

May 8, 2017

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., Compliance Filing;*
Docket Nos. RM16-5-000; ER17-____-000**

Dear Secretary Bose:

In compliance with the Federal Energy Regulatory Commission's ("Commission's") Order No. 831,¹ the New York Independent System Operator, Inc. ("NYISO") respectfully submits revisions to its Market Administration and Control Area Services Tariff ("Services Tariff").² In Section VII of this filing letter the NYISO requests waiver of the Commission's notice requirement³ and a flexible effective date to permit its proposed Tariff revisions to become effective between October 1, 2018 and December 31, 2018, after the NYISO provides at least two weeks prior notice to the Commission and to its stakeholders.

I. Documents Submitted

The NYISO respectfully submits the following documents with this filing letter:

1. A clean version of the proposed revisions to the Services Tariff ("Attachment I")
2. A blacklined version of the proposed revisions to the Services Tariff ("Attachment II")

¹ *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 831, 81 Fed. Reg. 87,770 (Dec. 5, 2016), 157 FERC ¶ 61,115 (2016) ("Final Rule").

² Capitalized terms that are not otherwise defined in this filing shall have the meaning specified in Section 2 of the NYISO Services Tariff.

³ See 18 C.F.R. § 35.3(a)(1).

II. Communications and Correspondence

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

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III. Background

The core provisions of the Final Rule require jurisdictional ISOs and RTOs to add the following three sets of rules to their tariffs:

(1) A resource's incremental energy offer must be capped at the higher of \$1,000/MWh or that resource's cost-based incremental energy offer. For the purpose of calculating Locational Marginal Prices, Regional Transmission Organizations and Independent System Operators must cap cost-based incremental energy offers at \$2,000/MWh. (Offer cap structure requirement)

(2) The costs underlying a resource's cost-based incremental energy offer above \$1,000/MWh must be verified before that offer can be used for purposes of calculating Locational Marginal Prices. If a resource submits an incremental energy offer above \$1,000/MWh and the costs underlying that offer cannot be verified before the market clearing process begins, that offer may not be used to calculate Locational Marginal Prices and the resource would be eligible for a make-whole payment if that resource is dispatched and the resource's costs are verified after-the-fact. A resource would also be eligible for a make-whole payment if it is dispatched and its verified cost-based incremental energy offer exceeds \$2,000/MWh. (Verification requirement)

(3) All resources, regardless of type, are eligible to submit cost-based incremental energy offers in excess of \$1,000/MWh. (Resource neutrality requirement)⁴

⁴ Final Rule at P 42.

The Final Rule provides further detail addressing how each of the above requirements is to be implemented.

On December 19, 2016 the NYISO timely filed a request for clarification or, in the alternative, rehearing of three aspects of the Final Rule (“NYISO Clarification Request”).⁵ The NYISO first requested the Commission clarify that its *expectation*, stated in Paragraph 90 of the Final Rule, that cost-based incremental energy offers above \$2,000/MWh should be used to determine merit-order dispatch was *not* intended to impose a mandate on all ISOs and RTOs, but rather reflects the Commission’s desire and assumption that ISOs/RTOs that can practicably meet the stated expectation will do so.⁶ The NYISO explained why using offers above \$2,000/MWh that are not eligible to set price to determine merit-order dispatch would be inconsistent with the NYISO’s *ex ante* resource selection process and would be expected to produce prices that are inconsistent with schedules.⁷ In the alternative, the NYISO requested rehearing of this requirement.⁸

The NYISO next requested clarification that it may consistently apply the Commission-directed offer cap to both incremental energy and minimum generation offers. The NYISO’s request is appropriate because, under the offer construct the NYISO employs, the cost drivers that impact incremental energy offers are likely to impact minimum generation offers and to drive cost-based minimum generation offers above \$1,000 per MWh as well.⁹ Permitting the NYISO to apply the same offer cap to incremental energy offers and minimum generation offers will provide assurance to Suppliers that they will have a reasonable opportunity to recover all of the incremental costs they may incur to supply Energy.¹⁰ If the Commission intended to prevent the NYISO from continuing to apply a uniform offer cap requirement to incremental energy offers and to minimum generation offers, then the NYISO requested rehearing of this determination.¹¹

Finally, the NYISO raised a concern about the costs that should be allowed to be recovered as uplift when NYISO does not have sufficient time to verify incremental energy offers or minimum generation offers that exceed \$1,000/MWh. The NYISO asked the Commission to clarify that only actual, documented, out-of-pocket costs should be paid after-the-fact and that no risk-related adders or opportunity costs should be allowed when cost information is not submitted in a sufficiently timely manner to permit review and verification by the ISO or

⁵ See *Requests for Clarification and Alternative Requests for Rehearing of the New York Independent System Operator Inc.* (December 19, 2016).

