

February 6, 2017

By Electronic Delivery

The 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. ER17-____-000**

Dear Ms. Bose:

In accordance with Section 205 of the Federal Power Act (“FPA”) and 18 C.F.R. Part 35 (2016) of the Federal Energy Regulatory Commission’s (“Commission”) regulations, the New York Independent System Operator, Inc. (“NYISO”) respectfully submits proposed revisions to the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”) to amend the language in Section 23.4.5.5 governing the circumstances under which a Market Party¹ will be deemed to be a Pivotal Supplier in a Mitigated Capacity Zone.

Specifically, Section 23.4.5.5 allows a Responsible Market Party to rebut a presumption of Control of Unforced Capacity. But it currently contains one rebuttal standard applicable to the G-J Locality and a different standard applicable to other Mitigated Capacity Zones.² The Commission accepted the G-J Locality’s rebuttal standard in response to a NYISO compliance filing in Docket No. ER13-1380 (the docket in which the tariff provisions were adopted to establish the G-J Locality).³ When accepting the rebuttable standard for the G-J Locality, the Commission held that any corresponding change to the rebuttal standard applicable to other Mitigated Capacity Zones would have to be accomplished through a separate FPA Section 205 proceeding. In this filing, the NYISO respectfully proposes tariff revisions that would make the rebuttal standard for the G-J Locality applicable to all Mitigated Capacity Zones.

¹ Capitalized terms that are not otherwise defined in this filing shall have the meaning specified in the Services Tariff.

² Currently, there is only one other Mitigated Capacity Zone, New York City (“Load Zone J”).

³ *New York Indep. Sys. Operator, Inc.*, 144 FERC ¶ 61,126 (2013) (“August 2013 Order”).

I. LIST OF DOCUMENTS SUBMITTED

The NYISO respectfully submits the following documents:

1. This filing letter;
2. A blacklined version of the proposed modifications to Section 23.4.5 of the Services Tariff (“Attachment I”); and
3. A clean version of the proposed modifications to Section 23.4.5 of the Services Tariff (“Attachment II”).

II. BACKGROUND

Supplier-side capacity market power mitigation is applied to Pivotal Suppliers in Mitigated Capacity Zones. The criteria for designation as a Pivotal Supplier set forth in Section 23.2.1 of the Services Tariff are as follows:

- For the New York City Locality, a Pivotal Supplier is defined as “a Market Party that, together with any of its Affiliated Entities, (a) Controls 500 MW or more of Unforced Capacity, and (b) Controls Unforced Capacity some portion of which is necessary to meet the New York City Locality Locational Minimum Installed Capacity Requirement in an ICAP Spot Market Auction.”;
- For the G-J Locality, a Pivotal Supplier is defined as “a Market Party that, together with any of its Affiliated Entities, (a) Controls 650 MW or more of Unforced Capacity; and (b) Controls Unforced Capacity some portion of which is necessary to meet the G-J Locality Locational Minimum Installed Capacity Requirement in an ICAP Spot Market Capacity Requirement in an ICAP Spot Market Auction.”; and
- “For each Mitigated Capacity Zone except the New York City Locality and the G-J Locality, if any, a Market Party that Controls at least the quantity of MW of Unforced Capacity specified for the Mitigated Capacity Zone and accepted by the Commission.”⁴

Section 23.4.5.5 describes the criteria to rebut Control of Unforced Capacity. It states that “Control of Unforced Capacity shall be rebuttably presumed from (i) ownership of an Installed Capacity Supplier, or (ii) status as the Responsible Market Party for an Installed

⁴ Under the Services Tariff, the NYISO performs a study each Demand Curve Reset Filing Year, the results of which may require that it establish a new Locality. *See* Section 5.16 of the Services Tariff. Any new Locality is a Mitigated Capacity Zone. *See* Section 2.13 of the Services Tariff at definition of Mitigated Capacity Zone.

Capacity Supplier, but may also be determined on the basis of other evidence.” At the time of the April 2013 Filing, the presumption was rebuttable by demonstrating that (1) the Unforced Capacity had been sold in a Capability Period Auction or Monthly Auction, or (2) the ability to determine the price and quantity of offers to supply the Unforced Capacity has been conveyed to a person or entity that is not an Affiliated Entity.

The NYISO submitted the Pivotal Supplier criteria for the G-J Locality in its April 2013 filing that proposed the establishment of the G-J Locality.⁵ In the April 2013 Filing, the NYISO noted that the independent Market Monitoring Unit for the NYISO (“MMU”) had expressed concern that the existing rebuttal language could allow the Pivotal Supplier framework to be “circumvented” through the sale of Unforced Capacity in advance of an ICAP Spot Market Auction.⁶ The MMU explained that such capacity would be deducted from the Unforced Capacity under a Market Party’s Control for purposes of the Pivotal Supplier calculation. According to the MMU, such a deduction could result in a “large supplier with market power [reducing] the amount of capacity that it is deemed to control by selling some of its capacity in the Capability Period Auction or the Monthly Auction.”⁷ The MMU concluded that this issue could be addressed by deleting the “current exclusion of forward capacity sales in Section 23.4.5.5(1).”⁸

The NYISO stated in the April 2013 Filing that it agreed with the MMU’s recommendation. The NYISO also stated that the MMU’s proposed enhancement should apply to both the G-J Locality and New York City and thus that it would “favor conforming tariff revisions to provide for parallel treatment.”⁹ However, in its August 2013 Order addressing the April 2013 Filing, the Commission did not address this issue.

