

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New York Independent System Operator, Inc.)	
)	Docket Nos. ER12-1653-____;
)	ER13-____-000
)	

**NEW YORK INDEPENDENT SYSTEM OPERATOR, INC. REQUEST
FOR LIMITED TARIFF WAIVER, SHORTENED COMMENT PERIOD,
AND EXPEDITED COMMISSION ACTION**

Pursuant to Rule 207(a)(5) of the Federal Energy Regulatory Commission (“Commission” or “FERC”) Rules of Practice and Procedure, 18 C.F.R. § 385.207(a)(5), the New York Independent System Operator, Inc. (“NYISO”) respectfully requests a temporary, limited waiver of Sections 23.3.3.3.1.1 and 23.3.3.3.1.2 of (Attachment H to) its Market Services Tariff (“Waiver Request”).¹ The Tariff rules that NYISO requests a temporary waiver of require the NYISO to (a) determine whether the application of real-time guarantee payment (“RTGP”) is appropriate, (b) post settlement results that reflect the application of RTGP mitigation, and (c) provide notice to Market Parties² of the effect that RTGP mitigation has on a Market Party’s real-time Bid Production Cost Guarantee (“BPCG”), within very tight time deadlines. The NYISO relies on the RTGP mitigation software that it has developed to achieve these Tariff-specified deadlines.³

¹ Section 23 of (Attachment H to) the NYISO’s Market Services Tariff sets forth the NYISO’s Market Power Mitigation Measures.

² Capitalized terms that are not expressly defined in this Waiver Request have the meaning ascribed to them in either Section 23.2.1 of (Attachment H to) the NYISO Market Services Tariff, or in Section 2 of the NYISO’s Market Services Tariff.

³ The NYISO’s “RTGP mitigation software” is not a discrete set of software components that are dedicated solely to applying RTGP mitigation. Rather the RTGP mitigation software includes components of the NYISO’s Bid entry, market operation, and settlement software that are all designed to work together to achieve Tariff compliance.

The NYISO planned to implement RTGP mitigation of Regulation Movement and Regulation Capacity Bids outside of its existing guarantee payment mitigation software until it was able to incorporate Regulation Capacity and Regulation Movement Bids and reference levels into the existing RTGP mitigation software.⁴ The NYISO did not recognize that the existing RTGP notification deadlines also apply to the new/additional/supplemental RTGP mitigation of Regulation Capacity Bids and Regulation Movement Bids.⁵ Until Regulation Capacity and Regulation Movement Bids and reference levels are included and tested in the RTGP mitigation software it is not possible for the NYISO to determine the effect that conduct-failing Regulation Movement or Regulation Capacity Bids have on guarantee payments within the Tariff-specified time deadlines, nor is it possible for the NYISO to reflect the application of RTGP mitigation of these Bids in posted settlement results or inform affected Market Parties within the timelines specified in Sections 23.3.3.3.1.1 and 23.3.3.3.1.2 of its Mitigation Measures. The NYISO expects to complete the necessary software improvements by October 23, 2013.

The NYISO respectfully requests that the Commission waive the following Tariff requirements from June 26, 2013 (the date that the NYISO's Order No. 755 Compliance Filing became effective) to October 23, 2013:

- (a) The requirement to determine the impact of conduct-failing Regulation Capacity and Regulation Movement Bids on RTGP to a Market Party, for a

⁴ See, e.g., P 30 of the Affidavit of Dr. Pallas LeeVanSchaick that was submitted as Attachment I to the NYISO's January 22, 2013 Compliance Filing in Docket No. ER12-1653-000 ("the mitigation measures for Ancillary Services are applied manually, rather than in an automated fashion...").

⁵ It is not appropriate to separately test particular Bids/Bid components for BPCG impact because the RTGP impact test compares total costs to total revenues over a Real-Time Market day.

Generator, for a Real-Time Market day, by the time it posts settlement results for that Real-Time Market day. Settlement results are ordinarily posted approximately two days after each real-time market day⁶;

- (b) the requirement to post settlement results that reflect the application of RTGP mitigation (that includes the impact of conduct-failing Regulation Capacity Bids and Regulation Movement Bids) in the initial settlement results it posts approximately two days after each real-time market day; and
- (c) the requirement to send an e-mail to Market Parties informing them of RTGP mitigation and inviting them to initiate a consultation no more than two business days after new or revised real-time guarantee payment impact test settlement results are posted.

