

178 FERC ¶ 61,114  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

February 18, 2022

In Reply Refer To:  
New York Independent System  
Operator, Inc.  
Docket No. ER22-705-000

New York Independent System Operator, Inc.  
10 Krey Boulevard  
Rensselaer, NY 12144

Attention: James H. Sweeney, Esq.

Dear Mr. Sweeney:

1. On December 22, 2021, New York Independent System Operator, Inc. (NYISO) submitted a request pursuant to section 205 of the Federal Power Act<sup>1</sup> (FPA) and Part 35 of the regulations of the Commission's regulations<sup>2</sup> proposing amendments to the market power mitigation measures set forth in section 23 of NYISO's Market Administration and Control Area Services Tariff (Services Tariff).<sup>3</sup> Specifically, NYISO proposes to modify the mitigation measures applicable to the uneconomic production and uneconomic withdrawal of energy.<sup>4</sup> We accept the proposed revisions, to be effective February 21, 2022, as discussed below.
2. NYISO states that the Services Tariff requires NYISO to monitor for and mitigate uneconomic production and uneconomic withdrawal.<sup>5</sup> The Services Tariff defines

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<sup>1</sup> 16 U.S.C. § 824d.

<sup>2</sup> 18 C.F.R. pt. 35 (2021).

<sup>3</sup> New York Independent System Operator, Inc., NYISO Tariffs, [NYISO MST, 23.2 MST Att H Conduct Warranting Mitigation \(48.0.0\)](#), [NYISO MST, 23.3 MST Att H Criteria for Imposing Mitigation Measures \(2\) \(29.0.0\)](#), [NYISO MST, 23.4-23.4.4 MST Att H Mitigation Measures \(53.0.0\)](#).

<sup>4</sup> NYISO Filing, Transmittal Letter at 2.

<sup>5</sup> *Id.* at 2.

uneconomic production as an increase in the output of an electric facility to levels that would otherwise be uneconomic in order to cause, and obtain benefits from, a transmission constraint.<sup>6</sup> The Services Tariff defines uneconomic withdrawal as energy withdrawn at a price that is uneconomic for the generator and that causes or contributes to transmission congestion. NYISO states that the conduct and impact thresholds for identifying uneconomic production and uneconomic withdrawal are set forth in section 23.3.1.3 of the Services Tariff; specifically, NYISO uses reference levels<sup>7</sup> to screen for conduct or market impacts that may warrant mitigation, including to determine when injecting or withdrawing may be uneconomic. For example, the conduct threshold used to identify uneconomic production that may warrant the imposition of a mitigation measure is “[e]nergy scheduled at [a Locational Based Marginal Price (LBMP)] that is less than 20[%] of the applicable reference level and causes or contributes to transmission congestion.”<sup>8</sup> The reference level for this component of a generator’s bid is calculated consistent with the methodology outlined in Services Tariff section 23.3.1.4.2.<sup>9</sup>

3. In the instant filing, NYISO proposes four sets of revisions to its Services Tariff, which NYISO states are based on a recommendation from its Market Monitoring Unit, Potomac Economics, Ltd. (Potomac Economics).<sup>10</sup> First, NYISO proposes to modify its definition of uneconomic production to use what NYISO claims is a more objective standard that is consistent with the Services Tariff’s definition of economic or physical withholding. Specifically, NYISO proposes to replace the component of the current definition that requires NYISO to demonstrate a market party’s “intent to cause or obtain benefits from a transmission constraint.”<sup>11</sup> NYISO argues that this subjective standard makes it unduly burdensome for NYISO to impose mitigation for uneconomic production and uneconomic withdrawal behavior. NYISO further contends that this subjective standard is inconsistent with the Services Tariff’s definitions of physical and economic withholding, which require an objective demonstration that the party’s conduct violated the relevant conduct threshold and caused a market impact in order to impose mitigation.<sup>12</sup>

<sup>6</sup> *Id.* (citing NYISO Services Tariff § 23.2.4.1.3).

<sup>7</sup> Reference levels generally reflect the marginal cost—and therefore, expected bid—of a specific generator. NYISO calculates reference levels for each component of a generator’s bid to produce energy. NYISO Services Tariff § 23.3.1.4.

<sup>8</sup> *Id.* § 23.3.1.3.1.1.

<sup>9</sup> *Id.* § 23.3.1.4.1.

<sup>10</sup> NYISO Filing, Transmittal Letter at 2-3.

<sup>11</sup> *Id.* at 3 (citing NYISO Services Tariff § 23.2.4.1.3).

<sup>12</sup> *Id.* (citing NYISO Services Tariff §§ 23.3.1.1, 23.2.1.2).

Instead, NYISO proposes to re-define uneconomic production as increasing output to levels that would not be in the economic interest of the market party or its affiliates in the absence of market power. NYISO proposes a similar definition for uneconomic withdrawal.