In a request for rehearing of the August 2013 Order, the Indicated New York Transmission Owners¹⁰ (the “Indicated NYTOs”) raised this issue, arguing that allowing the exclusion of forward capacity sales from the Pivotal Supplier determination “would, in many cases, exempt from offer caps entities that have a financial incentive to withhold capacity and

⁵ See New York Independent System Operator, Inc., *Proposed Tariff Revisions to Establish and Recognize a New Capacity Zone and Request for Action on Pending Compliance Filing*, Docket No. ER13-1380-000 (filed April 30, 2013) (the “April 2013 Filing”).

⁶ See April 2013 Filing, Affidavit of Dr. David B. Patton, Ph.D (“Patton Affidavit”) at PP 27, 29-30, and 32.

⁷ *Id.*

⁸ *Id.* at P 32.

⁹ *Id.* at 21.

¹⁰ The Indicated NYTOs consist of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

thereby drive up capacity prices in” the G-J Locality.¹¹ In its order on rehearing, the Commission agreed and ordered the NYISO to revise the rebuttable presumption of its Pivotal Supplier threshold for the G-J Locality by deleting the current exclusion of forward capacity sales in Section 23.4.5.5(1).¹² The Rehearing Order also stated that it had granted rehearing “only with respect to” the G-J Locality and that if the NYISO wished to propose similar revisions for the New York City zone “it may do so in a separate proceeding.”¹³

In a June 2014 compliance filing,¹⁴ the NYISO amended Section 23.4.5.5 of the Services Tariff to eliminate the forward capacity sales exclusion for the G-J Locality by specifying that,

For purposes of determining if a Responsible Market Party is a Pivotal Supplier in the G-J Locality, the presumption of Control of Unforced Capacity can be rebutted by demonstrating to the reasonable satisfaction of the ISO that the ability to determine the price and quantity of offers to supply Unforced Capacity has been conveyed to a person or entity that is not an Affiliated Entity without limitation or condition, but cannot be rebutted by the sale of Unforced Capacity in a Capability Period or Monthly Auction.

The June 2014 Compliance Filing retained the original rebuttal language, and thus the forward capacity sales exclusion, with respect to the New York City Locality, as instructed by the Rehearing Order. However, the NYISO also argued that “the forward capacity sales exclusion should be eliminated for all current and future Mitigated Capacity Zones (including New York City) so that all will have an equally effective Control “test” and that “[h]aving separate rebuttable presumption rules in New York City (*i.e.*, Load Zone J) and the G-J Locality creates incongruities for Market Parties that participate in the same market.”¹⁵ The NYISO therefore asked “that the Commission direct it to make an additional compliance filing so that all forward capacity sales will no longer be excluded for purposes of the Control of Unforced Capacity test.”¹⁶ The Commission subsequently issued a delegated order accepting the NYISO’s compliance filing, but not addressing the applicability of the new presumption criteria to the New York City Locality.

¹¹ *Request for Rehearing of the Indicated New York Transmission Owners* (filed Sept. 12, 2013) Rehearing Request at 18.

¹² *New York Independent System Operator, Inc.*, 147 FERC ¶ 61,152 at P 37 (2014) (“Rehearing Order”).

¹³ *Id.* at n. 75.

¹⁴ *See* New York Independent System Operator, Inc., Compliance Filing, Docket No. ER13-1380-004 (filed June 26, 2014) (“June 2014 Compliance Filing”).

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 5.

III. PROPOSED TARIFF REVISIONS

The NYISO proposes to amend Section 23.4.5 of the Services Tariff to unify the rebuttable presumption rules, and make them applicable to all Mitigated Capacity Zones. Specifically, the NYISO proposes to revise Section 23.4.5.5 to read, in relevant part:

23.4.5.5 Control of Unforced Capacity shall be rebuttably presumed from (i) ownership of an Installed Capacity Supplier, or (ii) status as the Responsible Market Party for an Installed Capacity Supplier, but may also be determined on the basis of other evidence. ~~For purposes of determining if a Responsible Market Party is a Pivotal Supplier in a Mitigated Capacity Zone except the G-J Locality, the presumption of Control of Unforced Capacity can be rebutted by: (1) the sale of Unforced Capacity in a Capability Period Auction or a Monthly Auction, or (2) demonstrating to the reasonable satisfaction of the ISO that the ability to determine the price and quantity of offers to supply Unforced Capacity has been conveyed to a person or entity that is not an Affiliated Entity without limitation or condition.~~ For purposes of determining if a Responsible Market Party is a Pivotal Supplier in the G-J Locality a Mitigated Capacity Zone, the presumption of Control of Unforced Capacity can be rebutted by demonstrating to the reasonable satisfaction of the ISO that the ability to determine the price and quantity of offers to supply Unforced Capacity has been conveyed to a person or entity that is not an Affiliated Entity without limitation or condition, but cannot be rebutted by the sale of Unforced Capacity in a Capability Period or Monthly Auction

