

June 1, 2015

The Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission 888
First Street, NE
Washington, D.C. 20245

Re: *Compliance Filing in Docket No. ER14-2518-000*

Dear Secretary Bose;

In compliance with Ordering Paragraph B of the Federal Energy Regulatory Commission's (Commission's) April 30, 2015, *Order Conditionally Accepting in Part and Rejecting in Part Proposed Tariff Changes and Directing Compliance Filing*¹ issued in the above docket, the New York Independent System Operator, Inc. ("NYISO") hereby submits proposed revisions to its Market Administration and Control Area Services Tariff ("Services Tariff") and Open Access Transmission Tariff ("OATT").

In its April 30 Order, the Commission rejected one proposal, and either accepted or conditionally accepted, subject to a compliance filing, the balance of the proposed revisions filed by the NYISO on July 28, 2014.² This compliance filing is made in full satisfaction of the Commission's directives in its April 30 Order.

I. Documents Submitted

1. This filing letter;
2. A clean version of the proposed revisions to the Services Tariff ("Attachment I");³

¹ *New York Independent System Operator, Inc.* 151 FERC 61,075 (April 30, 2015) ("April 30 Order").

² *Id.*

³ Section 23.4 of the NYISO Services Tariff included in Attachments I and III does not reflect language that is presently effective as accepted in *New York Independent Operator, Inc.*, Letter Order issued May 6, 2015 in Docket No. ER15-128, *Requests for Additional Capacity Resource Interconnection Service*, effective May 12, 2015. The revisions to Section 23.4 effective May 1, 2015 have been omitted from Section 23.4 in Attachments I and III solely for purposes of the tariff filing because the NYISO is requested that the tariff language proposed in this filing have an earlier effective date, *i.e.*, May 1, 2015, as described in Part VI below.

3. A clean version of the proposed revisions to the OATT (“Attachment II”);
4. A blacklined version of the proposed revisions to the Services Tariff (“Attachment III”);
5. A blacklined version of the proposed revisions to the OATT (“Attachment IV”); and
6. A clean version of the NYISO Services Tariff Section 23.4 incorporating the revisions that became effective May 12, 2015 (“Attachment V”).⁴

II. Background

In its July 28, 2014 filing in this docket, the NYISO proposed several revisions to its Services Tariff and OATT to (i) clarify market rules surrounding outage states, (ii) provide that Generators on outage respond to reliability needs, either by returning to service or by making their interconnection points available while they remain on outage, and (iii) establish a new EFORd or availability calculation for units returning to service from an outage.⁵ The proposal also responded to a need identified by the NYISO and the Market Monitoring Unit (“MMU”) to establish clear rules regarding how long a unit suffering equipment failure may participate in the Installed Capacity (“ICAP”) market.

The NYISO describes below the compliance obligations required by the Commission and provides the tariff revisions necessary to fully comply.

III. Proposed Tariff Revisions in Compliance with the Commission’s April 30 Order

A. Termination of Existing Interconnection Agreements

In its Outage States Filing, the NYISO proposed several tariff revisions to designate, as Retired, Generators with expired Mothball or ICAP Ineligible Forced Outages.⁶ Protestors asserted that designating a Generator with an existing interconnection agreement as Retired

⁴ Section 23.4 of the NYISO Services Tariff included in Attachment V reflects language that was accepted by the Commission in Docket No. ER15-128, *Requests for Additional Capacity Resource Interconnection Service*, effective May 12, 2015 and reflects language submitted in this filing that is requested to be effective May 1, 2015.

⁵ *New York Independent System Operator, Inc.*, Proposed Tariff Amendments to Define Certain Outage States and Associated Requirements, Docket No. ER14-2518-000 (filed July 28, 2014)(“Outage States Filing”).

⁶ April 30 Order at P 4.

would inappropriately modify the terms of the existing interconnection agreement if such designation could be used to terminate that interconnection agreement.⁷ The NYISO explained in its answer to protests and response to the Commission's deficiency letter that designating a unit with an existing three-party NYISO *pro forma* Interconnection Agreement as Retired would be grounds for termination of the agreement⁸ because those agreements are subject to the NYISO tariffs "as they may be amended from time to time."⁹ On the other hand, the NYISO explained, a decision on whether designating a unit with an existing two-party interconnection agreement¹⁰ as Retired would trigger the interconnection agreement's termination provisions would need to be made on a case-by-case basis.¹¹ The NYISO further explained that once an interconnection agreement was terminated, access to the relevant Point of Interconnection would be made available to proposed projects on a non-discriminatory basis through the generally applicable interconnection or transmission expansion processes.¹²

The Commission accepted the NYISO's explanation of the intended application of the proposed tariff provisions and agreed that those provisions should apply to both existing *pro forma* Interconnection Agreements and existing two-party interconnection agreements, provided that the NYISO submitted revised tariff language in its compliance filing to:

[C]learly delineat[e] the application of the new tariff provisions, including the new retirement provisions, to existing interconnection agreements, in accordance with the discussion above.¹³

To that end, the NYISO proposes to add a new Services Tariff Section 5.18.6 and new OATT Sections 30.11.5 and 32.4.9.

