020. If the Commission ultimately rejects the proposed revisions, the NYISO asks that it make any such rejection prospective only.

I. COMMUNICATIONS

Communications regarding this proceeding should be sent to:

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***Designated to receive service.**

II. LIST OF DOCUMENTS SUBMITTED

The NYISO submits the following documents with this transmittal letter:

1. A blacklined version of the Services Tariff revisions proposed in this filing ("Attachment I");

2. A clean version of the Services Tariff revisions proposed in this filing ("Attachment II");

[7] As noted in Section V below, the NYISO has described its proposed remedy, and shared its proposed tariff revisions, with stakeholders. To date, no stakeholder has objected to the NYISO's proposed prospective action.

3. Affidavit of Robb Pike ("Attachment III");

4. *Notice of Potential Market Problem: Discussion on 2017-21 Demand Curve Reset Net Energy Ancillary Service (Net EAS) Model Gas Pricing Logic,* presented at the October 7, 2020 meeting of the Installed Capacity Working Group ("Attachment IV");[8] and

5. A clean version of NYISO Services Tariff Sections 5.11 and 5.14 to incorporate the language being made effective in this filing into a version of those provisions that were previously accepted by the Commission to become effective on March 1, 2021 ("Attachment V"). [9]

III. BACKGROUND

A. The ICAP Demand Curve Reset Process

Every four years, the NYISO and its stakeholders undertake a comprehensive review to determine the necessary inputs and assumptions for developing the ICAP Demand Curves for the four-year period covered by the reset. This quadrennial process is commonly referred to as the ICAP Demand Curve reset ("DCR").

The ICAP Demand Curves are developed based on the estimated cost to construct and operate a hypothetical new capacity supply resource in various locations throughout New York.[10] This cost is then offset by an estimate of the potential revenues the hypothetical resource could earn from participating in the NYISO-administered energy and ancillary services markets.[11] The resulting net value determines the revenue the hypothetical resource would need

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[8] Mr. Pike's affidavit has not been notarized as is permitted under the Commission's August 20, 2020 order extending the previous emergency waiver of the notarization rules. *See Temporary Action to Facilitate Social Distancing*, 172 FERC ¶ 61,151 (2020).

[9] This filing proposes revisions to Sections 5.11 and 5.14 of the Services Tariff. On January 23, 2020, the Commission accepted tariff revisions to Services Tariff Sections 5.11 and 5.14 that were submitted in Docket No. ER19-2276-000. The NYISO submits as Attachment V to this filing a clean copy of the tariff revisions proposed herewith to incorporate the language into a version that will become effective on March 1, 2021, consistent with the Commission's January 23, 2020 Order in Docket No. ER19-2276-000.

[10] Services Tariff Section 5.14.1.2.2. refers to the hypothetical new capacity supply resource as a "peaking plant."

[11] The Services Tariff refers to the estimate of potential energy market revenue earnings for the peaking plant as the "net Energy and Ancillary Services revenue offset." *See, e.g.*, Services Tariff Sections 5.14.1.2.2 and 5.14.1.2.2.2.

to receive from the capacity market to obtain sufficient revenues to support market entry under the system conditions specified for use in the DCR.[12]

The estimated energy market revenue earnings are determined using a historic commitment and dispatch model that is developed as part of the DCR and incorporated as part of the NYISO's quadrennial filing with the Commission seeking acceptance of the results of the DCR. The model utilizes the most recent three years of historic market prices and fuel costs, along with the operating characteristics of the hypothetical new resource, to estimate such resource's potential revenue earnings. The daily price of natural gas used as fuel is a key component of the data. For fossil generators, the cost of natural gas is one of the single largest drivers of the variable operating cost to produce electricity. The gas costs used by the model are therefore critically important to estimating commitment and dispatch determinations for the hypothetical new resource for each market day, as well as the potential revenues that can be earned by such resource by producing energy or providing reserves. This model is commonly referred to as the "Net EAS Model."

B. Identification of the Gas Pricing Logic Issue

As part of the ongoing 2021-2025 DCR process, certain stakeholders raised concerns about the gas pricing alignment logic contained in the Net EAS Model for the 2021-2025 period. Specifically, the Net EAS Model included logic that shifts forward by one day the gas price published for a specific date by the selected vendor of this data (*i.e.*, S&P Global Market Intelligence or "SPGMI").[13] This logic was based on an understanding that the gas prices published by SPGMI represented the "trade day" price (or the day before the generator would take delivery of and use the gas to produce electricity). The NYISO has since confirmed that the data published by SPGMI actually represents the "flow day" price (or the day the generator would take delivery of and use the gas to produce electricity). The logic that shifts the gas price forward by one day is what this filing refers to as the "Gas Pricing Logic Issue."

