

October 29, 2015

**Submitted Electronically**

Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street N.E.  
Washington, D.C. 20426

Re: New York Independent System Operator, Inc.'s Proposed Amendments to its Market Power Mitigation Measures regarding Physical Withholding and Reflecting Fuel Costs in Reference Levels; Docket No. ER16-\_\_\_\_-000.

Dear Ms. Bose:

The New York Independent System Operator, Inc. ("NYISO") submits this filing pursuant to Section 205 of the Federal Power Act<sup>1</sup> to propose amendments to the Market Power Mitigation Measures that are set forth in Section 23 of its Market Administration and Control Area Services Tariff ("Services Tariff"). The proposed amendments will improve coordination between the electric system and the natural gas system by giving the NYISO authority to prohibit Generators<sup>2</sup> from including unauthorized natural gas costs in reference levels and to reject *ex-post* requests to recover costs associated with burning unauthorized natural gas. In addition to addressing unauthorized natural gas use by electric Generators, the Tariff revisions proposed in this filing:

- (a) give Market Parties an exemption from physical withholding review when, and to the extent, a Generator does not submit offers because it would have to consume unauthorized natural gas in order to provide additional Energy or Ancillary Services;
- (b) propose a NYISO reporting obligation in the event the NYISO does not utilize the best fuel cost information available to it to adjust reference levels, where NYISO's failure to use the best fuel cost information available to it affects market clearing prices, or produces guarantee payment impacts that cannot be corrected;

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<sup>1</sup> 16 U.S.C. §824d.

<sup>2</sup> Capitalized terms not specifically defined herein have the meaning set forth in the NYISO's Market Administration and Control Area Services Tariff or in its Open Access Transmission Tariff.

- (c) improve the NYISO's implementation of default bid mitigation by more clearly authorizing the NYISO to require a Market Party to submit a default bid or default bid parameters for an Electric Facility that has been mitigated by the NYISO;
- (d) improve the penalty calculation the NYISO performs to assess a penalty when Market Parties submit inaccurate fuel type and/or fuel price information; and
- (e) allow the NYISO to use a more restrictive impact threshold to evaluate submission of inaccurate fuel type and/or fuel price information when Generators are committed for reliability outside of New York City.

## **I. List of Documents Submitted**

The NYISO submits the following documents:

1. This filing letter;
2. A clean version of the proposed revisions to the NYISO's Services Tariff ("Attachment I"); and
3. A backline version of the proposed revisions to the NYISO's Services Tariff ("Attachment II").

## **II. Copies of Correspondence**

Correspondence concerning this filing should be served on:

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### **III. Background and Justification**

#### **A. Changes to Reference Levels to Improve Gas-Electric Coordination**

During the cold weather operations of the 2014/2015 Winter, the NYISO and its stakeholders began discussions on excluding unauthorized natural gas charges from recovery in NYISO-developed reference levels as part of the ongoing gas-electric coordination efforts. Several of the rules addressing the development of reference levels expressly require the NYISO to adjust reference levels to reflect changes in the price of the fuel that a Generator must consume.<sup>3</sup> The NYISO believes allowing recovery of actual fuel costs in reference levels lowers the overall cost of electric service to consumers. Absent the opportunity to recover incremental fuel costs, resources might not offer additional generation into the Real-Time Market. This would require the NYISO to dispatch higher cost resources to meet real-time load, increasing real-time energy prices and/or uplift charges. The NYISO also expects competitive suppliers to comply with federal and state laws, rules, regulations and orders, and to comply with valid rules and orders that are issued by the NYISO to ensure the reliable operation of the electric system, or by natural gas pipelines or Local Distribution Companies (“LDCs”) to ensure the reliable operation of the natural gas delivery system.