The NYISO will continue to apply all other aspects of RTGP mitigation within the timeframes specified in the Mitigation Measures.⁷

For the reasons explained in Section IV of this Waiver Request, the NYISO's error was made as part of a good-faith effort to implement the requirements of Order No. 755. The requested waiver is of limited scope—it seeks to extend the time that the NYISO has to consult with and RTGP impact test Regulation Suppliers that (i) submit conduct-failing Regulation Capacity or Regulation Movement Bids and (ii) receive a

⁶ The initial posting of settlement results “ordinarily” occurs two days after the relevant real-time market day. The NYISO has not seriously considered or proposed delaying the posting of settlement results in order to achieve compliance with the RTGP mitigation posting requirements. Instead, the NYISO submitted this waiver request to achieve Tariff compliance without disrupting the NYISO settlement process.

⁷ If a Market Party's Bids are determined to exceed the RTGP impact threshold, the NYISO mitigates *all* conduct-failing Bids. If including conduct-failing Regulation Capacity and Regulation Movement Bids in the RTGP test causes a Market Party's Bids for a Generator to exceed the relevant RTGP impact threshold, then the NYISO will mitigate *all* of the conduct-failing Bids, not just the conduct-failing Regulation Capacity or Regulation Movement Bids.

BPCG. The requested waiver is for a limited duration—from June 26, 2013 to October 23, 2013. The NYISO’s inability to timely perform RTGP impact tests and provide Tariff-required notice to some Market Parties presents a concrete problem that needs to be remedied. Finally, the requested waiver will not have undesirable consequences, such as harming third parties. To the contrary, granting the waiver will protect loads from possibly overpaying for Regulation Service, while ensuring that regulation providers have the opportunity to recover their costs of providing Regulation Service.

The NYISO will implement the software improvements as soon as they are completed, tested, and deployed to production. The NYISO hopes to complete the necessary work before the end of the requested waiver period. The NYISO will provide notice to the Commission and to its Market Participants at least one week prior to implementing the software improvements that are necessary to incorporate Regulation Capacity and Regulation Movement Bids and reference levels into the NYISO’s RTGP mitigation software.

I. BACKGROUND

In its August 31, 2007 RTGP filing in Docket No. ER07-1334, the NYISO described how it performs RTGP mitigation⁸:

Under the Services Tariff, generators submit three-part Bids into the Real-Time Market: (i) Incremental Energy Bids (which are used to set the LBMP), (ii) Minimum Generation Bids, and (iii) Start-Up Bids. The three Bids are collectively used to determine whether a generator is eligible to receive a Bid Production Cost guarantee (“BPCG” or “guarantee”) payment for a given 24 hour operating day. Absent mitigation, a BPCG payment is made if a given generator’s total as-Bid costs exceed its LBMP plus Ancillary Service revenues for the operating day. BPCG payments

⁸ Citations to specific provisions of the Market Mitigation Measures (“MMM”) in the quoted language have been updated to identify the currently effective tariff provisions.

are necessarily determined on a unit-by-unit basis after the results of a full day's schedules are available.

Under the MMM, competitive “reference levels”⁹ are established for each generator's Incremental Energy, Minimum Generation and Start-Up Bids. Bids that exceed the relevant reference level by the conduct thresholds specified in Section 23.3.1.2 of the MMM fail the conduct test and are eligible for guarantee payment mitigation if they would also result in a real-time BPCG payment to the generator that is 50% (in New York City) or 200% (in the rest of New York State) greater than the “reference” BPCG payment that would be available for the operating day if all conduct-failing Bids were replaced with reference levels (the “RTGP Impact Test”).¹⁰ Stated another way, the RTGP Impact Test compares (i) the BPCG payment that a generator would receive if its Bids that fail the conduct test were replaced with reference levels (the “Reference BPCG”), to (ii) the BPCG payment that the generator would receive if the generator were compensated based on the offers the NYISO used to run its Real-Time Market (the “Initial BPCG”). If the comparison of the Initial BPCG to the Reference BPCG indicates that the generator's offers increased its BPCG payment by more than 50% (in New York City) or by more than 200% (in the rest of New York State), then all of the generator's conduct-failing Bids are mitigated for the entire operating day and a revised BPCG payment (which can never be less than \$0) is calculated based on the mitigated offers. [Highlighting added.]

In an affidavit submitted in support of the NYISO's January 22, 2013 compliance filing in Docket No. ER12-1653, Dr. Pallas LeeVanSchaick of Potomac Economics (the “Affidavit”), the NYISO's Market Monitoring Unit, identified the potential for BPCG payments to be inflated if suppliers were to raise the Regulation Capacity or Regulation Movement Bids of their inframarginal resources above those resources marginal cost of providing the service.