⁶ NYISO Clarification Request at 11-12.

⁷ *Id.* at 4-11.

⁸ *Id.* at 12-13.

⁹ *Id.* at 13-15.

¹⁰ The NYISO will independently verify incremental energy offers and minimum generation offers when determining if verified costs exceed \$1,000/MWh. See proposed Services Tariff Sections 23.7.3.2 and 23.7.3.3.

¹¹ NYISO Clarification Request at 14-15.

RTO.¹² The NYISO's requested clarification is consistent with the Commission's instruction that only the "actual short-run marginal costs of the MWs dispatched, as verified after the fact by the RTO/ISO" are eligible for compensation,¹³ and any uplift paid after-the-fact "should not include any adders above costs."¹⁴ The requested clarification eliminates a possible financial incentive to exercise market power, as explained on pages 15-16 of the NYISO Clarification Request.

Paragraph 94 of the Final Rule instructs the ISOs and RTOs that "any issues regarding the implementation of this Final Rule will be raised by RTOs/ISOs on compliance, and the Commission will address them at that time." Consistent with the Commission's instruction, the NYISO proposes Tariff revisions that fully comply with the Final Rule as interpreted by the NYISO Clarification Request below for the Commission's consideration.

The proposed revisions included in this compliance filing are expressly required by the Final Rule, are necessary to implement or clarify the NYISO's existing Tariff language to accommodate the Commission's directives, or are non-substantive organizational or clarifying adjustments of the kind that the Commission has previously permitted in compliance filings.¹⁵ In Section IV of this filing letter, the NYISO explains how its compliance filing satisfies each of the Commission's directives.

IV. Compliance Revisions

The Tariff revisions that NYISO proposes in order to achieve compliance with various aspects of the Final Rule are described below.

A. NYISO's Implementation of the Offer Cap Requirements

Paragraph 78 of the Final Rule explains how the NYISO is expected to implement the offer cap requirement:

As a result of this Final Rule, an RTO/ISO will treat resources' incremental energy offers differently, depending on the level of the offer itself. Each RTO/ISO shall treat incremental energy offers below \$1,000/MWh as it currently does. Such offers: (1) are subject to existing RTO/ISO market power mitigation procedures and are not required to be cost-based; and (2) may be used to calculate LMPs. A resource may only submit an incremental energy offer equal to or above \$1,000/MWh if the offer is cost-

¹² *Id.* at 15-16.

¹³ Final Rule at P 146 and n. 331.

¹⁴ *Id.* at P 207.

¹⁵ See *New York Independent System Operator, Inc.*, 125 FERC ¶ 61,206 (2008), *reh'g*, 127 FERC ¶ 61,042 (2009) (accepting proposed additional tariff revisions that were necessary to implement the modifications directed by the Commission and to correct drafting errors or ambiguities in a compliance filing).

based, that is, if the offer accurately reflects that resource's actual or expected short-run marginal costs. For an incremental energy offer equal to or above \$1,000/MWh and less than or equal to \$2,000/MWh, the RTO/ISO or Market Monitoring Unit must verify that the offer is cost-based before the RTO/ISO may use the offer to calculate LMPs. For an incremental energy offer above \$2,000/MWh, the RTO/ISO or Market Monitoring Unit must also verify that the offer is cost-based. Cost-based incremental energy offers in excess of \$2,000/MWh will be capped at \$2,000/MWh for purposes of calculating LMPs. As such, the \$2,000/MWh hard cap places an upper limit on the incremental energy offers that the RTO/ISO can use to calculate LMPs....¹⁹³

¹⁹³ The \$2,000/MWh hard cap requires that the cost-based incremental energy offers that RTOs/ISOs may use to calculate LMPs may not exceed \$2,000/MWh.

