

April 20, 2015

Hon. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: New York Independent System Operator, Inc., Compliance Filing, Docket
Nos. EL07-39-006, ER08-695-004, and ER10-2371-00_**

Dear Secretary Bose:

In accordance with Paragraphs 1 and 30, and Ordering Paragraph (C), of the Commission's March 19, 2015 order (the "March 2015 Order"),¹ the New York Independent System Operator, Inc. ("NYISO") respectfully submits a proposed compliance revisions to its Market Administration and Control Area Services Tariff ("Services Tariff"). The NYISO requests that the Commission accept these revisions with an effective date of March 19, 2015 in accordance with the March 2015 Order.²

In the March 2015 Order, the Commission granted, in part, and denied, in part, the requests for rehearing of its May 2010 order,³ which addressed, among other things, the NYISO's proposed tariff language to implement buyer-side mitigation provisions applicable to Installed Capacity ("ICAP")⁴ in New York City.⁵ The Commission also accepted, in part, and rejected, in part, the NYISO's August 2010 filing to comply with the Commission's directives in the May 2010 Order.⁶ Finally, the Commission directed the NYISO to make a further

¹ *New York Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,208 (2015) ("March 2015 Order").

² March 2015 Order at P 32.

³ *New York Indep. Sys. Operator, Inc.*, 131 FERC ¶ 61,170 (2010) ("May 2010 Order"). The May 2010 Order granted, in part, and denied, in part, rehearing of the Commission's September 30, 2008 order. *New York Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,301 (2008) ("September 2008 Order"). The May 2010 Order also accepted NYISO's filing to comply with the September 2008 Order. *New York Indep. Sys. Operator, Inc., Tariff Compliance Filing and Request for Waiver of the New York Independent System Operator, Inc.*, Docket No. ER08-695-003 (Oct. 30, 2008).

⁴ Capitalized terms that are not otherwise defined herein have the meaning set forth in the Services Tariff.

⁵ The NYISO's tariffs also define New York City as "Load Zone J" and "In-City."

⁶ *New York Independent System Operator, Inc., Compliance Filing*, Docket No. ER10-2371-000 (Aug. 12, 2010, re-submitted Aug. 24, 2010) ("August 2010 Compliance Filing").

compliance filing regarding the language proposed in the August 2010 Compliance Filing concerning when a specific subsidy or other benefit should be excluded from the NYISO's calculation of the Offer Floor for Special Case Resources ("SCRs").⁷ Specifically, the Commission directed the NYISO to amend Section 23.4.5.7.5 to provide that, unless ruled exempt by a Commission order on a request for an exemption filed by the state, all rebates and other benefits from state programs must be included in the calculation of the Offer Floor for new SCRs in New York City (the "SCR Ruling").⁸

On March 30, 2015, the NYISO filed a Request for Expedited Clarification that asked the Commission to clarify whether the SCR Ruling is applicable to SCRs in Mitigated Capacity Zones other than New York City.⁹ The Commission has not ruled on the Request for Expedited Clarification as of the date of this filing. For the reasons discussed below, the revisions proposed in this filing are applicable only to New York City.

I. DOCUMENTS SUBMITTED

The NYISO respectfully submits the following documents in support of this filing:

1. This filing letter;
2. A clean version of the proposed revisions to Services Tariff Section 23 (Attachment H) ("Attachment I");¹⁰

⁷ March 2015 Order at P 3. *See also Id.* at P 78.

⁸ March 2015 Order at P 30.

⁹ *Request for Expedited Clarification of the New York Independent System Operator, Inc.*, Docket Nos. EL07-39-007, ER08-695-005, ER10-2371-001 (March 30, 2015) ("Request for Expedited Clarification"). Pursuant to the Services Tariff, the NYISO calculates an Offer Floor for each new SCR. It uses that Offer Floor to determine whether the SCR is exempt from Offer Floor mitigation, or is not exempt. *See* Services Tariff Section 23.4.5.7.5(b). If the SCR is not exempt, it is subject to the Offer Floor.