The NYISO uses Market Party-submitted fuel cost information to timely and accurately fuel index Generator reference levels to reflect actual or expected fuel costs.<sup>4</sup> Generators sometimes seek to include additional charges or penalties that gas pipelines or LDCs assess for the unauthorized use of natural gas in their reference levels and Bids. Natural gas pipelines and LDCs have expressed concern to the NYISO about Generators recovering additional costs associated with unauthorized natural gas consumption or recovering penalties that are designed to economically deter natural gas consumption through the NYISO’s electric markets. Natural gas pipelines and LDCs are concerned that NYISO’s reimbursement of penalties that are designed to deter natural gas use neutralizes the economic disincentive pipelines and LDCs rely on to prevent Generators from burning unauthorized natural gas. Natural gas consumption may be unauthorized when supply or delivery conditions are such that unauthorized consumption of natural gas might compromise the reliable operation of the natural gas delivery system. Consuming natural gas that a Generator has no authority to consume in these circumstances could jeopardize the reliable operation of natural gas pipelines and LDC systems on which electric Generators in New York depend. Therefore, the NYISO’s stakeholders have determined that it is appropriate for the NYISO to exclude costs associated with unauthorized consumption of natural gas and natural gas penalty charges from Generator reference levels.

The NYISO proposes to rely primarily on the Commission accepted and New York Public Service Commission approved tariffs of the pipelines and LDCs that manage the reliable and efficient operation of the natural gas delivery system to identify unauthorized and penalty natural gas use. The Tariff revisions the NYISO proposes herein dictate that the

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<sup>3</sup> See, e.g., Services Tariff Sections 23.3.1.4.1.1, 23.3.1.4.1.2, 23.3.1.4.4.1.

<sup>4</sup> See, Services Tariff Section 23.3.1.4.6.

NYISO will not permit charges for unauthorized natural gas use, including consumption of natural gas that is subject to a “penalty,” to be included as a component of a Generator’s reference levels. In addition, the NYISO proposes that Market Parties not be permitted to recover costs associated with the consumption of unauthorized gas or penalty gas. Subject to certain exceptions described below and set forth in the NYISO’s proposed Tariff revisions, unauthorized natural gas use will be determined in accordance with each natural gas pipeline’s or LDC’s applicable tariff, rate schedule or customer contract. Pipelines and LDCs are best situated to specify when natural gas use is unauthorized or needs to be deterred by applying penalties because they are responsible for reliably operating the natural gas delivery system. Unauthorized natural gas use or penalty natural gas use may result from, but is not limited to, consumption that violates the terms of an Operational Flow Order (“OFO”) or other instruction issued by the relevant natural gas LDC or pipeline; or the use of natural gas balancing services at times or in quantities that are explicitly identified as “unauthorized” or “penalty gas.” Prohibiting recovery of the costs of unauthorized natural gas use or penalty natural gas use in the NYISO Tariffs will help enforce the economic disincentive gas pipelines and LDCs rely on to prevent electric Generators from consuming natural gas in circumstances that could jeopardize the reliability of the natural gas delivery system.

The NYISO will not consider natural gas consumption unauthorized if the Market Party obtains authorization from the relevant natural gas pipeline or LDC to consume the gas. The proposed tariff revisions do not allow the NYISO to consider natural gas use as unauthorized if the Market Party has obtained specific authorization to use natural gas that would otherwise be considered unauthorized. The NYISO even expects Generators that are requested to operate for electric system reliability via an Out-of-Merit commitment request or a Supplemental Resource Evaluation to obtain permission from the relevant gas pipeline or LDC before they consume gas that they are not otherwise authorized to consume, or that would result in the assessment of a penalty by the pipeline or LDC.

#### **B. Use of Best Fuel Cost Information Available to Develop Reference Levels**

Services Tariff Section 23.3.1.4 addresses the NYISO’s development of reference levels. Dollar-denominated reference levels, such as start-up, minimum generation and incremental energy reference levels, are generally intended to reflect a Generator’s marginal cost of providing a service.<sup>5</sup> As part of the marginal cost the NYISO is required to include the fuel costs incurred by a Generator to provide energy in reference levels. Specifically, Services Tariff Section 23.3.1.4.6 states that the NYISO “shall use the best information available to it to adjust reference levels to reflect appropriate fuel costs.” However, there are times when the NYISO’s software processes do not use the most recent, best fuel cost information even though such information has been obtained and is, technically, available to the NYISO.