Proposed revisions implementing the Commission's requirements are set forth in Sections 21.4.1 and 23.7.2 of the Services Tariff. Proposed new Section 21.4.1 allows the Bid Restriction that applies to New York Control Area ("NYCA") Resources to increase to equal the higher of (a) \$1,000/MWh, or (b) a Resource-specific, verified, cost-based "reference level" determined in accordance with existing rules established in Section 23.7 of the Services Tariff.

A cost-based "reference level" is an assessment of a Generator's incremental operating costs that is used to replace a Generator's offer with a "default bid" when the offer is "mitigated" (reduced) in accordance with the rules set forth in Section 23 of the Services Tariff.¹⁶ Reference levels are designed to cause a Market Party to offer its Generator as if it faced workable competition during a period when the Generator does not face workable competition. Reference levels should not cause a Market Party to offer its Generator at a price below the Generator's marginal cost.¹⁷ In Section 23.7.4 of its compliance filing the NYISO proposes new rules that will enable it to develop reference levels for the two types of Demand Side Resources that are eligible to submit Incremental Energy Bids and/or Minimum Generation Bids.

Proposed Section 21.4.1 of the Services Tariff further states "[f]or purposes of determining commitment and dispatch, and setting market clearing prices, maximum Day-Ahead and real-time Incremental Energy Bids and Minimum Generation Bids submitted for NYCA Resources shall not be permitted to exceed \$2,000/MWh." The language proposes to impose a "hard cap" on Incremental Energy Bids and Minimum Generation Bids for *all* purposes. The proposed language is consistent with the NYISO Clarification Request which asked the Commission to confirm that P 90 of the Final Rule is a statement that the Commission expects offers above \$2,000/MWh to be used to determine merit order dispatch when feasible, but it is not intended to impose an absolute requirement that offers above \$2,000/MWh must be used to determine merit order dispatch.¹⁸ If the Commission intended to impose an absolute requirement that verified offers above \$2,000/MWh must be used in determining merit-order dispatch even

¹⁶ Section 23 of the Services Tariff is the NYISO's Market Power Mitigation Measures.

¹⁷ See Services Tariff Sections 23.3.1.4.1.3, 23.3.1.4.2.1, 23.4.2.1 and 23.4.2.2.1.

¹⁸ See NYISO Clarification Request at 4-13.

though such offers are not eligible to set the market clearing price, then the Commission should instruct the NYISO to strike the words “determining commitment and dispatch, and” from proposed Section 23.7.2.1 and to add language to its Tariffs affirmatively imposing this requirement.¹⁹ But if NYISO is required to develop the capability to use verified Incremental Energy Bids and Minimum Generation Bids that exceed \$2,000/MWh to determine merit order dispatch, it will require additional time to develop the software and processes that are necessary to comply with this requirement.²⁰ In that case, the NYISO will either need to delay its proposed implementation date, or it will need to propose a multi-stage implementation of the requirements of the Final Rule.

The NYISO will use the cost comparison in proposed Section 23.7.2 of the Services Tariff to test Incremental Energy Bids and Minimum Generation Bids that exceed \$1,000/MWh against Resource-specific, cost-based reference levels.²¹ The proposed cost comparison rules ensure that when a Resource’s verified cost is below \$1,000/MWh its Incremental Energy Bids and Minimum Generation Bids will be subject to NYISO’s “standard” mitigation rules that apply to offers below \$1,000/MWh.²² If the verified cost-based reference level associated with an Incremental Energy Bid or a Minimum Generation Bid exceeds \$1,000/MWh, but is less than \$2,000/MWh then applying the rule in proposed Sections 23.7.2.3 will restrict the Bid to no more than the NYISO’s currently effective cost-based reference level.

Proposed Sections 23.7.2.4 and 23.7.2.4.1 set forth the rules for Incremental Energy Bids and Minimum Generation Bids whose verified costs exceed \$2,000/MWh. As explained above, consistent with the NYISO Clarification Request, the NYISO’s proposed compliance tariff revisions do not require the NYISO to use verified Incremental Energy Bids and Minimum Generation Bids that exceed \$2,000/MWh to determine merit-order dispatch. If the Commission determines that the NYISO must use verified Incremental Energy Bids and Minimum Generation Bids that exceed \$2,000/MWh to determine merit-order dispatch, then the Commission should instruct the NYISO to revise proposed Section 23.7.2.4 to permit verified offers above \$2,000/MWh to be used to determine resource commitment and dispatch.

