

December 28, 2010

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.*, Docket No.ER11-____-000
Proposed Tariff Clarifications Regarding the Market Power Mitigation
Measures and Market Monitoring Plan and Request for Limited Waiver of
Notice Requirements**

Dear Ms. Bose:

Pursuant to Section 205 of the Federal Power Act,¹ the New York Independent System Operator, Inc. (“NYISO”) hereby submits proposed amendments to Sections 23 and 30 of its Market Administration and Control Area Services Tariff (“Services Tariff”) to revise provisions concerning the Market Power Mitigation Measures (“Mitigation Measures”) and the Market Monitoring Plan (the “Plan”). This filing seeks to clarify tariff provisions that set forth the rules that govern the market mitigation processes. Some minor substantive changes to current practice concerning these processes are proposed.

The Tariff amendments proposed here eliminate provisions that have been rendered meaningless by subsequent court or regulatory actions, or changes in market design, and improve the descriptions of existing provisions adding clarity and necessary detail to often vague and over-generalized provisions. The proposed clarifications introduce the additional detail necessary for a clear understanding of the manner in which the NYISO applies its Market Mitigation Measures, almost ten years after their introduction.

The NYISO conducted an internal review of its Mitigation Measures and Plan and identified opportunities to improve and clarify certain provisions.² The NYISO proposes to revise the tariff Sections detailed in Section II of this filing letter. The Tariff amendments proposed in this filing have been approved by the NYISO’s Management Committee and by its Board of Directors.

¹ 16 U.S.C. §824d (2010).

² The NYISO conducted this internal review and is making this filing as part of an on-going comprehensive review of its tariffs to identify opportunities to improve and clarify them.

The Mitigation Measures that are set forth in Section 23 of (Attachment H to) the Services Tariff address the NYISO's application of mitigation under a wide variety of circumstances. However, the scope of this filing does not include mitigation measures related to the Installed Capacity³ market, nor does it include substantive revisions to the dispute resolution provisions contained in the Mitigation Measures (other than a minor proposed clarification of Section 23.4.3.5.2 of the Mitigation Measures). Proposed modifications to the NYISO's dispute resolution rules will be addressed in a separate filing that the NYISO expects to submit in the second quarter of 2011, following stakeholder review.

The proposed revisions to the Plan that is set forth in Section 30 of (Attachment O to) the Services Tariff do not include changes related to safeguarding or sharing Protected Information, or revisions to the Plan's dispute resolution provisions. Proposed revisions to the Plan addressing the safeguarding and sharing of Protected Information have been approved by the NYISO's stakeholders and its Board of Directors, and will be submitted for the Federal Energy Regulatory Commission's ("Commission's") consideration in January of 2011. The expected second quarter 2011 filing addressing dispute resolution is described above.

The NYISO requests a limited waiver of the notice requirements in Section 35.3 of the Commission's regulations to permit it to implement two of the changes proposed in this filing more than 120 days after the date of this filing using a flexible effective date.

I. Documents Submitted

1. This filing letter;
2. A clean version of the proposed revisions to Sections 23 and 30 of the NYISO's Services Tariff for which the NYISO request a February 28, 2011 effective date ("Attachment I");
3. A clean version of the proposed revisions to Section 23 of the NYISO's Services Tariff for which the NYISO request a late June 2011 flexible effective date ("Attachment II");
4. A blacklined version of the proposed revisions to Sections 23 and 30 of the NYISO's Services Tariff for which the NYISO request a February 28, 2011 effective date ("Attachment III"); and

³ Capitalized terms that are not defined in this filing have the meaning ascribed to them in the Mitigation Measures, Plan or Services Tariff, as appropriate.

5. A blacklined version of the proposed revisions to Section 23 of the NYISO's Services Tariff for which the NYISO request a late June 2011 flexible effective date ("Attachment IV").⁴

II. Description and Justification of Proposed Tariff Revisions

A. Revisions to the Mitigation Measures

1. Ministerial Revisions

The NYISO has made several types of ministerial revisions that appear throughout the Mitigation Measures. These include:

- replacing the undefined term "bid" with the defined term "Bid" where appropriate;
- clarifying when the term "Energy" is intended to refer to "Incremental Energy" and when it is intended to encompass both a Generator's Incremental Energy and its minimum generation;
- using the Tariff-defined term when referring to "Start-Up Bids";
- re-numbering the Mitigation Measures to reflect the addition or deletion of a provision; and
- correcting or revising numerical references and cross-references due to changes in numbering, or to be more specific or accurate.