¹⁰ Attachment I and Attachment II do not reflect language that is presently effective as accepted in *New York Independent System Operator, Inc.*, Delegated Letter Order, Docket No. ER13-1380-005 (Aug. 5, 2014) (accepting revisions to Services Tariff Section 23.4.5.5(1), effective March 23, 2015 (the "G-J Pivotal Supplier Revision"). The Section 23.4.5.5(1) revisions effective March 23, 2015 have been omitted from Attachment I and Attachment II solely for purposes of the filing of the tariff filing because, as described herein, the Commission directed that the language newly proposed in this filing be submitted with an earlier effective date; *i.e.*, March 19, 2015.¹⁰ Also to facilitate the filing of the tariff, Attachment I and Attachment II do not reflect revisions proposed in (a) *New York Independent System Operator, Inc., Proposed Tariff Amendments to Define Certain Outage States and Associated Requirements*, Docket No. ER14-2518-000 (July 28, 2014), with a requested effective date of May 1, 2015 (the "Outage States Filing"); (b) *New York Independent System Operator, Inc., Compliance Filing, Request for Commission Action by May 14, 2015, and Request for Limited Waiver*, Docket No. ER15-1498 (filed April 13, 2015), with a proposed effective date of February 26, 2015 (the "Competitive Entry Exemption Compliance

3. A blacklined version of the proposed revisions to Services Tariff Section 23 (Attachment H) (“Attachment II”);
4. A clean version of the proposed revisions to Services Tariff Section 23 and incorporating the revision to Section 23.4.5.5(1) that became effective on March 23, 2015 (the G-J Pivotal Supplier Revision) (“Attachment III”); and
5. A blacklined version of Attachment H, provided for informational purposes only, showing the NYISO’s anticipated proposed revisions to Section 23.4.5.7.5, should the Commission clarify that it intended the provision to apply to all current and future Mitigated Capacity Zones, in addition to New York City (“Attachment IV”).

II. BACKGROUND

In general, the May 2010 Order accepted the NYISO’s proposal for calculating the Offer Floor for new SCRs in New York City.¹¹ It also identified two specific exceptions¹² to the rule that “subsidies or other benefits designed to encourage SCRs should be included in the calculation of the Offer Floor.”¹³ It then directed the NYISO to establish tariff criteria to determine whether subsidies or benefits under other state programs should be included in SCR Offer Floor determinations.¹⁴ The August 2010 Compliance Filing proposed revisions to Section 23.4.5.7.5 that excluded from the Offer Floor for new SCRs in New York City all payments or the value of other benefits provided under programs administered or approved by New York State or a government instrumentality of New York State.¹⁵

The March 2015 Order acted on requests for clarification and rehearing of the May 2010 Order’s determination regarding the treatment of New York State program subsidies and benefits for SCRs in the calculation of an SCR’s Offer Floor. It directed the NYISO to revise Section 23.4.5.7.5 to establish that “unless ruled exempt by Commission order on a request for exemption filed by the state, all rebates and other benefits from state programs must be included in the SCR Offer Floor.”¹⁶ The Commission clarified that the May 2010 Order did not intend to

Filing”); (c) New York Independent System Operator, Inc., *Proposed Tariff Revisions to Govern Requests for Additional Capacity Resource Interconnection Service*, Docket No. ER15-1281-000 (March 13, 2015), with a request effective date of May 12, 2015 (the “Additional CRIS Filing”).

¹¹ May 2010 Order at P 131.

¹² The May 2010 Order identified as exclusions to the rule rebates from the New York State Energy Research and Development Authority, and rebates and payments from Consolidated Edison Company of New York, Inc.’s Distribution Load Relief Program. *See* May 2010 Order at P 137.

¹³ March 2015 Order at P 21, citing May 2010 Order at P 133.

¹⁴ May 2010 Order at P 137.

¹⁵ August 2010 Compliance Filing at p. 13.

¹⁶ March 2015 Order at P 30.

require the NYISO to rule on the legitimacy of particular state programs or to grant a blanket exemption for all state programs that subsidize demand response.¹⁷ The Commission concluded that New York State may seek an exemption from the Commission pursuant to Section 206 of the Federal Power Act if it believes that the inclusion in the SCR Offer Floor of rebates and other benefits under a state program interferes with a legitimate state objective.¹⁸

Accordingly, the Commission directed the NYISO to make this filing to revise Section 23.4.5.7.5 of the Services Tariff to provide that, unless ruled exempt by Commission order on a request for exemption filed by the state, all rebates and other benefits from state programs must be included in the SCR Offer Floor.¹⁹

In the Request for Expedited Clarification, the NYISO asked the Commission to clarify whether it intended that the SCR Ruling apply only to SCRs in New York City or whether the Commission intended it to apply also to new SCRs in Load Zones G, H, and I (*i.e.*, those within the G-J Locality)²⁰ or in any Mitigated Capacity Zones that may be created in the future.²¹ As of the date of this filing, the Commission has not acted on the NYISO's request.²²