The compliance tariff revisions proposed herein satisfy the Final Rule’s stated requirements, including the requirement to ensure that offers that exceed \$1,000/MWh are consistent with a Resource’s verified costs and the requirement that offers be capped at \$2,000/MWh for price-setting purposes.

¹⁹ The NYISO would also need to make corresponding revisions to proposed Section 23.7.2.4 of the Services Tariff.

²⁰ Developing the capability to use verified Incremental Energy Bids and Minimum Generation Bids that exceed \$2,000/MWh to determine merit order dispatch would require significant changes to the software that the NYISO uses to commit and dispatch Resources and calculate LBMPs in both its Day-Ahead and Real-Time Markets.

²¹ See proposed Services Tariff Section 23.7.2.1.

²² See proposed Services Tariff Sections 23.7.2.2. and 23.7.2.2.1.

B. Eligibility of Offers that Exceed \$1,000/MWh to Receive Uplift

Paragraph 78 of the Final Rule states “resources with verified cost-based incremental energy offers above \$2,000/MWh will be eligible to receive uplift.”²³ Paragraph 146 of the Final Rule sets forth a second circumstance under which resources with incremental energy offers above \$1,000/MWh are eligible to receive uplift payments.

146. ...if a resource’s incremental energy offer above \$1,000/MWh is not verified but that resource is nonetheless dispatched, that resource would be eligible to receive an uplift payment to recover its verified costs. The basis of the uplift payment would be the difference between a given resource’s energy market revenues and that resource’s actual short-run marginal costs of the MWs dispatched, as verified after-the-fact by the RTO/ISO or Market Monitoring Unit.³³¹

³³¹ The Commission notes that the clarification regarding use of a resource’s actual or expected short-run marginal costs during the verification process that occurs prior to the market clearing process is not applicable to such uplift payments. Any such uplift payment, which is paid after-the-fact, must be based on a resource’s actual short-run marginal costs.

To comply with this requirement, the NYISO’s proposed Tariff revisions require verified costs in excess of \$2,000/MWh, and costs in excess of \$1,000/MWh that are verified after-the-fact, to be included in the Generator’s Bid Production Cost Guarantee (“BPCG”) calculation for the relevant Day-Ahead or Real-Time Market day.

Proposed Services Tariff Section 21.4.1 states that (a) validated Incremental Energy or Minimum Generation Bids above \$2,000/MWh, and (b) Incremental Energy or Minimum Generation Bids above \$1,000/MWh that NYISO was not able to validate prior to market close but was able to validate after-the-fact, may be eligible to be included in the NYISO’s calculation of a BPCG. Proposed Services Tariff Section 23.7.2.5 provides additional detail and points to Services Tariff Sections 23.7.3.3 and 23.7.4.6.

Proposed Services Tariff Section 23.7.3.3 identifies the costs that a Generator may recover after-the-fact if the NYISO is not able to verify, or is not able to fully verify all of the cost components of, an Incremental Energy Bid or a Minimum Generation Bid that exceeds \$1,000/MWh. The proposed rule states that Generators will be permitted to demonstrate the costs they incurred in an after-the-fact review and the NYISO will include all demonstrated costs, up to the amount of the Bid that was submitted, that are not opportunity costs or risk adders in its daily BPCG calculation for the Generator. NYISO’s proposed compliance revision is consistent with the Commission’s determination that only “actual costs” are eligible for recovery after-the-fact.²⁴ The proposed requirement is appropriate because it creates a financial

²³ P 145 of the Final Rule also addresses this requirement.

²⁴ See Final Rule at P 146, n. 331 and P 207.

incentive for Market Parties to submit Incremental Energy Bids and Minimum Generation Bids that exceed \$1,000/MWh in advance, so that the NYISO will have sufficient time to verify the offers before market close for the affected Day-Ahead Market day or the affected Real-Time Market hour. The NYISO's proposal to exclude opportunity costs and risk adders that it was not able to verify prior to the relevant market close from the BPCG calculation is consistent with the clarification NYISO requested on pages 15-16 of the NYISO Clarification Request.