In new Services Tariff Section 5.18.6, the NYISO proposes to state, affirmatively, that whether the classification as Retired, of a Generator with an interconnection agreement other than a Standard Large Generator Interconnection Agreement ("LGIA") or a Small Generator

⁷ April 30 Order at P 22.

⁸ April 30 Order at P 26.

⁹ April 30 Order at 33.

¹⁰ The Commission distinguished existing two-party interconnection agreements from those Interconnection Agreements entered into pursuant to OATT Sections X and Z, the NYISO's interconnection procedures, by referring to the former as "non-conforming existing interconnection agreements" and the later as "existing *pro forma* Interconnection Agreements." See April 30 Order at PP 34 and 33, respectively. Herein, the NYISO will refer to the former as existing two-party interconnection agreements and the later as existing *pro forma* Interconnection Agreements.

¹¹ April 30 Order as P 27.

¹² Id.

¹³ April 30 Order at P 35.

Interconnection Agreement (“SGIA”), is grounds for the termination of the interconnection agreement depends on the terms and conditions of such agreement. This provision recognizes the Commission’s acknowledgement that the termination provisions of such agreement should be analyzed individually and that its terms should govern whether designating a unit as “Retired” will trigger termination.¹⁴ In addition, the NYISO proposes to provide in this new section that any termination will be effective only upon the acceptance by the Commission of the effective date of termination as provided in a filing made to the Commission by either party to the interconnection agreement, as appropriate. The NYISO is also proposing to add a provision to this section to indicate that access to the point of interconnection of the Generator will be available on a non-discriminatory basis pursuant to the NYISO’s applicable interconnection and transmission expansion processes and procedures only upon acceptance by the Commission of the notice of termination.

The NYISO is proposing to add a new provision to OATT Attachment X, Section 30.11.5, the Large Generating Facilities Interconnection Procedures, and OATT Attachment Z, Section 32.4.9, the Small Generating Facilities Interconnection Procedures, to describe the process of terminating conforming and non-conforming *pro-forma* LGIAs and SGIA.¹⁵

New OATT Section 30.11.5 provides that the classification of a Large Generating Facility as Retired will be grounds for the termination of its LGIA. The new provision requires the NYISO to file with the Commission a notice of termination of the LGIA as soon as practicable after the Large Generating Facility is Retired but that the termination of a non-conforming *pro forma* LGIA would be effective only upon acceptance by the Commission of the notice of termination and proposed effective date. As of the effective date of the termination of the LGIA, access to the Point of Interconnection of the Large Generating Facility would be available on a non-discriminatory basis pursuant to the ISO’s applicable interconnection and transmission expansion processes and procedures.

Pursuant to the Commission’s direction, the NYISO is also proposing to amend Section 30.14 to remove the phrase “or permanently ceases commercial operation” from Section 2.3.1 of the LGIA as a grounds for termination of a LGIA.¹⁶

New OATT Section 32.4.9 provides that the classification of a Small Generating Facility as Retired will be grounds for the termination of the SGIA and that the NYISO will file with the Commission a notice of termination of the SGIA as soon as practicable after the Small Generating Facility is Retired, as applicable. The termination of a non-conforming *pro forma* SGIA will be effective only upon acceptance by the Commission of the notice of termination and

¹⁴ April 30 Order at P 34.

¹⁵ In the NYISO’s proposed OATT Sections 30.11.5 and 32.4.9, the NYISO refers to non-conforming *pro forma* Interconnection Agreements as those interconnection agreements that contained modifications to the *pro forma* language provided in the LGIA and the SGIA themselves and thus were filed with the Commission.

¹⁶ April 30 Order at P 32.

proposed effective date. Similar to the provisions applicable to a Retired Large Generating Facility, access to the Point of Interconnection of the Small Generating Facility will be available on a non-discriminatory basis, as of the effective date of the termination of the SGIA, pursuant to the NYISO's applicable interconnection and transmission expansion processes and procedures.