Due to the incorrect understanding of the gas pricing data, this pricing alignment logic was, in fact, unnecessary. The Net EAS Model uses gas prices to estimate the cost of the hypothetical resource to produce energy on a given electric market day. The gas prices utilized are intended to reflect a reasonable approximation of the costs to generate on the same day the resource would take delivery of and use that gas. The Net EAS Model should thus use "flow day" prices. The gas price alignment logic incorrectly assumed that SPGMI was posting "trade day" prices. As a result, the logic shifted the gas price forward by one day in an unnecessary attempt to align the gas price with the electric market day on which the gas would be used by the hypothetical resource. The incorrect assumption resulted in the Net EAS Model essentially assuming that the resource could produce energy on a particular electric market day based on the prior day's gas price. This produces an inaccurate calculation of the resource's variable

[12] The DCR requires that such costs and revenues be estimated under market conditions in which the available capacity is equal to the applicable minimum Installed Capacity requirement plus the MW value of the peaking plant. *See* Services Tariff Section 5.14.1.2.2.

[13] SPGMI is the successor to SNL Financial. SNL Financial was the entity selected as the gas price data vendor for the 2017-2021 reset period.

operating costs, which could result in either (or both) incorrect schedules and/or improperly estimated revenue earnings.

The NYISO has proposed to remove this pricing alignment logic from the Net EAS Model to be used for the 2021-2025 reset period.[14] The NYISO is required to file the results of the ongoing 2021-2025 DCR with the Commission on or before November 30, 2020.[15]

After proposing to correct this logic for the upcoming reset period, and in response to stakeholder feedback, the NYISO evaluated the Net EAS Model previously approved by the Commission for use during the 2017-2021 reset period. Such evaluation concluded that this same issue was present in the 2017-2021 DCR Net EAS Model. The existence of this logic has impacted the reference point prices that would otherwise be calculated for the ICAP Demand Curves for the 2017/2018 through 2020/2021 Capability Years.

C. Assessing the Impact of the Gas Pricing Logic Issue for the 2017-2021 ICAP Demand Curves

The 2017-2021 DCR Net EAS Model included the same gas price alignment logic and produces the same pricing misalignment that the NYISO has proposed to eliminate from the Net EAS Model for the 2021-2025 DCR. The current Net EAS Model has been used to determine reference points and ICAP Demand Curves for all Capability Periods starting with the 2017 Summer Capability Period. The ICAP Demand Curves for the first year were developed using the Net EAS Model and filed with the Commission, the ICAP Demand Curves for the subsequent three years encompassed by the 2017-2021 reset period were developed as part of the tariff-prescribed annual updates using that model. The only remaining Capability Period under this DCR is the upcoming 2020/2021 Winter Capability Period which begins on November 1, 2020.

The NYISO has analyzed the impact of the issue on the ICAP Demand Curves since May 1, 2017, including estimating the potential impact for the upcoming 2020/2021 Winter Capability Period.[16]

The NYISO's analysis of the impact of the Gas Pricing Logic Issue on ICAP Demand Curves since May 1, 2017, started with obtaining a revised version of the Net EAS Model that eliminated the one-day forward gas price shift.[17] The NYISO then re-ran the Net EAS Model using the appropriate three-year historic dataset for each Capability Year (*i.e.,* the 2017/2018 Capability Year through the 2020/2021 Capability Year), and used those updated results to

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[14] *See* NYISO, *Installed Capacity Demand Curves for the 2021-2022 Capability Year and Annual Update Methodology and Inputs for the 2022-2023, 2023-2024, 2024-2025 Capability Years – Final Report* at 32-33 (September 2020), available at: https://www.nyiso.com/documents/20142/14526320/NYISO-Staff-Final-DCR-Recommendations.pdf.

[15] *See* Services Tariff Section 5.14.1.2.2.4.11.

[16] *See* Attachment IV.

[17] Attachment IV at 4.

calculate revised reference point prices.[18] The NYISO then calculated revised market clearing outcomes based on the updated reference points, and compared those market clearing outcomes to the actual market clearing outcomes.[19] The NYISO's results are set forth in Attachment IV and are summarized below.[20]

As a general matter, the revised reference point prices reflected both increases and decreases from the original reference point prices. The misalignment of gas prices in the Net EAS Model did not have a unidirectional impact on the reference point prices.[21] The impacts over the course of reset period completed to date were relatively limited. Overall, the net impact was to lower capacity prices compared to what would have occurred absent the Gas Pricing Logic Issue, with the impacts being most significant in New York City.