2. Determining When Transmission Congestion Exists In a Constrained Area

Several of the NYISO's mitigation rules addressing the New York City Constrained Area require the application of tighter mitigation thresholds when congestion exists on the transmission system. In practice, the NYISO applies a single standard to determine when an active transmission constraint exists in the New York City Constrained Area for purposes of applying tighter mitigation thresholds. The standard that the NYISO applies includes a \$0.04/MWh *de minimis* exception to allow for the movement of Phase Angle Regulators ("PARs") and other actions that can be taken to relieve transmission congestion that do not require the redispatch of a resource. The NYISO proposes to clarify Sections 23.3.1.1.1.1,

⁴ The proposed changes that are blacklined in Attachment III are not blacklined in Attachment IV. The NYISO is submitting its proposed revisions in this manner in order to clearly identify the changes that the NYISO is requesting a late June 2011 flexible effective date for. Should the Commission requires changes to the tariff revisions proposed in Attachment III prior to the effective date of the changes proposed in Attachment IV, the NYISO will re-file its proposed Attachment IV changes with the Commission's required changes to the language submitted in Attachment III incorporated as part of any compliance filing that it submits in this docket. The NYISO will re-file Attachments II and IV when it determines the effective date for the revisions to the Mitigation Measures that are proposed in those attachments.

23.3.1.1.1.2, 23.3.1.2.2.1, and 23.3.1.2.2.3 of the Mitigation Measures to more accurately reflect the method that the NYISO uses to determine when an active transmission constraint exists in the New York City Constrained Area. The identified sections of the Mitigation Measures presently contain similar, but not identical (and, in some cases, slightly inaccurate), language describing when a transmission constraint exists that requires the application of a tighter mitigation threshold. It is appropriate to clarify these measures by incorporating a single, common, definition that clearly and accurately reflects the NYISO's implementation of this requirement into the Mitigation Measures.

3. Section-by-Section Review of Proposed Revisions

Proposed revisions to the Mitigation Measures that are not described above are described in this section of the filing letter.

Section 23.2.4.2—the NYISO proposes to clarify that it must obtain the Commission's approval to apply a new mitigation measure.

Section 23.3.1.2.1.1 (conduct thresholds)—clarifies that the NYISO determines that an Incremental Energy Bid or Minimum Generation Bid fails the conduct threshold when it exceeds a Generator's reference level by more than 300% or by more than \$100/MWh. The proposed clarification more accurately reflects the NYISO's implementation of this requirement in its market software.

Section 23.3.1.2.1.5 (conduct thresholds for non-price Bid parameters)—clarifies that the MW component of a Minimum Generation Bid is subject to the conduct threshold specified in this Section of the Mitigation Measures.

Section 23.3.1.4.1.1 (calculation of Bid-based reference levels)—clarifies that the NYISO's reference level calculation systems will use Bids over the most recent 90-day period for which data is available to the reference level calculation systems to determine Bid-based reference levels.

Section 23.3.1.4.1.2 (calculation of LBMP-based reference levels)—The NYISO proposes a pair of clarifications and a substantive revision to Section 23.3.1.4.1.2 of the Mitigation Measures. First, the NYISO proposes to clarify that the NYISO's reference level calculation systems will use LBMPs from hours when the Generator was committed over the most recent 90-day period for which data is available to the reference level calculation systems to determine LBMP-based reference levels.

Second, the NYISO proposes to revise Section 23.3.1.4.1.2 to clarify that it will not use LBMPs from hours in which a Generator was committed outside the economic evaluation process as a Day-Ahead Reliability Unit ("DARU") to develop LBMP-based reference levels. This is consistent with the NYISO's treatment of Supplemental Resource Evaluations ("SREs") and Out-of-Merit commitments, and is appropriate because LBMPs in hours when a Generator

was not committed based on the economics of its Bids are not likely to accurately reflect a Generator's marginal cost.