Proposed Services Tariff Section 23.7.4.6 performs essentially the same function as proposed Services Tariff Section 23.7.3.3, but it applies to Demand Side Resources that participate in the NYISO's Day-Ahead Demand Response Program ("DADRP"), not to Generators. In particular, it permits the NYISO to include costs that were timely submitted, but that had not been verified by the NYISO at market close, to be included in the BPCG it calculates for a DADRP Demand Side Resource.

Finally, the NYISO proposes a series of extremely similar additions to the BPCG calculation rules that are set forth in Section 18 of its Services Tariff.²⁵ In each case, the NYISO clarifies that Incremental Energy Bids (including incremental Curtailment Bid costs for DADRP) and Minimum Generation Bids (including minimum Curtailment initiation Bids for DADRP) that exceed \$1,000/MWh are only eligible to be included in a BPCG payment if they satisfy the requirements of Sections 21.4.1 and 23.7 of the Services Tariff.

Under NYISO's proposed Tariff revisions Generators and Demand Side Resources will be eligible to recover demonstrated costs that exceed \$2,000/MWh and to recover actual costs (not including opportunity costs or risk adders) that NYISO was not able to verify prior to market close as components of each Resource's daily BPCG calculation.

C. Verification of Incremental Energy and Minimum Generation Offers that Exceed \$1,000/MWh

The Final Rule imposes an obligation on ISOs and RTOs to verify offers that exceed \$1,000/MWh before the offer is used to set LBMPs.²⁶ The Final Rule states "the verification process for cost-based incremental offers above \$1,000/MWh must ensure that a resource's cost-based incremental energy offer reasonably reflects that resource's actual or expected costs."²⁷ The Final Rule also requires the NYISO to explain the factors that it will consider in the verification process for cost-based Incremental Energy Bids and Minimum Generation Bids that exceed \$1,000/MWh, and whether such factors are currently considered in NYISO's existing market power mitigation provisions or whether new practices or tariff provisions are necessary to comply with the verification requirement adopted in this Final Rule.²⁸

²⁵ See proposed changes to Services Tariff Sections 18.2.1.2, 18.4.1.2, 18.5.1.2 and 18.8.1.

²⁶ Final Rule at P 139.

²⁷ *Id.* at P 140.

²⁸ *Id.* at P 141.

Proposed new Section 23.7.3 of the Services Tariff sets forth how the NYISO proposes to verify Generator offers that exceed \$1,000/MWh. The NYISO intends to leverage its existing reference level development process to verify that Incremental Energy Bids and Minimum Generation Bids that exceed \$1,000/MWh are consistent with a Generator's costs. Under the existing process, the NYISO considers fuel, emissions, variable operating and maintenance costs as well as risk and/or opportunity costs in the development of a Generator's cost-based reference level. All of the cost factors except fuel costs must be submitted to and approved by the NYISO for incorporation into a reference level before an Incremental Energy Bid or a Minimum Generation Bid is submitted. Limited changes to a Generator's fuel price or fuel type can be submitted with a Generator's Incremental Energy Bid or a Minimum Generation Bid. However, changes to fuel price or fuel type that exceed a seasonally calculated tolerance level must be approved by the NYISO before they are permitted to take effect.²⁹ The NYISO proposes to use similar rules to verify Incremental Energy Bids and Minimum Generation Bids that exceed \$1,000/MWh.

Proposed Section 23.7.3.1 requires all Generators that want to submit offers that exceed \$1,000/MWh to include a fuel cost adjustment (a change of fuel type or a change of fuel price) with its offer. This requirement even applies to resources that do not consume "fuel," such as renewable resources. The NYISO is in the process of developing procedures that will explain how all Generator types, including fossil and non-fossil fuel Generators, should utilize the fuel cost adjustment functionality when they submit an Incremental Energy Bid or a Minimum Generation Bid that exceeds \$1,000/MWh. The NYISO will use the submission of a fuel cost adjustment (a) to identify Incremental Energy Bids and Minimum Generation Bid that exceeds \$1,000/MWh for further review, and (b) to ensure that a cost-based reference level (as opposed to a Bid-based or an LBMP-based reference level³⁰) is used to validate the Bid. The NYISO will develop a complete set of procedures before the Tariff revisions proposed in this filing take effect. The new procedures will be developed in consultation with the NYISO's stakeholders and outlined in the NYISO's Reference Level Manual.