For the 42 months of the reset period that have already been completed, the NYISO estimates that the reduced capacity prices resulted in an aggregate underpayment to capacity suppliers statewide of approximately $3.9-9.3 million.[22] This impact represents less than approximately 0.1% of the total ICAP market value of capacity statewide over the 42-month historic period. New York City has been most significantly impacted over this historic period. The NYISO estimates that the aggregate underpayment to New York City capacity supply resources accounts for approximately $2.8-$5.5 million of the statewide impact.[23]

The NYISO and the MMU also forecasted the potential impact of the Gas Pricing Logic Issue for the upcoming 2020/2021 Winter Capability Period. Based on consideration of the results of the Capability Period Auction recently conducted for the 2020/2021 Winter Capability Period, market outcomes for similar historical winter periods, and current capacity supply resource participation levels, the NYISO anticipates that the impacts for the upcoming 2020/2021 Winter Capability Period will be primarily limited to New York City.[24] Absent remedial action, the NYISO estimates that an additional underpayment to capacity supply resources in New York City of approximately $4-$8.4 million could accrue over the upcoming 2020/2021 Winter Capability Period.[25]

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[18] *Id.*

[19] *Id.*

[20] *See* Attachment IV at 5-13.

[21] *Id.* at 7-9.

[22] *Id*. at 12. The lower value of the range accounts for only the quantity of capacity that participated and was settled through the applicable ICAP Spot Market Auctions for the historic period. The upper value of the range assumes that the total amount of capacity participating in the market would be exposed to the applicable ICAP Spot Market Auction outcomes without accounting for any bilateral transactions or other hedging arrangements that may otherwise eliminate or mitigate such exposure.

[23] *See* Attachment IV at 12.

[24] *Id*. at 11.

[25] *Id*. at 13.

D. The Gas Pricing Logic Issue Does Not Violate the Currently Effective Services Tariff and There Is No Basis, or Support, for Revisiting Previous ICAP Auction Results Affected by the Issue

The NYISO has analyzed the Services Tariff and concluded that the Gas Pricing Logic Issue does not represent a tariff violation. There is thus no basis for retroactively changing capacity prices since May 1, 2017, under the filed rate doctrine.

In particular, the gas price misalignment was incorporated into the Net EAS Model that was developed during the DCR for the 2017-2021 reset period and utilized in determining the ICAP Demand Curves for the first year of the reset period (*i.e.*, the 2017/2018 Capability Year). The Net EAS Model including this gas pricing alignment logic was submitted to, and approved by, the Commission.[26] The 2017-2021 DCR was the first reset process to be governed by Section 5.14.1.2.2 of the Services Tariff, which requires the NYISO to conduct a quadrennial review of the ICAP Demand Curves, and "to: (i) identify the methodologies and inputs used for determining the ICAP Demand Curves for the four Capability Years covered by the periodic review; and (ii) establish the ICAP Demand Curves for the first Capability Year covered by the periodic review." Section 5.14.1.2.2 requires further that the quadrennial review "assess … the likely projected net Energy and Ancillary Services revenues of the peaking plant… including the methodology and inputs for determining such projections for the four Capability Years covered by the periodic review."

Under Services Tariff Section 5.14.1.2.2.2, the "[u]pdated values for the net Energy and Ancillary Services revenue" are to be "determined using a net revenue model that will be developed as part of the periodic review and made available to stakeholders." Services Tariff Section 5.14.1.2.2.2 also provides that the "commitment and dispatch logic and data sources and/or inputs used by the model" must be "identified in the [FERC] filing required by Section 5.14.1.2.2.4.11 and remain fixed for the entire period covered by the periodic review, subject to annual updating of certain data inputs used by the model as described herein."

The NYISO followed this process when developing the Net EAS Model for the 2017-2021 DCR, and the Gas Pricing Logic Issue was a part of the Net EAS Model that was developed during the reset process. In June 2016, the Analysis Group, Inc. the independent consultant that developed the Net EAS Model as part of the 2017-2021 DCR, gave a presentation that informed stakeholders, in relevant part, that the "model aligns SNL gas prices with electricity prices by incrementing the SNL gas date by one day."[27] Furthermore, when the Net EAS Model was presented to stakeholders for their review, an instruction file included with the

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[26] *See* New York Independent System Operator, Inc., *Proposed ICAP Demand Curves for the 2017/2018 Capability Year and Parameters for Annual Updates for Capability Years 2018/2019, 2019/2020 and 2020/2021*, Docket No. ER17-386-000 (November 18, 2016); and *New York Independent System Operator, Inc.*, 158 FERC ¶ 61,028 (2017) (accepting 2017-21 ICAP DCR filing).

[27] *See NYISO 2015/2016 ICAP Demand Curve Reset*, *Net EAS Revenue Model*, Presented by The Analysis Group, Installed Capacity Working Group Meeting, June 2, 2016, at 14, available at: https://www.nyiso.com/documents/20142/1409354/ICAP%20DCR%20Net%20EAS%20Model%206-2-2016%20FINAL%205%2022%202016%20(2).pdf.

posted version of the model informed them that the "model shifts gas prices ahead by one day to account for the day-ahead reporting of gas prices."