These provisions will be applicable to any new *pro forma* Interconnection Agreement entered into on or after May 1, 2015¹⁷ and also to existing *pro forma* Interconnection Agreements. As the Commission indicated, compliance with the NYISO's tariffs, as they may be amended from time to time, is an explicit condition of these *pro forma* Interconnection Agreements.¹⁸

In addition, the NYISO proposes to revise OATT Section 25.5.5.2, the description of the Existing System Representation for the purpose of the Annual Transmission Baseline Assessment and the Annual Transmission Reliability Assessment for a given Class Year. The NYISO's revisions propose to state that the Point of Interconnection of a Retired Generator with a terminated interconnection agreement is available to proposed facilities under the applicable interconnection and transmission expansion processes and procedures. The NYISO is also proposing to add that a Retired Generator with an interconnection agreement that remains in effect after it is Retired will retain its right to the specific Point of Interconnection as provided for in the interconnection agreement and access to this point will not be available for new facilities.

B. Return to Service to Resolve a Reliability Need

1. Compensation

Pursuant to Commission direction, the NYISO is submitting a revised Services Tariff Section 5.18.4.1 replacing the phrase "an applicable regulatory agency" with a reference to the Commission as the agency providing the compensation order which would precede the return to service of a Market Participant's Generator when the return of the Generator has been selected as either a Gap Solution or to resolve a reliability issue on a non-New York State Bulk Power Transmission Facility arising during the Generator's outage.

Also pursuant to the Commission's direction, the NYISO proposes to add a new Services Tariff Section 5.18.4.1.1 describing the process to be followed in instances where a Market Participant and the NYISO cannot agree on compensation for the return to service of a Market Participant's Generator.¹⁹ Pursuant to the terms of this new section, within 30 days of a determination by the Market Participant and the NYISO that negotiations on the appropriate

¹⁷ LGIAs executed after May 1, 2015 will have the classification of the applicable Generator as Retired included as an explicit grounds for termination. See new OATT Section 30.14, Appendix 6, Section 2.3.1

¹⁸ April 30 Order at P 33.

¹⁹ April 30 Order at PP 51-52.

level of compensation are at an impasse, the Market Participant may submit a filing with the Commission for compensation under the Federal Power Act, Section 205. Should such a filing be made, the NYISO shall, no later than ten days following such a filing, file with the Commission an unexecuted compensation agreement that includes only non-rate terms and conditions.

Consistent with the Commission's February 19, 2015 Order in Docket No. EL15-37,²⁰ the NYISO is in the process of developing proposed Tariff rules to apply to Reliability-Must Run ("RMR") agreements. The NYISO will revisit the provision in new Services Tariff Section 5.18.4.1.1 in its proposed amendments to its Services Tariff and OATT that are required by the Commission's Order in Docket No. EL15-37.

2. Penalty for Failure to Return to Service

Pursuant to the Commission's direction in Paragraph 73 of the April 30 Order, the NYISO is deleting proposed Services Tariff Section 5.18.4.3, the provision that assigned costs to a Market Participant upon returning its Generator to service before expiration of the Generator's Mothball Outage or ICAP Ineligible Forced Outage if it had previously failed to timely return its Generator to service to resolve a reliability need. In addition, the NYISO is proposing to amend Services Tariff Sections 5.18.3.4, 5.18.4.1, 5.18.4.2, and 5.18.4.2.1 to delete references to Section 5.18.4.3.

C. Criteria for Physical Withholding Determinations

The NYISO's Outage States Filing included revisions to Services Tariff Section 23.4 requiring an audit and review, or Physical Withholding Test, when, in the absence of a Catastrophic Failure, a Supplier in a Mitigated Capacity Zone is removed from the Installed Capacity market as a result of the reclassification of its Generator from a Forced Outage to an ICAP Ineligible Forced Outage. The purpose of the Physical Withholding Test is to determine whether the exit from the Installed Capacity market has a legitimate economic justification or is motivated by a desire to physically withhold Installed Capacity in order to raise prices. The Commission's April 30 Order required the NYISO to incorporate into the tariff the criteria it would use in this Physical Withholding Test.²¹

With its Outage States Filing, the NYISO included an affidavit submitted by Dr. David Patton on behalf of the NYISO's Market Monitoring Unit, Potomac Economics.²² In his

²⁰ *New York Independent System Operator, Inc.*, Order Instituting 206 Proceeding and Directing Filing to Establish Reliability Must Run Provisions, 150 FERC ¶ 61,116 (2015).

²¹ April 30 Order at P 83.