For the reasons explained in PP 23-25 of Dr. LeeVanSchaick's Affidavit, it is no longer appropriate for the NYISO to simply include net Ancillary Service revenues when performing the RTGP impact test. The NYISO's implementation of the Commission's

⁹ MMM § 23.3.1.4.

¹⁰ MMM § 23.3.2.1.

Order No. 755 requirements necessitates a more sophisticated comparison of Regulation Bids to Regulation reference levels to accurately effectuate BPCG mitigation.¹¹ Unfortunately, the NYISO and the Market Monitoring Unit did not recognize that *all* of the Tariff requirements for applying RTGP mitigation also apply to the new/improved measures.

II. RELEVANT TARIFF PROVISIONS

Section 23.3.3.3.1.1 of the NYISO's Market Power Mitigation Measures ("Mitigation Measures") requires the NYISO to:

[E]lectronically post settlement results informing Market Parties of Bid(s) that failed the real-time guarantee payment impact test. The settlement results posting shall include the adjustments to the guarantee payment and the mitigated Bid(s). The initial posting of settlement results ordinarily occurs two days after the relevant real-time market day.

Section 23.3.3.3.1.2 of the Mitigation Measures requires the NYISO to:

For real-time guarantee payment mitigation ... no more than two business days after new or revised real-time guarantee payment impact test settlement results are posted, the ISO will send an e-mail or other notification to all potentially impacted Market Parties...

The NYISO timely posts real-time settlement results that include the information required in Section 23.3.3.3.1.1 of its Mitigation Measures. The NYISO also has a process in place to timely issue e-mail notices inviting Market Parties to consult with the NYISO regarding instances of RTGP mitigation. However, as explained above, the real-time guarantee payment impact test that was accepted for filing by the Commission in Docket No. ER07-1334-000 simply includes net ancillary service revenues.¹² The

¹¹ Generators that are submitting Bids into the Real-Time Market, and that are capable of providing Spinning Reserve, 10-Minute Non-Synchronized Reserves, and 30-Minute Reserves, are required to offer these products at zero cost, so there is no need to conduct or impact test real-time offers of these products. See Section 23.3.1.4.6 of the Mitigation Measures.

¹² See *New York Independent System Operator, Inc.*, 121 FERC ¶ 61,112 at P 2 and n.2 (2007).

NYISO has not previously tested and mitigated specific ancillary service components in its real-time guarantee payment conduct and impact testing process.

III. PROPOSED PROCEDURE FOR INCORPORATING REGULATION CAPACITY AND REGULATION MOVEMENT INTO GUARANTEE PAYMENT CONSULTATION/MITIGATION UNTIL IMPROVED SOFTWARE IS DEPLOYED

While the requested Tariff waivers are in effect, the NYISO proposes to employ an extended timeline to incorporate Regulation Capacity and Regulation Movement Bids into its review of RTGP, and temporary, alternative screening and consultation measures: (a) to permit the NYISO to manually screen real-time Regulation Capacity and Regulation Movement Bids for the exercise of market power until the necessary software upgrades are completed; and (b) to provide Market Parties adequate time and opportunity to consult and explain the basis for conduct-failing real-time Regulation Capacity and/or Regulation Movement Bids.

Because the NYISO implemented its new, two-part Regulation Market less than one month ago (on June 26, 2013), many Market Parties have not developed a settled offer strategy, and/or have yet not determined the most effective way to reflect and recover each Generator's cost of providing regulation service in that Generator's Regulation Capacity and Regulation Movement Bids. In addition, there are a number of Generators that did not choose to consult with the NYISO regarding their Generators' Regulation Capacity and Regulation Movement reference levels prior to the implementation of the new market construct. In these cases, the NYISO was forced to use "place holder" reference levels that may not accurately represent a Generator's cost of providing regulation service. As a result of these factors, the NYISO is seeing a large number of Regulation Service Bids that appear to exceed the relevant conduct thresholds.

It is not unusual or surprising for a market to become unsettled when a significant market change, like the addition of Regulation Movement to the regulation market, occurs. From June 26, 2013 to the date of this Waiver Request, total revenues paid to regulation providers have not significantly increased in comparison to past periods, so it appears unlikely that suppliers have significantly inflated their offers under the new market design. However, the NYISO's Market Mitigation and Analysis Department ("MMA") still needs to complete the exercise of developing accurate Regulation Capacity and Regulation Movement reference levels for all regulation providers.

The NYISO proposes to use the following process to address conduct-failing Regulation Conduct and Regulation Movement Bids submitted by entities that were scheduled to provide Regulation Service and that received a BPCG for the relevant RealTime Market day.