In November 2016, the NYISO concluded the DCR by making a filing with the Commission to define the ICAP Demand Curves for the 2017/2018 Capability Year, and to "identify the methodologies and inputs to be used for subsequent, annual updates to the ICAP Demand Curves for the 2018/2019, 2019/2020, and 2020/2021 Capability Years."[28] The NYISO's filing detailed the methodologies and inputs that were part of the Net EAS Model. This aspect of the filing was uncontested, and the Commission accepted it as just and reasonable.[29]

Under these circumstances, the Gas Pricing Logic Issue is clearly part of the filed rate, and the NYISO must adhere to it until the tariff is changed. The fact that the Gas Pricing Logic produced an unintended pricing misalignment does not make the NYISO's application of that logic a tariff violation. The NYISO's interpretation of its obligation to apply the Net EAS Model as accepted is fully consistent with the filed rate doctrine, which ensures that customers, and the Commission, are on notice of the rates to be charged.[30] The only potentially applicable exception to the filed rate doctrine is when customers have notice that a rate is subject to change.[31] In this case, the Gas Pricing Logic Issue was expressly incorporated into the Net EAS Model for the 2017-2021 reset period. A clear description of the gas pricing logic was provided during the 2017-2021 DCR process. There is thus no basis for invoking a "notice exception" to the filed rate doctrine here.

The NYISO and the independent MMU do not support any effort to recalculate previous ICAP auction results. No stakeholder has suggested to the NYISO that it should attempt to retroactively change capacity market prices. Even if there were a filed rate violation in this case, Commission precedent would strongly disfavor re-running prior market outcomes because doing so would upset settled market expectations.[32] The Commission should follow this policy here.

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[28] *New York Independent System Operator, Inc.*, 158 FERC ¶ 61, 028 at P 1 (2017).

[29] *Id.* at PP 17, 166, n.17.

[30] *See, e.g., Southwest Power Pool, Inc.*, 166 FERC ¶ 61,160 at P 45 (2019) ("SPP") ("[R]egulated utilities are forbidden to charge rates for services other than those on file with the Commission, a prohibition that has become known as the filed rate doctrine." *citing West Deptford*, 766 F.3d at 11 (citing *NSTAR Elec. & Gas Corp. v. FERC*, 481 F.3d 794, 800 (D.C. Cir. 2007); *Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 577 (1981)). *See also City of Cleveland v. FPC*, 525 F.2d 845, 854 (D.C. Cir. 1976) (The purpose of the filed rate doctrine is to "preserv[e] . . . the agency's primary jurisdiction over reasonableness of rates and . . . to insure that regulated companies charge only those rates of which the agency has been made cognizant.").

[31] *See SPP* at P 51, *citing NSTAR*, 481 F.3d at 801 *(citing Columbia Gas III*, 895 F.2d at 797); *Consolidated Edison*, 347 F.3d at 969. FERC also has authority to accept retroactive rate changes when the interested parties have previously agreed to accept such changes. That exception is not applicable here.

[32] *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,252, at P 55 (2017) ("as a general matter, rerunning the markets undermines the markets themselves by creating uncertainty for market participants,

E. Compliance with the Services Tariff's "Market Problem" Requirements

The Services Tariff defines a "Market Problem" as "[a]n issue which requires notification to Market Participants, the Commission and the Market Monitoring Unit pursuant to Section 3.5.1 of this Services Tariff. It includes market design flaws, software implementation and modeling anomalies or errors, market data anomalies or errors, and economic inefficiencies that have a material effect on the ISO-administered markets or transmission service."

Section 3.5.1 of the Services Tariff requires the NYISO to take certain steps when a potential Market Problem is identified. These include early outreach to stakeholders, informing the MMU, and notice to the Commission's Office of Enforcement.

The NYISO issued a notice to stakeholders on September 18, 2020, alerting them that the Gas Pricing Logic Issue constituted a potential Market Problem. The NYISO engaged stakeholders on the Gas Pricing Logic Issue in ICAPWG meetings on September 22, 2020, September 25, 2020, and on September 30, 2020. At the October 7, 2020 ICAPWG meeting, the NYISO informed stakeholders that it had concluded that the pricing alignment issue constituted a Market Problem under the definition set forth in Services Tariff Section 2.13. On October 15, 2020, the NYISO informed stakeholders that it had concluded that the Gas Pricing Logic Issue constituted a Market Problem.

The NYISO has fully complied with all requirements of Section 3.5.1. It has acted as expeditiously and with as much transparency to stakeholders as practicable. This exigent circumstances filing, and subsequent action to make it effective for the duration of the 2020/2021 Winter Capability Period, will resolve the identified Market Problem for the remainder of the 2017-2021 reset period.