If a Generator submits an Incremental Energy Bid or a Minimum Generation Bid that exceeds \$1,000/MWh but does not utilize the required fuel cost adjustment functionality, then the Bid will fail verification and the NYISO will notify the Market Party. As part of its implementation of this compliance filing the NYISO will no longer wait until market close to perform Bid validation related to this requirement. If the Market Party submitted its Bid in advance of market close then the Market Party will be informed that its Bid failed validation and

²⁹ See Services Tariff Sections 23.3.1.4.6.3 through 23.3.1.4.6.7 (addressing the submission of fuel cost information to support changes to Generator reference levels). Link to NYISO's most recently posted fuel entry thresholds:

http://www.nyiso.com/public/webdocs/markets_operations/services/market_monitoring/Fuel_Entry_Thresholds/Fuel_Entry_Thresholds/Fuel%20Entry%20Thresholds%20DA%20and%20RT%20Effective%2004-4-2017.pdf

³⁰ See Services Tariff Sections 23.3.1.4.1 through 23.3.1.4.3 (addressing the methods that the NYISO may use to develop reference levels).

will have an opportunity to correct its error and re-submit the Bid (making appropriate use of the fuel cost adjustment functionality) prior to market close.

Proposed Section 23.7.3.2 explains that if a claimed cost supporting an Incremental Energy Bid or a Minimum Generation Bid that exceed \$1,000/MWh has been verified by the NYISO, then those costs will be included in the Generator's cost-based reference level. Costs that are included in a Generator's cost-based reference level at the time the NYISO performs the cost comparison that is explained in Section 23.7.2 of the proposed Tariff revisions are eligible to be included in the Generator's Incremental Energy Bid or Minimum Generation Bid, and will be included if the NYISO reduces the Bid based on its application of a Bid Restriction or mitigation.

The NYISO does not currently have a process in place to develop reference levels for Demand Side Resources, so Section 23.7.4 of the proposed Tariff revisions is entirely new. Proposed Section 23.7.4.2 establishes how the NYISO will develop reference levels for Demand Side Resources that participate in the NYISO's Day-Ahead Demand Response Program ("DADRP") and in the NYISO's Demand Side Ancillary Service Program ("DSASP").³¹ Demand Side Resources that want to have the ability to submit Incremental Energy Bids or Minimum Generation Bids that exceed \$1,000/MWh must meet with the NYISO in advance to develop an appropriate cost-based reference level for their resource.

Proposed Tariff Section 23.7.4.3 explains the rules DADRP and DSASP resources must follow to submit Incremental Energy Bids or Minimum Generation Bids that exceed \$1,000/MWh. Because the NYISO does not calculate reference levels for Demand Side Resources for any other purpose, it does not have significant experience calculating reference levels for Demand Side Resources or verifying their costs of providing service. The NYISO's proposed rules requires Demand Side Resources to submit information to the NYISO supporting an expectation that their costs will exceed \$1,000/MWh by 9:00 a.m. on the day before the close of the relevant Day-Ahead Market or the close of the relevant Real-Time Market hour. If the required information is not timely submitted, then the Demand Response Resource will not be permitted to submit an offer that exceeds \$1,000/MWh.³² This requirement is necessary to provide NYISO sufficient opportunity to verify costs asserted by Demand Side Resources, and is

³¹ DSASP providers submit Bids to indicate when they are available to be converted from providing regulation or reserves to producing Energy. However, these resources are not paid to provide Energy. *See New York Independent System Operator, Inc.*, Mar. 24, 2008 compliance filing in Docket No. ER04-230-034 at 9 ("[T]he NYISO is not proposing to pay Demand Side Resources an energy settlement (the LBMP market clearing price) for any load reduction the Demand Side Resource provides in response to a NYISO instruction to either convert its ancillary services schedule to energy or to produce energy in real-time.") accepted for filing by the Commission at 123 FERC ¶ 61,203 (2008). *See also*, Services Tariff Sections 4.6.6.10 and 18.11 (DSASP resources are not eligible to recover Incremental Energy or Minimum Generation costs).

³² *See* proposed Services Tariff Section 23.7.4.4.

consistent with the Commission's recognition that "the verification process for demand response resources will necessarily differ from the verification process for generation resources."³³

The NYISO's proposed rules satisfy the verification requirements for Generators and for Demand Side Resources.