1. **Informal consultation process.** Without waiting to perform an impact test, MMA will send a letter informing the Market Party of (a) the conduct-failing Bid, and (b) the reference level that the NYISO currently has in place for Regulation Capacity and/or Regulation Movement and provide the Market Party an opportunity to submit cost information justifying the bidding behavior. Cost information that a Market Party provides to justify its Regulation Capacity or Regulation Movement Bid is likely to also be relevant to developing an appropriate reference level for the Generator.

- a. The NYISO will try to send the informal consultation/information requests within two business days of posting to the NYISO's Decision Support System ("DSS"), but given the manual nature of the effort and the significant number of conduct-failing Bids, the NYISO may

require up to six business days to send the initial informal consultation letter. The letter will require Market Parties to respond within 10 business days.

- b. The NYISO will complete all informal consultations in a timeframe that will permit the NYISO to perform a manual RTGP impact test and apply RTGP mitigation, where appropriate, in the four-month true-up invoice for the relevant market month.
- c. NYISO expects that, in most cases, it will not be necessary to proceed beyond the informal consultation process.

2. **Manually perform RTGP impact test.** If the justification(s) provided by the Market Party in the informal consultation process are determined to be inadequate, or if no response is received, the NYISO will manually perform a RTGP impact test that replaces all conduct-failing Bids, including conduct-failing Regulation Capacity and/or Regulation Movement Bids, with reference levels to determine if a RTGP impact that exceeds the impact threshold specified in Section 23.3.2.1(2) of the Mitigation Measures occurred. Performing this test manually takes a significant amount of time because the NYISO must manually identify and calculate the impact on guarantee payments of each of the 5-minute intervals of the day in which the Generator being tested received a regulation schedule. In addition to considering conduct-failing regulation Bids, the NYISO must also account for any/all

other conduct-failing Bids.¹³ Due to the significant amount of time each RTGP impact test is expected to take, the NYISO proposes to offer the opportunity for the Market Party to participate in informal consultation before it performs a RTGP impact test.

3. **Apply RTGP mitigation.** If RTGP impact is determined, the NYISO will manually adjust the Market Party's bill to reflect the change and send an e-mail informing the Market Party of the mitigation and its impact on the Market Party's guarantee payment, and inviting the Market Party to initiate a formal consultation regarding the mitigation.

- a. NYISO will manually apply RTGP mitigation on or before the date of the four-month true-up invoice for the relevant market month.

4. **Formal consultation process.** Following the application of mitigation, the NYISO proposes to follow all of the consultation rules and requirements set forth in Section 23.3.3.3 of the Mitigation Measures. The NYISO will treat the date that the NYISO informed the Market Party of the RTGP mitigation and its impact on the Market Party's guarantee payment as the date on which electronic settlement results are posted (*see* Section 23.3.3.3.1.1 of the Mitigation Measures). The e-mail MMA sends informing the Market Party of the mitigation and inviting the Market Party to participate in a formal consultation will also satisfy the notice obligation set forth in Section 23.3.3.3.1.2 of the Mitigation Measures.

¹³ For example, in addition to failing conduct for Regulation Capacity or Regulation Movement, the Generator's Minimum Generation Bid might also exceed the relevant conduct threshold. All conduct-failing Bids must be taken into consideration when calculating the guarantee payment impact of a Market Party's bidding behavior for a Generator, for a market day.

5. **End result.** RTGP mitigation may stand, or it may be wholly or partially overturned, based on the results of the formal consultation process.

IV. THE REQUESTED WAIVER CONFORMS TO THE COMMISSION'S APPLICABLE CRITERIA AND IS IN THE PUBLIC INTEREST

For the reasons explained in this Waiver Request, the NYISO requests waiver of Sections 23.3.3.3.1.1 and 23.3.3.3.1.2 of its Mitigation Measures. “The Commission has previously granted Independent System Operators and Regional Transmission Organizations limited waivers of their own tariff provisions when: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.”¹⁴ NYISO’s waiver request meets each of these criteria.

A. Good Faith

The NYISO acted in good faith to develop tariff rules and software to implement its Order No. 755 compliance filing. However, as described above, neither the NYISO developers, nor its Market Monitoring Unit, understood that the supplemental, manual review of Regulation Capacity Bids and Regulation Movement Bids for possible RTGP mitigation remains subject to the same impact determination, posting and Market Party notice deadlines that apply, more generally, to the application of RTGP mitigation.