IV. JUSTIFICATION FOR PROSPECTIVELY ADDRESSING THE GAS PRICNG LOGIC ISSUE FOR THE 2020/2021 WINTER CAPABILITY PERIOD AND DESCRIPTION OF PROPOSED TARIFF REVISIONS

Although the Gas Pricing Logic Issue is embedded in the previously accepted Net EAS Model for the 2017-2021 reset period, and thus is part of the NYISO's filed rate,[33] the NYISO believes that shifting gas prices forward by one day is a clear and discrete modeling error that should be corrected for the remainder of the 2017-2021 reset period. The Gas Pricing Logic Issue has impacted the ICAP Demand Curves and resulting capacity prices for the duration of the 2017-2021 DCR period. It will continue to impact prices for the 2020/2021 Winter Capability Period if not addressed. Under the circumstances, the NYISO believes that it is appropriate to address this discrete modeling error and its resulting impacts prospectively.

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and we generally eschew directing them to be rerun"); *San Diego Gas & Elec. Co. v Sellers of Energy & Ancillary Servs. Into Mkts. Operated by the Cal. Indep. Sys. Operator Corp.*, 153 FERC ¶ 61,144, at P 196 (2015) ("We, however, do not find any grounds for re-running the market for the Summer Period and imposing refund liability on the sellers that did not violate then-effective tariffs.").

[33] *See* Section III.D above.

The NYISO has therefore determined that prospective action should be taken through this exigent circumstances filing to eliminate the Gas Pricing Logic Issue for the upcoming 2020/2021 Winter Capability Period. The independent MMU concurs. There also appears to be a stakeholder consensus that the Gas Pricing Logic Issue is an error that should be remedied prospectively. Revising the tariff to eliminate the impacts of the Gas Pricing Logic Issue on the ICAP Demand Curves for the 2020/2021 Winter Capability Period is just, reasonable, and not unduly discriminatory. Doing so will make capacity market price signals more accurate.

The NYISO is proposing to add a new Section 5.14.1.2.2.5 to the Services Tariff. It would establish new ICAP Demand Curves for the 2020/2021 Winter Capability Period. The provision would expressly define the curves for clarity. This is a departure from current practice under Sections 5.14.1.2 and 5.14.1.2.2 of the Services Tariff under which the NYISO posts updated curves to its website after the first year of a quadrennial DCR.

These proposed 2020/2021 Winter Capability Period ICAP Demand Curves were determined in a manner consistent with the standard DCR annual update procedures set forth in Sections 5.14.1.2.2.1, 5.14.1.2.2.2, and 5.14.1.2.2.3. To determine the ICAP Demand Curves for the 2020/2021 Winter Capability Period, the NYISO recalculated the ICAP Demand Curves for each Capability Year, starting with the 2017/2018 Capability Year, and then adjusted them as specified in Sections 5.14.1.2.2.1, 5.14.1.2.2.2, and 5.14.1.2.2.3 of the Services Tariff. Thus, the NYISO determined peaking plant gross cost for each Capability Year using the appropriate escalation factor defined under Section 5.14.1.2.2.1. The NYISO then calculated updated values for the net Energy and Ancillary Services revenue offset values associated with each peaking plant, as required under Section 5.14.1.2.2.2. However, the updated net Energy and Ancillary Services revenue offset values reflect an adjustment to the Net EAS Model to eliminate the Gas Pricing Logic Issue. The NYISO used these recalculated offset amounts, along with the adjusted gross costs for each peaking plant, to determine ICAP Demand Curve reference points for each Capability Year, consistent with Section 5.14.1.2.2.3. The NYISO calculated the 2020/2021 Winter Capability Period ICAP Demand Curves in this manner to appropriately account for the transitional reference point "collar" rules that are applicable to the 2017-2021 reset period, which prohibits reference points from increasing or decreasing beyond specified limits, as measured in comparison to reference point values for the prior Capability Year.[34]

The revised reference points are reflected in proposed Section 5.14.1.2.2.5, which would establish ICAP Demand Curves for the upcoming 2020/2021 Winter Capability Period at the same level that they would have been established under the Commission-approved procedures, except that the Gas Pricing Logic Issue would be eliminated. These curves would supersede the NYISO's previously posted curves for the 2020/2021 Capability Year as it relates solely to the upcoming 2020/2021 Winter Capability Period.[35]

[34] Specifically, Services Tariff Section 5.14.1.2.2.3 provides that reference points determined in the annual updates for the 2017-2021 reset period may not increase by more than 12 percent, or decrease more than eight percent, compared to the prior Capability Year's reference points.

[35] The NYISO used the previously posted ICAP Demand Curves for the 2020/2021 Capability Year for all months covered by the 2020 Summer Capability Period.