D. Offer Caps for Imports, Exports and Wheels Through, Virtual Transactions, CTS Bids and Price Cap Load Bids

Consistent with the requirements of the Final Rule, the NYISO proposes to implement the following Bid Restrictions (offer caps) for Imports, Exports, Wheels Through the NYCA, Virtual Transactions, CTS Bids and Price Cap Load Bids:

Bids to Import Energy to the NYCA or to Export Energy from the NYCA will be limited to a maximum Bid Price of \$2,000/MWh and will be limited to a minimum Bid Price of -\$1,000/MWh. The NYISO does not propose to employ a verification requirement for Imports or Exports. The proposed limits, and the proposal not to require verification, are consistent with Paragraph 192 of the Final Rule.

CTS Interface Bids are spread bids that will be limited to a maximum Bid Price of \$1,000/MWh and will be limited to a minimum Bid Price of -\$1,000/MWh. The NYISO does not propose to employ a verification requirement for CTS Interface Bids. The proposed limits are consistent with Paragraph 198 of the Final Rule.

Wheels Through the NYCA are spread bids that will be limited to a maximum Bid Price of \$1,000/MWh and will be limited to a minimum Bid Price of -\$1,000/MWh. The NYISO does not propose to employ a verification requirement for Wheels Through the NYCA. The proposed limits are consistent with the language in Paragraph 198 of the Final Rule that addresses spread bids.

Virtual Load Bids and Virtual Supply Bids will be limited to a maximum Bid Price of \$2,000/MWh and will be limited to a minimum Bid Price of -\$1,000/MWh. The NYISO does not propose to employ a verification requirement for Virtual Load Bids or Virtual Supply Bids. The proposed limits are consistent with Paragraph 172 of the Final Rule.

Price Cap Load Bids will be limited to a maximum Bid Price of \$2,000/MWh and will be limited to a minimum Bid Price of -\$1,000/MWh. The NYISO does not propose to employ a verification requirement for Price Cap Load Bids. Price Cap Load Bids are similar to Virtual Bids and the NYISO's proposed limits, and the proposal not to require verification, are consistent with Paragraph 172 of the Final Rule.

The NYISO proposes to enforce all of the requirements that are set forth in Section IV.D of this filing letter by implementing a Bid validation that is tied to the permitted maximum Bid Price or the permitted minimum Bid Price. If a Bid is submitted that exceeds the permitted

³³ Final Rule at P 158.

maximum Bid Price, or that falls below the permitted minimum Bid Price, then the Bid will fail validation and the NYISO will notify the Market Party that its Bid was rejected. As part of its implementation of this compliance filing the NYISO will no longer wait until market close to perform the Bid validation for offers that it is required to reject if they violate a Bid Restriction. If the Market Party submitted its Bid in advance of market close, then the Market Party will be informed that its Bid failed validation and will have an opportunity to submit a Bid that complies with the applicable Bid Restriction prior to market close.

V. Proposed Compliance Revisions

A. Proposed Revisions to Section 18 of the Services Tariff

As explained in Section IV.B of this filing letter, the NYISO proposes a series of similar additions to the BPCG calculation rules that are set forth in Section 18 of its Services Tariff Sections 18.2.1.2, 18.4.1.2, 18.5.1.2 and 18.8.1. In each case, the NYISO clarifies that Incremental Energy Bids (including incremental Curtailment Bid costs for DADRP) and Minimum Generation Bids (including minimum Curtailment initiation Bids for DADRP) that exceed \$1,000/MWh are only eligible to be included in a BPCG payment if they satisfy the requirements of Sections 21.4.1 and 23.7 of the Services Tariff.

B. Proposed Revisions to Section 21 of the Services Tariff

Section 21.1: The NYISO proposes to revise the definition of “Bid Restriction” to indicate that both Sections 21.4 and 21.5 of the Services Tariff specify how and when Bid Restrictions will be applied.

Section 21.2: The NYISO proposes to clarify that the Bid Restrictions are not intended to interfere with, prevent or supplant the NYISO’s authority to apply the mitigation measures set forth in its Tariffs.

Section 21.3: Outdated provision deleted. Section 21.3 is reserved for future use.

Section 21.4: Revised to remove the uniform +/- \$1,000/MWh Bid Restriction that currently applies to all Bids, and to indicate that in some cases Bids will be reduced rather than being automatically rejected (invalidated).