4. Second, NYISO proposes to revise its conduct threshold for uneconomic production to account for situations in which a resource may have negative marginal costs.<sup>13</sup> NYISO argues that its current conduct threshold, which is 20% of a resource's reference level, does not effectively address situations when reference levels or energy prices are low or negative, or when the generator's behavior leads to a decrease in the energy price. NYISO states that these conditions may become increasingly prevalent as more intermittent power resources and energy storage resources connect to the electric system and drive LBMPs to low or negative levels during many hours of the day.<sup>14</sup> Therefore, NYISO proposes to modify its conduct threshold to the greater of \$25/MWh or 80% below the applicable reference level. NYISO further proposes that it will not evaluate resource conduct during intervals when LBMP is greater than \$25/MWh because uneconomic production is unlikely during such intervals.

5. Third, NYISO proposes new market impact thresholds that will apply to potential uneconomic production and uneconomic withdrawal.<sup>15</sup> Under this proposal, NYISO would consider uneconomic production or uneconomic withdrawal conduct to have market impact if the uneconomic production or uneconomic withdrawal conduct changes the hourly day-ahead LBMP, the real-time LBMP, the day-ahead congestion component of LBMP, or the real-time congestion component of LBMP, by at least 200% or \$100/MWh, whichever is lower. NYISO continues that, when reviewing uneconomic production and uneconomic withdrawal, NYISO does not propose to allow a change of less than \$25/MWh to have a market impact.<sup>16</sup> NYISO explains that change is defined as the absolute value of the difference between: (1) the prices or congestion components that resulted from the market party's uneconomic production or uneconomic withdrawal behavior; and (2) the prices or congestion components that would have occurred if the market party had operated in a competitive manner, consistent with its reference levels.<sup>17</sup>

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<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.* at 4 (*referencing* Climate Leadership and Community Protection Act, N.Y. Statutes, Chapter 106 of the laws of 2019 (Jul. 18, 2019). The CLCPA mandates that 70% of load be served by energy generated from renewable resources by 2030 and that 100% of the energy serving load be zero emission by 2040).

<sup>15</sup> *Id.* at 5 (citing NYISO Services Tariff §§ 23.3.2.1.1.1 and 23.3.2.1.2.1).

<sup>16</sup> *Id.* at 5-6.

NYISO also proposes to clarify when it considers uneconomic production and uneconomic withdrawal to have market impact. Specifically, NYISO proposes to consider conduct as having a market impact if it increases bid production cost guarantee (BPCG) payments or day-ahead margin assurance payments (DAMAP) to a market party or an affiliate by 200%, or by 50% for generators in a constrained area.

6. Finally, NYISO revises the financial penalty to be applied when a generator violates the conduct and impact thresholds for uneconomic production and uneconomic withdrawal.<sup>18</sup> NYISO proposes that a market party and/or its affiliates engaging in uneconomic production or uneconomic withdrawal will be subject to a financial sanction equal to: (1) one and a half times the absolute value of the congestion component of the LBMP times the quantity of MW meeting the standards for uneconomic production or uneconomic withdrawal for the conduct-failing market party; or (2) one and a half times the increase in guarantee payment(s), BPCG or DAMAP, to the conduct-failing generator and all affiliated generators. NYISO states that this penalty calculation aligns with the unjust benefit a market party is expected to receive from engaging in the behavior. NYISO adds that the proposed penalty calculation addresses the uneconomic production or uneconomic withdrawal by specifically targeting the system impact resulting from the uneconomic conduct.

7. Notice of this filing was published in the *Federal Register*, 86 Fed. Reg. 74,077 (Dec. 29, 2021), with interventions and protests due on or before January 12, 2022. Timely motions to intervene were filed by Calpine Corporation, Public Citizen, Inc., NRG Power Marketing, Inc., New York Transmission Owners, et. al., and Potomac Economics. On January 12, 2022, Potomac Economics filed comments.

8. In its comments, Potomac Economics supports NYISO's proposal and states that the revisions will address gaps that could allow for the exercise of market power.<sup>19</sup> Potomac Economics states that the proposed revisions will also better account for generators with zero or negative marginal costs.

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2021), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. We find NYISO's proposed Services Tariff revisions to be just and reasonable and not unduly discriminatory or preferential. First, we find that NYISO's proposal to use a more objective standard for meeting the conduct and impact thresholds will align the

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<sup>17</sup> *Id.* at 6.

<sup>18</sup> *Id.* (citing NYISO Services Tariff § 23.4).

<sup>19</sup> Potomac Economics Comments at 1.

uneconomic production and uneconomic withdrawal mitigation measures with the parallel measures for physical withholding and economic withholding. Second, we agree with NYISO that its revised conduct and impact thresholds would more accurately reflect a resource's marginal costs and better account for situations in which there are low or negative energy prices. Given that NYISO's changing resource mix may make these conditions increasingly prevalent, we find that this proposal is just and reasonable. Lastly, we find that NYISO's proposed financial penalty calculation for uneconomic production and withdrawal will refine NYISO's existing penalty calculation to more appropriately align with the unjust benefit that a generator would receive from engaging in the behavior. For these reasons, we accept NYISO's proposal.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.