The Services Tariff does not specify what the NYISO must do when it is unable to utilize the best information available to adjust reference levels to reflect appropriate fuel costs. Currently, the NYISO reviews every such occurrence for possible market clearing

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<sup>5</sup> See, e.g., Services Tariff Sections 23.3.1.4.1.1(iii), 23.3.1.4.1.2(iv), 23.3.1.4.1.3, 23.4.2.1.

price impacts and guarantee payment impacts. The NYISO corrects any guarantee payment impacts it identifies consistent with Section 23.3.3.3.3 of the Services Tariff. The NYISO reports every instance that cannot be corrected to FERC Staff as a tariff violation, whether or not the occurrence resulted in a market impact.<sup>6</sup>

The Tariff revisions proposed in this filing specify what the NYISO must do when it does not use the best information available to it to adjust reference levels to reflect appropriate fuel costs. The proposed Tariff revisions require the NYISO to submit a report to Commission Staff and to its Market Participants detailing the error and its impacts when (1) the NYISO does not use the best fuel cost information available to it to adjust reference levels to reflect fuel costs, and (2) the NYISO's failure to use the best fuel cost information available to it affects market clearing prices, or has a guarantee payment impact that the NYISO is not able to correct. The proposed reporting process will improve transparency when a market impact occurs, and will end the need for the NYISO to submit reports or to seek tariff waivers addressing errors that do not, ultimately, impact the markets the NYISO administers.

#### **C. Proposed Changes to Energy Market Physical Withholding Rules**

The NYISO does not expect a Generator to offer incremental generating capability in the Real-Time Market when it is unable to procure natural gas and would be required to use unauthorized natural gas to operate. Sections 23.3.1.1.2, 23.3.1.4.6.2.1, 23.3.1.4.6.2.1.1 and 23.3.1.4.6.2.2, of the NYISO's proposed tariff revisions will allow Generators not to Bid when generating as a result of that Bid would require consumption of unauthorized natural gas, or gas that is subject to a penalty under the relevant gas pipeline or LDC tariff. Because Generators will not be allowed to incorporate unauthorized natural gas use charges into reference levels or *ex-post* cost recovery requests, the NYISO does not propose to evaluate Generators for physical withholding under Sections 23.2.4.1.1 or 23.3.1.1 of the Services Tariff if and to the extent the Market Party demonstrates that its Generator would have to burn unauthorized natural gas in order to operate. Any generating capacity that is not Bid, because and to the extent such operation would require the Generator to consume unauthorized natural gas, will not be considered withheld. The NYISO's internal Market Mitigation and Analysis Department and the external Market Monitoring Unit may review claims that a Generator was unable to be Bid because its operation (or further operation) would have required it to consume unauthorized or penalty gas.

#### **D. Manual Implementation of Default Bid Mitigation**

The Services Tariff requires prospective mitigation of Generator Bids if conduct is detected that meets the criteria specified in Services Tariff Section 23.3.1 that causes a market impact that exceeds the thresholds specified in Services Tariff Section 23.3.2.1. In such circumstances, default bid mitigation is imposed to set prospective limits on Generator Bids into the NYISO markets in accordance with Services Tariff Sections 23.2.3.1 and 23.4.2.2.

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<sup>6</sup> To date, the NYISO has been able to correct all guarantee payment impacts it has identified.

When the NYISO applies default bid mitigation it substitutes (or requires the substitution of) a default bid or bid parameter for a Bid or Bid parameter submitted for an Electric Facility. However, the NYISO's implementation of default bid mitigation is complicated by its inability to programmatically implement the mitigation in some circumstances. In some cases (such as application of market clearing price mitigation outside the New York City Constrained Area) the NYISO must manually apply after-the-fact mitigation for a period of up to six months from the date of the occurrence giving rise to the mitigation.<sup>7</sup> It is this circumstance that the NYISO's proposed revisions to Section 23.4.2.2.1 of the Services Tariff are designed to address. The proposed tariff revisions clarify that when an Electric Facility is subject to default bid mitigation that cannot be programmatically applied, the NYISO can require the Market Party to use a default bid or default bid parameters in the Bids it submits for the mitigated Electric Facility. The NYISO's proposal to add a specific obligation for the Market Party to include a NYISO-specified default bid in its offer eliminates any potential ambiguity regarding the Market Party's bidding obligations when the NYISO imposes default bid mitigation that it is not able to programmatically impose.