The NYISO explained in its Request for Expedited Clarification that it intends to apply the SCR Ruling only when making determinations for new SCRs located in New York City but not to determinations for new SCRs in Load Zones G, H, and I or any other Mitigated Capacity Zone that might be created in the future.²³ The NYISO presently is implementing the SCR Ruling in this manner. As identified in the Request for Expedited Clarification, the above-captioned proceedings have, to date, been confined to market power mitigation issues in New York City. However, there have been discussions in the Commission's proceedings addressing the G-J Locality and Mitigated Capacity Zones that may be created in the future, as to whether issues and rules regarding New York City ICAP mitigation were beyond the scope of those proceedings.²⁴

¹⁷ *Id.* at P 78.

¹⁸ *Id.* at P 30.

¹⁹ *Id.*

²⁰ If a resource is located in more than one Mitigated Capacity Zone (*e.g.*, a resource located in Load Zone J (New York City) is also within the G-J Locality,) the NYISO's BSM Rule determination is based on the smallest Mitigated Capacity Zone in which the resource is located (in the example, New York City).

²¹ Request for Expedited Clarification at 5-6.

²² In order to reduce confusion and uncertainty in the market, it continues to be important that the Commission rule on the clarification as expeditiously as possible.

²³ Request for Expedited Clarification at 6.

²⁴ *Id.* at 5.

III. DESCRIPTION OF PROPOSED COMPLIANCE TARIFF REVISIONS

In compliance with the March 2015 Order, and as explained above, the NYISO proposes to modify Section 23.4.5.7.5 as follows:

The Offer Floor for a Special Case Resource shall be equal to the minimum monthly payment for providing Installed Capacity payable by its Responsible Interface Party, plus the monthly value of any payments or other benefits the Special Case Resource receives from a third party for providing Installed Capacity, or that is received by the Responsible Interface Party for the provision of Installed Capacity by the Special Case Resource. The Offer Floor calculation for a Special Case Resource located in New York City shall include any payment or the value of other benefits that are awarded for offering or supplying Mitigated Capacity Zone Capacity, except for payments or the value of other benefits provided under programs administered or approved by New York State or a government instrumentality of New York State unless such payment or the value of other benefits is ruled exempt by Commission order in response to a request for exemption filed under section 206 of the Federal Power Act by New York State or a government instrumentality of New York State. The Offer Floor calculation for a Special Case Resource located in a Mitigated Capacity Zone except New York City shall include any payment or the value of other benefits that are awarded for offering or supplying Mitigated Capacity Zone Capacity, except for payments or the value of other benefits provided under programs administered or approved by New York State or a government instrumentality of New York State.

IV. INFORMATIONAL EXHIBIT

The NYISO has also provided in Attachment IV, for informational purposes only, potential revisions to Section 23.4.5.7.5 that the NYISO anticipates it would file if the Commission clarifies that it intended the SCR Ruling to apply to all current and future Mitigated Capacity Zones in addition to New York City.²⁵

V. MARKET MONITORING UNIT REVIEW

The MMU was given an opportunity to review and comment on the proposed compliance tariff revisions. The MMU did not have any comments on the compliance tariff revisions.

²⁵ For the reasons explained in the Request for Expedited Clarification, the NYISO requested that if the Commission grants clarification that the SCR Ruling is intended to apply to all Mitigated Capacity Zones, “it defer the application of that ruling to new SCRs outside of New York City for twenty days from the date of the issuance of an order on clarification.” *See Id.* at 7.

VI. EFFECTIVE DATE

The NYISO requests that the Commission accept the compliance tariff revisions proposed in Attachments I and II to this filing and, in accordance with Ordering Paragraph (C), requests that the Commission make them effective on March 19, 2015.

Subject to the Commission's acceptance of this filing with the effective date of March 19, 2015, and no commission action the Competitive Entry Exemption Compliance Filing, the version that is Attachment III would be the complete tariff language, effective March 23, 2015.

VII. COMMUNICATIONS AND CORRESPONDENCE

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

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VIII. 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 the proceedings listed in the subject line of this filing letter, to 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.

²⁶ The NYISO respectfully requests waiver of the Commission's regulations (18 C.F.R. § 385.203(b)(3)(2014)) to the extent necessary to permit service on counsel for the NYISO in both Miami and Washington, D.C.

IX. CONCLUSION

Wherefore, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept the tariff revisions proposed in this filing and make them effective as of March 19, 2015.

Respectfully submitted,

/s/ Gloria Kavanah

Gloria Kavanah

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