The NYISO is also proposing to add language to Section 5.14.1.2 to clarify that new Section 5.14.1.2.2.5 defines the ICAP Demand Curves to be used for all months covered by the 2020/2021 Winter Capability Period. Section 5.14.1.2.2 would likewise be revised to clearly establish that ICAP Demand Curves for the upcoming 2020/2021 Winter Capability Period would be defined exclusively by new Section 5.14.1.2.2.5. These revisions reinforce the status of Section 5.14.1.2.2.5 as a special "one off" provision meant to adjust the ICAP Demand Curves for the 2020/2021 Winter Capability Period but not to affect past periods or future DCRs.

Finally, the NYISO proposes to revise Section 5.11.4, which governs the determination of Locational Minimum Installed Capacity Requirements ("LCRs"), to clarify that the NYISO's proposal to address the Gas Pricing Logic Issue by modifying the ICAP Demand Curves for the upcoming 2020/2021 Winter Capability Period will not result in any change to the LCRs applicable to the 2020/2021 Capability Year. For the last two years of the 2017-2021 reset period, LCRs have been determined using an optimization that includes consideration of cost curves related to the net EAS revenue offset values used in determining the ICAP Demand Curves for each Capability Year. Because the tariff revisions proposed herein would be effective for only a portion of the 2020/2021 Capability Year, and because the resulting changes to the net EAS revenue offset values reflecting correction of the Gas Pricing Logic Issue are relatively limited, and directionally consistent, it would not be reasonable to adjust the LCRs for only the 2020/2021 Winter Capability Year. In addition, recalculating LCRs would be a time-consuming process that could delay resolving the Gas Pricing Logic Issue. It would also be difficult, and potentially impractical, to accurately recalculate LCRs for only the 2020/2021 Winter Capability Period because of the need to recalibrate the economic optimization model used for calculating LCRs to account for the updated net EAS revenue offset values reflecting correction of the Gas Pricing Logic Issue for prior years that were initially used in establishing the current optimization model.[36]

V. STAKEHOLDER REVIEW

On September 22, 2020, the NYISO commenced discussions with stakeholders regarding the Gas Pricing Logic Issue at a meeting of the ICAPWG. The NYISO explained the issue and outlined its planned actions to assess the potential impacts to the 2017-2021 ICAP Demand Curves.

At the September 25, 2020 ICAPWG meeting, the NYISO discussed tariff compliance questions and presented its conclusion that the issue did not constitute a tariff violation. It also updated stakeholders on the status of its ongoing price impact assessment and provided preliminary reference point price re-calculations. On September 30, 2020 the NYISO updated stakeholders on its efforts and discussed the possibility of prospective remedial action.

On October 7, 2020, the NYISO made another presentation to the ICAPWG. The NYISO's presentation, which is included as Attachment IV hereto, provided an updated

[36] *See New York Independent System Operator, Inc.*,163 FERC ¶ 61,011 (2018); *reh'g denied*, 170 FERC ¶ 61,051 (2020) (accepting a new economic optimization algorithm for LCR calculations that was only in effect for a portion of the 2017-2021 reset period).

assessment of its impact analyses, addressed the NYISO's Market Problem determination, and described the NYISO's planned course of action. The NYISO emphasized that it did not support retroactive action but planned to make this filing to remedy the Gas Pricing Logic Issue prospectively. It also advised stakeholders that it expected to request a shortened comment period and expedited action.

The NYISO posted its proposed tariff revisions for stakeholder review and invited input by the end of the day on October 14, 2020. Stakeholders did not identify any concerns with the proposed tariff revisions or suggest modifications thereto.

On October 28, 2020, the NYISO will present the tariff revisions proposed herein to the Management Committee for ratification under Section 19.01 of the ISO Agreement.

Based on the stakeholder meetings that have been held to date and its discussions with individual stakeholders the NYISO believes that its proposal enjoys broad support. The MMU also supports the NYISO's proposed remedial action plan for the 2020/2021 Winter Capability Period.

VI. COMPLIANCE WITH SECTION 19.01 OF THE ISO AGREEMENT AND THE COMMISSION'S *GUIDANCE ORDER*

The NYISO's independent Board determined that it is important to address the Gas Pricing Logic Issue quickly. It therefore decided to proceed with this exigent circumstances filing to facilitate implementing revised ICAP Demand Curves for the November Auction. Section 19.01 of the ISO Agreement allows the Board to direct such a filing if, among other things, it concludes that an "exigent circumstance" exists with respect to an "ISO-Administered Market" and that the "urgency of the situation justifies a deviation from the normal ISO governance procedures." On October 6, 2020, the Board made that determination with respect to the Gas Pricing Logic Issue. The Board's action was communicated to stakeholders at the October 7, 2020 ICAPWG meeting.