**E. Improvements to Calculation of Penalties for Submission of Inaccurate Fuel Cost Information**

The Services Tariff requires the NYISO to apply a penalty when (1) a Market Party submits inaccurate fuel price and/or fuel type information for one or more Generators, (2) the inaccurate information is used by the NYISO to develop reference levels for the Generators, and (3) the inaccurately developed reference levels permit the Market Party to Bid the Generator(s) in a manner that increases the guarantee payments to one or more of the Market Party's Generators or the market clearing prices at the Market Party's Generator locations, above the payment that the Market Party would have received had it submitted accurate fuel price or fuel type information.<sup>8</sup> In order for a penalty to apply, the guarantee payment or market clearing price must increase by more than the impact thresholds specified in Sections 23.4.3.3.1.2, 23.4.3.3.2.2 and 23.4.3.3.2.3 of the Services Tariff for at least one of the Market Party's Generators.

The Real-Time Market LBMP impact test and penalty calculation rely on the difference between (x) the reference level that the NYISO developed based on the inaccurate fuel type and/or fuel price information submitted, and (y) the greater of (i) the reference level that would have been in place if the Market Party had submitted its actual fuel costs, or (ii) the "default" reference level that would have been in place but for the submission of inaccurate fuel type and/or fuel price information.<sup>9</sup> The NYISO has determined that this calculation can result in an inappropriate determination of LBMP impact and produce an inappropriately large penalty if the Bids submitted for the Generator are not equal to or greater than the Generator's artificially inflated reference levels. The proposed tariff revisions will utilize the

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<sup>7</sup> See Services Tariff Section 23.4.8.

<sup>8</sup> See Services Tariff Section 23.4.3.3.

<sup>9</sup> See Services Tariff Section 23.4.3.3.2.2.

lesser of the Market Party's Bid or the reference level that relies on the inaccurate fuel type and/or fuel price information to perform the Real-Time LBMP impact test, and to calculate the Real-Time Market penalty when necessary. Using the lesser of the Bid that was submitted or the reference level that was developed based on inaccurate fuel cost information evaluates, and potentially penalizes, the Market Party's actual behavior in the market. If the Market Party submits a Bid that is lower than the artificially inflated reference level, the Market Party cannot impact the market to the same extent as it would if it Bid equal to or greater than the artificially high reference level. The proposed revisions will produce penalties that are more consistent with the actual impact of the Market Party's behavior.

#### **F. Impact Test for Reliability-Committed Generators Located Outside the New York City Constrained Area**

The NYISO also proposes to modify the Day-Ahead and real-time guarantee payment impact test thresholds that apply to reliability-committed Generators located outside the New York City Constrained Area that are applied to determine if a penalty is appropriate when a Market Party submits inaccurate fuel type and/or fuel price information, and the inaccurate information is used to develop inflated reference levels that ultimately result in higher guarantee payments to the reliability-committed Generator. Currently, the impact test in Section 23.3.2.1.2 of the Services Tariff considers a material change in Day-Ahead or real-time guarantee payment to be an increase of 200% for Generators located outside the New York City Constrained Area and an increase of 50% for Generators located in the New York City Constrained Area. Because reliability-committed Generators possess a form of market power,<sup>10</sup> the NYISO proposes to revise the Tariff to apply the 50% guarantee payment impact threshold to reliability-committed Generators located outside the New York City Constrained Area when testing for penalties under Sections 23.4.3.3.3.1.2 and 23.4.3.3.3.2.3 of the Services Tariff. As explained above, the mitigation rules regularly apply tighter thresholds to reliability-committed Generators<sup>11</sup> and, consistent with that approach, the 50% impact threshold should apply to reliability-committed Generators that receive inflated guarantee payments after submitting inaccurate fuel information to the NYISO.

### **IV. Description of Proposed Revisions to the Services Tariff**

#### **A. Services Tariff Section 23.3.1.1.2**

The proposed Tariff revisions exclude generating capacity that is not Bid because and to the extent that operating would require use of unauthorized natural gas from the amount deemed withheld for purposes of the physical withholding thresholds calculations. The

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<sup>10</sup> See *New York Independent System Operator, Inc.*, 133 FERC ¶ 61,030 (2010) at P 47 (“a generator that is the subject of a [Day-Ahead Reliability Unit] request is guaranteed to be committed in the day-ahead market and, for this reason, has market power”) and P 48 (“a generator bidding in response to an [Supplemental Resource Evaluation] request knows they are needed for reliability and thus may be in a position to exercise market power”).