¹⁴ *New York Independent System Operator, Inc.*, 139 FERC ¶ 61,108, at P 14 (2012). See also, e.g., *PJM Interconnection, LLC*, 137 FERC ¶ 61,184, at P 13 (2011); *PJM Interconnection, LLC*, 137 FERC ¶ 61,109, at P 11 (2011); *PJM Interconnection, LLC*, 135 FERC ¶ 61,069, at P 8 (2011); *ISO-New England, Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *California Independent System Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010); *Hudson Transmission Partners*, 131 FERC ¶ 61,157, at P 10 (2010); *Pittsfield Generating Co., L.P.*, 130 FERC ¶ 61,182, at P 9-10 (2010); *ISO New England Inc. - EnerNOC*, 122 FERC ¶ 61,297 (2008); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008).

B. The Requested Temporary Waiver is Limited in Scope

The requested temporary waiver is limited in scope. First, the waiver applies to the finite period of June 26, 2013, which is the date the Tariff revisions that the Commission accepted in response to the NYISO's Order No. 755 compliance filing took effect, through October 23, 2013, which is the anticipated date by which the NYISO will have the software necessary to achieve Tariff compliance in-place. Second, the waiver only applies to entities that are selected to provide regulation, that submit conduct-failing Regulation Capacity or Regulation Movement Bids, and that receive a BPCG for the relevant Real-Time Market day. RTGP mitigation continues to be timely applied to all other Market Parties.

C. The Temporary Waiver Will Remedy a Concrete Problem

The requested temporary waiver will remedy a concrete problem. Until the NYISO is able to improve its RTGP software to incorporate Regulation Capacity and Regulation Movement Bids and reference levels into the conduct and RTGP impact tests, the NYISO will not be able to comply with the testing/notice deadlines set forth in Sections 23.3.3.3.1.1 and 23.3.3.3.1.2 of its Mitigation Measures. Granting the requested waiver and permitting the NYISO to temporarily implement a manual process that requires an impact determination, and that provides Generators a full opportunity to engage in consultation, addresses the concerns presented by the NYISO's application of RTGP mitigation to Regulation Capacity and Regulation Movement providers Bids.

D. Granting the Temporary Waiver Will Not Harm Third Parties

Granting this Waiver Request will protect loads in New York that might otherwise be required to pay BPCG compensation to Generators that are scheduled to provide Regulation Capacity or Regulation Movement in the NYISO's Real-Time

Market, and that submit Bids that significantly exceed their cost(s) of providing these services. Affected Generators will not be harmed because the NYISO will provide both an impact determination and a full opportunity for consultation regarding their Regulation Capacity and Regulation Movement reference levels and the NYISO's application of RTGP mitigation. Therefore, the Commission's granting of this Waiver Request will not harm third parties.

V. REQUEST FOR SHORTENED NOTICE PERIOD AND FOR COMMISSION ACTION BY AUGUST 23, 2013

The NYISO respectfully requests that the Commission grant the requested, temporary waiver request by no later than August 23, 2013. To meet this expedited schedule, the NYISO respectfully requests that the Commission immediately issue notice of this Waiver Request and provide, in accordance with its Rule 210(b),¹⁵ for a shortened comment period of ten days. Expedited action is necessary because the NYISO is not able to timely comply with the notice requirements in its Mitigation Measures when applying RTGP mitigation to accepted Regulation Capacity and Regulation Movement Bids. Until the Commission acts, the NYISO will be out-of-compliance with the requirements of its Tariffs. Expedited Commission action on this Waiver Request will also provide the NYISO and its Regulation Suppliers certainty regarding how guarantee payment consultation and mitigation of Regulation Capacity Bids and Regulation Movement Bids will be conducted during the requested waiver period.

¹⁵ 18 C.F.R. § 385.210(b).

VI. CORRESPONDENCE AND COMMUNICATIONS

Please send all correspondence regarding this Waiver Request to the following NYISO representatives:

Belinda Thornton, Director of Market Mitigation and Analysis
*Raymond Stalter, Director of Regulatory Affairs
Mollie Lampi, Assistant General Counsel
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VII. SERVICE

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

VIII. CONCLUSION

For the reasons stated above, from June 26, 2013 through October 23, 2013, the NYISO requests an expedited, temporary, waiver of the RTGP impact testing/mitigation and notice requirements set forth in Sections 23.3.3.3.1.1 and 23.3.3.3.1.2 of its Mitigation Measures. The NYISO further requests that the Commission provide for a shortened comment period and act on this Waiver Request by August 23, 2013.

Respectfully submitted,

/s/ Alex M. Schnell

Mollie Lampi, Assistant General Counsel
Alex M. Schnell
New York Independent System Operator, Inc.

Dated: July 23, 2013

CERTIFICATE OF SERVICE

I hereby certify that I this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Rensselaer, New York this 23rd day of July 2013.

/s/ Joy A. Zimmerlin

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