The Commission has traditionally allowed the Board discretion to decide what constitutes an "exigent" circumstance.[37] There is no requirement that the issue involve a market or reliability "emergency;" it need merely involve a matter where the Board concludes that prompt action is justified. It is also clear that "a deviation from the normal ISO governance procedures" is justified in this case. The NYISO cannot make a traditional Section 205 filing without the Management Committee's assent. The certification deadline for the November Auction is October 22, 2020. The limited time available to implement revised ICAP Demand Curves for the November Auction did not afford adequate time to proceed through the NYISO's normal shared governance process. This exigent circumstances filing was therefore necessary to allow the NYISO to address the Gas Pricing Logic Issue in time for that auction.

Expedited action is also warranted under the Commission's 2005 *Guidance Order*. Specifically, the *Guidance Order* stated that to qualify for "expedited tariff revision provisions"

[37] *See, e.g.*, *New York Independent System Operator, Inc.*, 96 FERC ¶ 61,249 (2001).

a "tariff or rule flaw" should meet three criteria. Specifically the flaw should: (i) "materially adversely impact the market" due to "the unanticipated working of the tariff;" (ii) "require prompt action to prospectively revise the tariff to remove the ability to cause such material adverse impacts;" and (iii) "be susceptible to a clear-cut revision or interim tariff provision or market rule."[38]

All three of these criteria are satisfied here. The Gas Pricing Logic Issue has impacted capacity market price signals and capacity prices. Absent remedial action, these impacts would persist for the 2020/2021 Winter Capability Period. The Gas Pricing Logic Issue was also significant enough to trigger the NYISO's Market Problem procedures. "[P]rompt action" is necessary to prevent the Gas Pricing Logic Issue from adversely impacting the November Auction. Finally, the Gas Pricing Logic Issue is "susceptible to clear-cut revision" via the discrete and straightforward tariff revisions proposed in Section IV above.

VII. REQUEST FOR WAIVER OF STATUTORY NOTICE PERIOD AND REQUESTED EFFECTIVE DATE

In accordance with Section 35.11 of the Commission's regulations, the NYISO requests waiver of the 60-day prior notice period set forth in Section 205(d) of the Federal Power Act and Section 35.3 of the Commission's regulations so that its proposed tariff revisions may become effective on October 21, 2020. There is "good cause" for granting this request. October 21, 2020 is the last day before the certification deadline for the November Auction. Granting the requested effective date will enable the NYISO's remedy for the Gas Pricing Logic Issue to take effect in time for that auction.

VIII. REQUEST FOR SHORTENED COMMENT PERIOD

The NYISO respectfully requests that the Commission establish a shortened notice and comment period, *i.e.*, no longer than five calendar days. The Commission routinely adopts shortened comment periods when circumstances warrant. For example, the Commission's regulations normally allow five calendar days for responses to motions seeking extensions of time or shortened time periods for action.[39] Although this filing does not fall within the ambit of that rule it is not fundamentally dissimilar from routine procedural filings. The NYISO's proposed tariff revisions would prospectively fix an unambiguous error in a straightforward fashion. The NYISO does not expect any party to object to addressing the issue prospectively. Moreover, the NYISO has held multiple stakeholder discussions addressing the Gas Pricing Logic Issue. It also expressly informed stakeholders at the October 7, 2020 ICAPWG meeting that it would be making this filing and seeking expedited action. Interested stakeholders have therefore already been afforded an opportunity to begin to formulate their positions. Granting the NYISO's request for a shortened comment period will therefore not prejudice their interests.

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[38] *Guidance Order* at P 2.

[39] *See* Rule 213d(1)(i). 18 C.F.R. §385.213(d)(1)(i).

IX. REQUEST FOR EXPEDITED COMMISSION ACTION AND NOTICE OF INTENT TO IMPLEMENT

The NYISO also respectfully requests that the Commission act as expeditiously as practicable to issue an order on this filing. Expedited action is justified for all of the reasons discussed above, including the Board's exigent circumstances finding and the *Guidance Order's* criteria. A Commission order by the October 22, 2020 certification deadline for the November Auction would permit the NYISO and market participants to move forward with regulatory certainty concerning the outcomes produced by the November Auction. Recognizing that this may not be practicable for the Commission, the NYISO respectfully requests that the Commission issue an order as soon as possible after the certification deadline for the November Auction in order to minimize any potential uncertainty regarding the ICAP Demand Curves in effect for the upcoming Winter Capability Period.[40]

The NYISO also informs the Commission that, unless it is instructed to do otherwise, it intends to implement the tariff revisions proposed in this filing on October 21, 2020. This would result in the NYISO's proposed revised ICAP Demand Curves taking effect from the outset of Winter Capability Period. The NYISO recognizes that this could mean that its proposed ICAP Demand Curves will take effect before the Commission is able to issue an order addressing them. Given the nature of the Gas Pricing Logic Issue, seemingly overwhelming stakeholder support for rapid action on a prospective remedy, and the relative simplicity of the NYISO's proposed correction, the NYISO believes that it is appropriate to take this step. For example, Commission precedent authorizes utilities to implement tariff revisions proposed in compliance filings before the Commission issues an order accepting them when the compliance revisions are ministerial in nature.[41] The NYISO believes that taking action to prospectively address the Gas Pricing Logic Issue is a comparable action.