Finally, the NYISO proposes a substantive change to the data it uses to calculate LBMP-based reference levels based on practical experience it has gained with implementing these reference levels over a period of years. Using LBMPs from the lowest priced 25 percent of hours in which a Generator is committed frequently results in the development of reference levels that are below the Generator's marginal cost. The NYISO is frequently required to override LBMP-based reference levels to avoid implementing reference levels that would require the Bid submitted for a Generator to be below that Generator's marginal cost. *See* Section 23.4.2.1 of the Mitigation Measures ("In designing and implementing default bids, the ISO shall seek to avoid causing an Electric Facility to bid below its marginal cost."). The NYISO proposes to address this concern by modifying the calculation to use LBMPs at the Generator's location during the lowest 50 percent of hours that the Generator was dispatched over the most recent 90 days. The change from 25 percent of hours to 50 percent of hours is the first of four proposed tariff revisions that requires changes to the NYISO's software to implement. Consistent with Section III of this filing letter and Attachment IV hereto, the NYISO proposes to implement this change in late June of 2011, following notice to the Commission and to Market Participants.

Section 23.3.1.4.2 (ISO determined reference levels)—the NYISO proposes to clarify that the development of a reference level that does not reasonably approximate a Generator's marginal cost presents a valid reason to determine that it is inappropriate to use a Bid- or LBMP-based reference level for a Generator. The proposed clarification is consistent with Section 23.4.2.1 of the Mitigation Measures, which provides that "In designing and implementing default bids, the ISO shall seek to avoid causing an Electric Facility to bid below its marginal cost."

Section 23.3.1.4.3 (Incremental Energy reference levels for New Capacity)—the NYISO proposes several clarifications to the method used to develop alternative⁵ reference levels for New Capacity. First, the NYISO clarifies that reference levels for New Capacity are based on fuel price adjusted LBMPs. Second, because it is often difficult to determine the precise date on which a Generator enters "commercial operation" the NYISO proposes to make new unit reference levels available for a period of three years and six months following the date on which the Generator first produces energy while synchronously interconnected to the New York State Transmission System. This avoids the need to identify a precise "commercial operation date" for purposes of developing a New Capacity reference level. Finally, the NYISO clarifies that the undefined term "zone" refers to the Load Zone in which the New Capacity is located.

The change from 'three years following the date of commercial operation' to 'three and a half years following the first production of energy while synchronized to the grid' is the second proposed tariff revision that requires changes to the NYISO's software to implement. Consistent

⁵ New Capacity is subject to an Incremental Energy reference level that is the higher of its regularly calculated Incremental Energy reference level, or a reference level calculated in accordance with Section 23.3.1.4.3 of the Mitigation Measures.

with Section III of this filing letter and Attachment IV hereto, the NYISO proposes to implement this change in late June of 2011, following notice to the Commission and to Market Participants.

Section 23.3.2.1.2 (Bid Production Cost guarantee impact)—clarifies that the NYISO calculates Bid Production Cost guarantee (“BPCG”) impact on a Generator-by-Generator basis. Calculating BPCG on a portfolio basis could present gaming opportunities.

Section 23.3.2.3 (obligation to propose a new mitigation measure)—the NYISO proposes non-substantive clarifications to the language of Section 23.3.2.3 of the Mitigation Measures.

Section 23.3.2.3.2 (new mitigation measure-guarantee payment impact)—the NYISO proposes to modify Section 23.3.2.3.2 consistent with its proposed modifications to Section 23.3.2.1.2 (Bid Production Cost guarantee impact). The NYISO also proposes to clarify how a guarantee payment impact that is not BPCG-related will be determined for purposes of this Section.