²² Outage States Filing, Attachment V, Affidavit of David P. Patton, Ph.D. ("Patton Affidavit").

affidavit, Dr. Patton described several criteria, the analysis of which would assist in determining whether there was physical withholding or a decision with a legitimate economic justification to not repair. As Dr. Patton stated:

In general, the decision to not repair a generator would have a legitimate economic justification if the cost of repair, including the risk-adjusted cost of capital, could not be recouped over the reasonably anticipated remaining life of the generator given:

The duration of the repair;

The anticipated prices for capacity, energy, and ancillary services; The costs of operating the generator following the repair; and

Any benefits that would be foregone from using the site for another purpose (e.g., repowering).²³

The NYISO is proposing to add these and other relevant criteria to a new Services Tariff Section 23.4.5.6.2.3 as elements of the Physical Withholding Test. As appropriate, the criteria would include the historical revenue and maintenance costs data for the purpose of the baseline, the duration of the repair, the costs, including but not limited to capital expenditures necessary to comply with federal or state environmental, safety or reliability requirements that must be met in order to operate the Generator, the anticipated capacity, energy and ancillary services revenues following the repair, the projected costs of operating the Generator following the repair, any benefits that would be foregone from using the site for another purpose and any other relevant data. The last element is intended to respond to the Commission's concern that the listed criteria not be exclusive and that the consideration of additional factors that may be relevant in specific circumstances not be precluded.

The NYISO also proposes to clarify that these criteria may be utilized in an audit and review required to be conducted pursuant to other provisions in this Services Tariff Section 23.4.5.6. This will clarify that the location of these criteria does not limit their application, as appropriate, in audit and reviews done pursuant to other Sections of the Services Tariff to determine the economic justification of the removal of an Installed Capacity Supplier's Generator, located in a Mitigated Load Zone, from the Capacity market.

D. Timelines of Determinations of Catastrophic Failure and Exceptional Circumstances

The Commission also required the NYISO to incorporate into its Services Tariff the timelines it would adhere to in rendering a decision on whether a unit has experienced a Catastrophic Failure and whether a unit has Exceptional Circumstances which justify a delay in its Physical Withholding Test. The NYISO had proposed putting these timelines into its Manuals.

²³ Patton Affidavit at P 24.

Therefore, the NYISO is proposing to add a new Services Tariff Section 23.4.5.6.2.4 to provide that the NYISO will make a determination that a Market Party has experienced Exceptional Circumstances by the 160th day of the Generator's Forced Outage. If the Market Party asserts it has experienced Exceptional Circumstances after it has Commenced Repair and requests reclassification to an ICAP Ineligible Force Outage, the NYISO proposes to use reasonable efforts to render a decision on whether a Market Party has experienced Exceptional Circumstances by the 40th day after its receipt of data necessary to make the determination.²⁴

The NYISO is also proposing that it will make a determination that a Market Party's Generator has experienced a Catastrophic Failure by the 160th day of the Forced Outage or, if the ISO has determined that Exceptional Circumstances will delay the submission of data necessary for the ISO to perform an audit and review pursuant to Services Tariff Section 23.4.5.6.2.1 or 23.4.5.6.2, the NYISO would use reasonable efforts to render a decision by the 40th day after its receipt of data necessary to make the determination.

To support a decision of either Catastrophic Failure or Exceptional Circumstances within 160 days of the first day of a Forced Outage, the NYISO is proposing to add a new Section 5.18.1.3 to the Services Tariff indicating that requests and supporting data for either determination must be submitted within 120 days of the Forced Outage.

E. Miscellaneous Tariff Revisions

The NYISO also proposes to revise the description of the effective date as it appears in various provisions associated with the Outage States Filing. The effective date is currently described in these provisions by referring to the effective date of Section 5.18. Wherever this phrase appears, the NYISO proposes to replace it with "May 1, 2015," the effective date accepted by the Commission.

Finally, the NYISO reiterates its commitment to develop with its stakeholders a provision that captures the NYISO's intent for the transition from an ICAP Ineligible Forced Outage to ICAP market eligibility to occur in a manner consistent with other market rules that would consider whether ICAP is available from a generator. This is an issue specifically for Pivotal Suppliers which, under the Services Tariff, are required to offer any remaining unsold capacity into the ICAP Spot Market Auction. Whether an entity is a Pivotal Supplier depends on the MW it has available for sale. For purposes of that calculation, the MW from a unit returning from an ICAP Ineligible Forced Outage would only be included if those MW are available to offer into the subsequent month's ICAP auction.²⁵ Pursuant to the Commission's directive, final language

²⁴ Pursuant to Services Tariff Section 23.4.5.6.2.2 a deferral by the NYISO of a Physical Withholding Test upon the reclassification of a Generator from a Forced Outage to an ICAP Ineligible Forced Outage for Exceptional Circumstances requires that the Generator be in a Forced Outage for at least 180 days before the reclassification.

²⁵ Outage States Filing p. 11

will be proposed as a revision to the Services Tariff and filed with the Commission under Section 205 of the Federal Power Act.

IV. Communications and Correspondence

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

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V. 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.

VI. Conclusion

Wherefore, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept for filing the proposed revisions to its OATT and Services Tariff that are attached hereto with an effective date of May 1, 2015.

Respectfully submitted,

/s/Mollie Lampi

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