Should the Commission not accept the NYISO's proposed tariff revisions, the NYISO respectfully requests that any rejection be prospective only. Once the NYISO implements its proposed tariff revisions it will not be practicable to retroactively undo their application to capacity market auctions that have already been held.[42] Requiring retroactive changes would also be unjust to market participants who relied on auction results in the reasonable and good

[40] Following the November Auction, the certification deadline for the December 2020 ICAP Spot Market Auction is November 18, 2020.

[41] *See, e.g., New York State Public Service Commission, et. al. v. New York Independent System Operator, Inc.*, 171 FERC ¶ 61,114 (2020) at P 21 (confirming that NYISO acted properly by implementing ministerial compliance directives before the Commission acted to accept them); *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 155 FERC ¶ 61,073 (2016) at PP 21-22 (The Commission's compliance directive was sufficient to finalize replacement rate as of date of order where required tariff changes left no uncertainty).

[42] *See, e.g., New York Independent System Operator, Inc.*, 129 FERC ¶ 61,217 at P 46 (2009) (holding that system modeling error in NYISO's security constrained economic dispatch was "too complex to enable NYISO to equitably and fairly rebill its customers."). *See also* n. 31 above.

faith assumption that the Commission would accept the revised 2020/2021 Winter Capability Period ICAP Demand Curves proposed herein.

The NYISO is not proposing to take this approach out of a desire to bypass the Commission's authority or review. Rather, it is moving to quickly address the Gas Pricing Logic Issue because, although its impact is relatively limited, it represents a clear and discrete modeling error that should be corrected before the November Auction.

X. EXPIRATION DATE AND CONTINGENT REQUEST FOR COMMISSION ACTION UNDER FPA SECTION 206

Section 19.01 of the ISO Agreement specifies that an exigent circumstances filing must contain an expiration date no later than 120 days after the filing is made. Exigent circumstances filings may become permanent in duration if they are ratified by the Management Committee and then accepted by the Commission as a standard FPA Section 205 filing within such 120-day period. The 120 day period for the tariff revisions proposed herein will expire on February 14, 2021.

Section 19.01 of the ISO Agreement also provides that an exigent circumstances filing may become permanent, even without Management Committee approval, if it is accepted by the Commission under the just and reasonable standard set forth in Section 206 of the FPA.

The NYISO respectfully requests that, if this filing is not ratified by the Management Committee, the Commission accept it under Section 206.[43] Section IV of this filing explains why the Gas Pricing Logic Issue should be addressed. Moreover, if the Commission finds that accepting the NYISO's proposed replacement ICAP Demand Curves is reasonable for the next several months then there would be no valid reason to revert to the currently effective curves, which incorporate the Gas Pricing Logic Issue, for the March 2021 and April 2021 ICAP Spot Market Auctions.

The NYISO will submit a status report after the October 28, 2020 Management Committee meeting to inform the Commission as to whether this filing has been ratified or if action is needed under FPA Section 206.

XI. SERVICE

The NYISO will send an electronic link to this filing to the official representative of each of its customers, each participant on its stakeholder committees, the New York State Public Service Commission, and the New Jersey Board of Public Utilities. In addition, the complete filing will be posted on the NYISO's website at www.nyiso.com.

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[43] *See New York Independent System Operator, Inc.*, 115 FERC ¶61.005 (2006) (accepting extension of Voltage Support Services rates that was originally addressed by a NYISO exigent circumstances filing under Section 206 of the FPA).

XII. CONCLUSION

The NYISO respectfully requests that the Commission issue an order accepting its proposed exigent circumstances revisions to the Services Tariff and making them effective on October 21, 2020, without imposing any conditions and without instituting any further proceedings. The Commission should adopt a shortened notice and comment period and issue an order as expeditiously as possible. In addition, if the Management Committee does not ratify the proposed tariff revisions, then the NYISO requests that the Commission make the proposed revisions permanently effective under Section 206 of the FPA. Finally, the NYISO informs the Commission that it intends to implement the proposed replacement ICAP Demand Curves for the 2020/2021 Winter Capability Period on October 21, 2020.

Respectfully Submitted,

/s/ Ted J. Murphy
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