Section 23.3.3.1 (consultation process)—the NYISO proposes to clarify the discussion of consultation by breaking it into sub-sections that address distinct topics. In proposed Section 23.3.3.1.4 the NYISO aims to clarify that, in some circumstances, after communicating proposed changes in reference levels to the Market Monitoring Unit for its review and comment, the NYISO may have to implement changes to a reference level before its MMU is able to review the proposed change and provide comments. An example might be when a winter cold snap is driving gas prices up very quickly and the NYISO needs to incorporate increased fuel costs into Bids that will be used in the Day-Ahead Market that runs at 5:00 a.m. The NYISO also proposes to clarify that changes to reference levels that are developed based on Market Party initiated consultation under Section 23.3.3.1.4 will be implemented on a going-forward basis, commencing no earlier than the date that the Market Party’s request was received by the NYISO. The NYISO notes that consultation under Section 23.3.3.1.4 of the Mitigation Measures applies to a subset of consultation requests. Sections 23.3.3.2.1 and 23.3.2.2 of the Mitigation Measures address which consultation rules apply to the various types of consultation requests that the NYISO receives.

Section 23.4.2.2.1 (application of mitigation)—clarifies that default bids (reference levels) can be substituted for both Bids (which are ordinarily denominated in \$) and Bid parameters (which include non-price parameters, such as maximum number of stops per day).

Section 23.4.2.2.3 (correction of over-mitigation)—clarifies how the NYISO will correct instances of over-mitigation. The existing rules only address correction of automated mitigation procedure (“AMP”) mitigation of Incremental Energy Bids; the NYISO proposes to add rules addressing how to correct the over-mitigation of other types of Bids. The proposed new rules are not limited in their application to AMP mitigation.

Removal of Section 23.4.2.2.5.1 (unnecessary exemptions from mitigation)—the exemptions from mitigation that the NYISO proposes to remove have not been relevant since rest-of-state AMP was turned off in 2005.

Sections 23.4.3.3.1 and 23.4.3.3.1.2 (base penalty amount)—clarifies that a penalty may be calculated based on the affected market clearing price, which may or may not be an LBMP.

Section 23.4.3.5.2 (resolution of dispute regarding a financial penalty)—clarifies that dispute resolution (including Commission review) may result in a penalty amount that is less than the penalty that was originally assessed and that interest on an unpaid penalty will only be charged on the amount that is finally assessed.

Section 23.4.4.2.1 (load bid monitoring calculation)—the NYISO proposes to improve a calculation it performs to monitor load bidding behavior because its years of experience in administering this measure indicate that the method that was originally included in the Mitigation Measures is not an effective method of assessing load bids.

Section 23.4.6.2.1 (virtual bid monitoring calculation)—the NYISO proposes to improve the calculation it performs to monitor divergence between Day-Ahead and real-time LBMPs because its years of experience in administering this measure indicate that the method that was originally included in the Mitigation Measures is not an effective method of assessing the extent of such divergence.

Sections 23.4.4.2.1 and 23.4.6.2.1 each specify a rule for calculating a diagnostic measure of Day Ahead Market/Real Time Market LBMP convergence. The existing measure uses a rolling average of hourly percentage real-time premiums. The existing measure has two properties that the NYISO proposes to improve upon. First, the existing metric weights the level of the real-time premium more heavily in low-priced, off-peak, hours, than in higher-priced on-peak hours. The revised formulas gives equal weight to the level of the real time premiums in all hours of day. Second, the existing percentage metric weights changes in real time premiums in low-priced load zones more heavily than changes in real-time premiums in higher priced zones. The NYISO proposes to improve the existing metric by emphasize changes in real time premiums equally in all zones, by focusing on the level of the premium, rather than on the percentage change.

The proposed changes to the diagnostic measures specified in Sections 23.4.4.2.1 and 23.4.6.2.1 of the Mitigation Measures are the final two tariff revisions that requires changes to the NYISO's software to implement. Consistent with Section III of this filing letter and Attachment IV hereto, the NYISO proposes to implement these changes in late June of 2011, following notice to the Commission and to Market Participants.

Removal of Section 23.5.5 (expired 10 minute non-synchronized reserve mitigation measure)—the NYISO proposes to remove a mitigation measure that expired in July of 2004 and

that has not been subsequently renewed. If the NYISO or its Market Monitoring Unit identify a concern that affects 10 minute non-synchronized reserve prices, they will take appropriate action.

B. Proposed Revisions to the Market Monitoring Plan

The proposed revisions to the Plan are described below. Because the Order No. 719 compliance effort required a thorough review of and substantial changes to the Plan, there are relatively few changes to the Plan proposed in this filing.