<sup>11</sup> See also, Services Tariff Section 23.3.1.2.3.

proposed Tariff revisions allow Generators not to Bid to the extent that unauthorized natural gas would be required to operate if the Bid was accepted.

**B. Services Tariff Section 23.3.1.4.6**

The proposed Tariff revisions specify: (1) the NYISO's reporting obligations when NYISO's process for adjusting reference levels to reflect appropriate fuel costs does not utilize the best fuel cost information available; and (2) the NYISO will not allow unauthorized gas use charges as a component in reference levels or for *ex post* cost recovery. The proposed Tariff revisions identify unauthorized natural gas use as the uses specified in each natural gas pipeline's or LDC's applicable tariff, rate schedule or customer contract and provide examples of circumstances when natural gas use may be unauthorized. Unauthorized natural gas use may result from, but is not limited to, the following circumstances: (i) consumption of natural gas in violation of the terms of an Operational Flow Order ("OFO") issued by the relevant natural gas LDC or pipeline; (ii) violation of instructions issued by the relevant natural gas LDC or pipeline restricting consumption of natural gas or use of natural gas imbalance service, when such instructions are issued consistent with the LDC's or pipeline's authority under a tariff, rate schedule or contract; (iii) consumption of natural gas during a period of authorized interruption of service by the relevant natural gas LDC or pipeline, determined in accordance with the terms of the applicable tariff, rate schedule or contract; or (iv) use of natural gas balancing services that are explicitly identified in the relevant natural gas LDC's or pipeline's applicable tariff, rate schedule or contract as unauthorized use or penalty gas.

**C. Services Tariff Section 23.3.3.2.1.3**

The proposed Tariff revisions clarify that gas balancing charges may be included in reference levels for Generators that are committed Out-of-Merit or via a Supplemental Resource Evaluation for reliability. The circumstances under which costs associated with burning unauthorized or penalty gas may be recovered by Generators that are committed for electric system reliability are addressed in other Tariff revisions proposed in this filing.

**D. Services Tariff Section 23.4.2.2.1**

The proposed Tariff revisions require a Market Party to include the default bid(s) or bid parameter(s) that the NYISO instructs the Market Party to include in its Bids when an Electric Facility is subject to default bid mitigation.

**E. Services Tariff Section 23.4.3.3.3**

The proposed Tariff revisions address three components of how penalties for submitting inaccurate fuel cost information are determined. The first modification revises the Real-Time LBMP impact test to use the lesser of the Generator's Bid and the fuel cost adjusted reference level when testing for Real-Time LBMP impact. The second modification applies a tighter market impact threshold to reliability-committed Generators located outside the New York City Constrained Area. The proposed threshold, a 50% increase in Day-Ahead



or real-time Bid Production Cost Guarantee payments to a Market Party, is the same threshold that is applied to Generators located in the New York City Constrained Area.<sup>12</sup> The third modification adds Minimum Generation Bids to the real-time penalty calculation language when a Market Party submits inaccurate fuel costs to the NYISO.

## **V. Effective Date**

The NYISO respectfully requests that the Tariff revisions proposed in this filing be permitted to become effective on December 28, 2015; 60 days after the date of this filing. The NYISO intends to implement these revisions commencing with the December 28, 2015, Real-Time Market and the December 29, 2015, Day-Ahead Market.

## **VI. Stakeholder Approval**

The NYISO's Management Committee approved these Tariff amendments on August 26, 2015, with abstentions. The NYISO Board of Directors approved these Tariff amendments on October 20, 2015.

## **VII. Service List**

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](http://www.nyiso.com).

## **VIII. Conclusion**

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept the Tariff changes proposed in the Attachments hereto without modification, with an effective date of December 28, 2015.

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<sup>12</sup> New York City Generators that are committed for reliability in the Day-Ahead Market are subject to mitigation any time their Bid exceeds the associated reference level. *See* Services Tariff Section 23.5.2.1.

Respectfully submitted,

/s/ James H. Sweeney

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