This revision is justified by the same rationale outlined in the NYISO's June 2014 Compliance Filing. Having different rebuttable presumption rules for different Mitigated Capacity Zones creates the market incongruities that were described in the June 2014 Compliance Filing. The NYISO posited the example of two ICAP Suppliers both within New York City, one with 1,000 MW and one with 600 MW. The NYISO pointed out that the ICAP Supplier could sell 501 MW or more in the Capability Period or Monthly Auctions or through a bilateral transaction and thus would fall below the Pivotal Supplier threshold in New York City. The example noted that, because New York City is within the G-J Locality and because of the differences in each Locality's ICAP Demand Curve and Pivotal Supplier threshold,¹⁷ this ICAP Supplier would nevertheless be a Pivotal Supplier in the G-J Locality and receive a must-offer requirement. By contrast, the ICAP Supplier with 600 MW could sell 101 MW in the Capability Period or Monthly Auction or through a bilateral transaction, and therefore would not be a Pivotal Supplier in the New York City Locality or in the G-J Locality.

As also noted in the June 2014 Compliance Filing, having inconsistent standards for rebutting the presumption of Control in different Mitigated Capacity Zones is a market design inefficiency. It leaves open the opportunity for mitigation rules to be circumvented via the forward capacity sales exclusion.

¹⁷ See Section 23.2.1 at definition of Pivotal Supplier.

All of these concerns would be addressed through the adoption of the language that the NYISO proposes in this filing. Under the new language, all ICAP Suppliers will be treated the same, irrespective of the Mitigated Capacity Zone in which they are selling and the forward capacity sales exclusion would be uniformly eliminated. For these reasons, the proposed revisions to the Services Tariff are just and reasonable and should be accepted.¹⁸

IV. EFFECTIVE DATE

In accordance with Section 205 of the FPA, the NYISO requests an effective date for these tariff amendments of April 7, 2017, 60 days from the date the proposed changes have been filed with the Commission.

V. STAKEHOLDER APPROVAL, BOARD AUTHORIZATION, and MMU REVIEW

The Management Committee approved this proposal on November 30, 2016 without dissent. The Board of Directors has authorized this filing.

The MMU has reviewed the proposal and this filing. The MMU has authorized the NYISO to state that it supports the proposed tariff revisions.

VI. COMMUNICATIONS AND CORRESPONDENCE

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

Robert E. Fernandez, General Counsel
Ray Stalter, Director of Regulatory Affairs
*Gloria Kavanah, Senior Attorney
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-6000
Fax: (518) 356-4702
rfernandez@nyiso.com

*Ted J. Murphy
Hunton & Williams LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037-1701
Tel: (202) 955-1500
Fax: (202) 778-2201
tmurphy@hunton.com

¹⁸ Under 18 C.F.R. § 35.13 (2016), a public utility is required to “file the information required by this section, as applicable, at the time it files with the Commission under §35.1 all or part of a rate schedule, tariff or service agreement to supersede or otherwise change the provisions of a rate schedule, tariff or service agreement filed with the Commission under §35.1.” Much of the information required by Section 35.13 is related to costs incurred by traditional vertically integrated utilities and is designed to allow the Commission to review changes in cost-of-service rates charged by investor-owned public utilities. However, the NYISO is not such a utility, and, more importantly, this filing does not modify a cost-of-service rate. Accordingly, the NYISO respectfully submits that § 35.13’s cost-of-service related filing requirements are inapplicable and requests, to the extent necessary, that the Commission waive them with respect to this filing.

rstalter@nyiso.com
gkavanah@nyiso.com

*persons designated to receive service

VII. 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 New Jersey Board of Public Utilities. In addition, the complete filing will be posted on the NYISO's website at www.nyiso.com. This is in accordance with 18 C.F.R. 35.2(e).

VIII. CONCLUSION

Wherefore, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept for filing the proposed tariff revisions that are attached hereto with an effective date of April 7, 2017.

Respectfully submitted,

/s/ Gloria Kavanah

Gloria Kavanah

*Counsel for the New York Independent System
Operator, Inc.*

New York Independent System Operator, Inc.

10 Krey Boulevard

Rensselaer, NY 12144

(518) 356-6103

gkavanah@nyiso.com

cc: Michael Bardee
Nicole Buell
Anna Cochrane
Kurt Longo
David Morenoff
Daniel Nowak

Larry Parkinson
J. Arnold Quinn
Douglas Roe
Kathleen Schnorf
Jamie Simler
Gary Will