Section 30.4.6.2.6 (consultation process)—the proposed clarifications to this Section of the Plan mirror the proposed changes to Sections 23.3.3.1 and 23.3.3.1.4 of the Mitigation Measures that are described above.

Section 30.8.2 (development of mitigation measures)—the proposed clarification recognizes the NYISO's obligation to unilaterally submit a Federal Power Act Section 205 filing when the requirements of Section 23.3.2.3 of the Mitigation Measures are satisfied.

III. Effective Dates

With four exceptions that are clearly identified in Attachment IV to this filing letter, and addressed below, the NYISO requests an effective date 60 days from the date of this filing, February 28, 2011.

The NYISO respectfully requests that the Commission waive its notice regulations⁶ so that the proposed changes to Sections 23.3.1.4.1.2, 23.3.1.4.3, 23.4.4.2.1 and 23.4.6.2.1 of the Mitigation Measures that are clearly identified in Attachment IV to this filing letter may take effect on a date in late June 2011 to be determined by the NYISO. The NYISO and its stakeholders are eager to realize the benefits of the proposed revisions as rapidly as possible. Nevertheless, the NYISO must have sufficient time to finalize and test new software, ensure that systems are properly integrated, perform testing, and make final pre-implementation adjustments. It is certain that this work will not be complete within the usual sixty day notice period or the normal maximum one hundred and twenty day notice period. The Commission has previously recognized the importance of allowing sufficient time to institute complex software and rule changes.

The NYISO will not know exactly when in June of 2011 the software changes needed to implement the NYISO's proposed revisions to Sections 23.3.1.4.1.2, 23.3.1.4.3, 23.4.4.2.1 and 23.4.6.2.1 of the Mitigation Measures will be ready for deployment until it is able to complete coding and testing. The NYISO therefore proposes to establish a final effective date based on its assessment of the software's readiness and its expected impact on the market and stakeholders at the relevant time (including the potential risks of implementing a change when the system is experiencing adverse conditions). The effective date will not occur until: (i) the Commission has

⁶ 18 C.F.R. § 35.13 (2010).

issued an order accepting the proposed tariff revisions; (ii) at least two weeks after the NYISO has notified the Commission and its stakeholders that the revisions are ready for implementation; and (iii) notice of the effective date has been posted on the NYISO website for at least forty eight hours. The Commission previously accepted similar proposals by both the NYISO and ISO New England Inc. when they were introducing their Standardized Market Designs.⁷ The benefits of the proposed changes make it appropriate to take the same approach here.

Attachment IV to this filing letter clearly identifies the proposed changes to the Mitigation Measures for which the NYISO is requesting a flexible, late June 2011 effective date. Proposed changes that are blacklined in Attachment III are included, but are not blacklined in Attachment IV. The NYISO is submitting its proposed revisions in this manner in order to clearly identify the changes that the NYISO is requesting a late June 2011 flexible effective date for. Should the Commission requires changes to the tariff revisions proposed in Attachment III prior to the effective date of the changes proposed in Attachment IV, the NYISO will re-file its proposed Attachment IV changes with the Commission's required changes to the language submitted in Attachment III incorporated as part of any compliance filing that it submits in this docket. The NYISO will re-file Attachments II and IV hereto with an effective date when it determines the effective date for the revisions proposed in those Attachments.

IV. Stakeholder Approval

The NYISO's Management Committee approved this proposal on December 17, 2010. The NYISO Board of Directors approved this filing on December 20, 2010.

V. Communications and Correspondence

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

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⁷ *New York System Operator, Inc.*, 106 FERC ¶ 61,111 (2004); *New England Power Pool and ISO New England Inc.*, 100 FERC ¶ 61,287 (2002).

VI. 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 electric utility regulatory agency of New Jersey. In addition, the complete filing will be posted on the NYISO's website at www.nyiso.com.

VII. Conclusion

Wherefore, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this filing to be effective on the dates specified in Section III of this filing letter.

Respectfully submitted,

/s/ Alex M. Schnell

Alex M. Schnell

New York Independent System Operator, Inc.