Section 21.4.1: The proposed Tariff revisions are described in Sections IV.A and IV.B of this filing letter.

Sections 21.4.2 through 21.4.6: The proposed Tariff revisions are described in Section IV.D of this filing letter.

C. Proposed Revisions to Section 23 of the Services Tariff

Sections 23.3.1.4.6.4.1 and 23.3.1.4.6.8.1: The NYISO proposes exceptions to its ordinary rules for submitting change in fuel price or fuel type. The exceptions state that fuel price or fuel type changes that are offered to support the submission of Incremental Energy Bids

or Minimum Generation Bids that exceed \$1,000/MWh must be submitted in accordance with Section 23.7.3 of the Services Tariff for a Generator, or in accordance with Section 23.7.4 of the Services Tariff for a Demand Side Resource.

Section 23.4.3.2: The NYISO proposes to broaden its authority to impose after-the-fact financial sanctions on: (a) Market Parties that submit inaccurate information on behalf of Demand Side Resources, and (b) Market Parties that submit inaccurate information that is not fuel cost information, where the inaccurate submission results in NYISO developing an inaccurate reference level for the resource that causes a market clearing price or a guarantee payment impact. The proposed additions are appropriate because NYISO was not previously required to calculate reference levels for Demand Side Resources, and in order to ensure that Market Parties have appropriate incentives to ensure that information they submit to the NYISO to support claims that their costs exceed \$1,000/MWh is accurate.

The proposed revisions to Services Tariff Section 23.4.3.2 should be read in conjunction with the proposed revisions to Services Tariff Section 23.7.6, which describes when a financial penalty should be applied and how it should be calculated.

Section 23.7.1: Introduces the rules addressing how reference levels will be used to implement the Bid Restrictions required in Section 21 of the Services Tariff. Explains that the Bid Restrictions will be applied in addition to, not in lieu of, any other mitigation measure, requirement, obligation, penalty or sanction that might apply under the Tariffs.

Section: 23.7.2: Requires NYISO to compare Incremental Energy Bids and Minimum Generation Bids that exceed \$1,000/MWh to cost-based reference levels to determine if it must apply a Bid Restriction. The proposed Tariff revisions are discussed in Section IV.A of this filing letter.

Section 23.7.2.1: Requires the NYISO to use cost-based reference levels when testing to determine whether or not it should apply a Bid Restriction. The proposed Tariff revisions are discussed in Section IV.A of this filing letter.

Section 23.7.2.2: Addresses what the NYISO will do when the cost-based reference level it compares to the Incremental Energy Bid or Minimum Generation Bid is less than \$1,000/MWh. The proposed Tariff revisions are discussed in Section IV.A of this filing letter.

Section 23.7.2.2.1: Requires NYISO to test Incremental Energy Bids and Minimum Generation Bids that are restricted to \$1,000/MWh for possible additional mitigation. This provision implements the requirement in Paragraph 78 of the Final Rule that offers below \$1,000/MWh be subject to “existing RTO/ISO market power mitigation procedures.”

Section 23.7.2.3: Requires NYISO to limit Incremental Energy Bids and Minimum Generation Bids that exceed \$1,000/MWh to no more than the applicable cost-based reference level. The proposed Tariff revisions are described in Section IV.A of this filing letter.

Section 23.7.2.4: Addresses circumstances where a Resource's cost-base reference level exceeds \$2,000/MWh. The proposed Tariff revisions are described in Section IV.A of this filing letter.

Section 23.7.2.4.1: Permits inclusion of verified costs that exceed \$2,000/MWh in the calculation of a BPCG, consistent with Section 18 of the Services Tariff. The proposed Tariff revisions are described in Section IV.A of this filing letter.

Section 23.7.2.5: States that costs that were not considered in price setting may be eligible for recovery following an after-the-fact review, subject to the requirements of Sections 23.7.3.3 (for Generators) and 23.7.4.6 (for DADRP Demand Side Resources). The proposed Tariff revisions are described in Section IV.B of this filing letter.

Section 23.7.3: Introduces the rules for the submission of Incremental Energy Bids and Minimum Generation Bids that exceed \$1,000/MWh on behalf of Generators and rules for implementing the verification requirement for such Bids. The proposed Tariff revisions are discussed in Section IV.C of this filing letter.

Section 23.7.3.1: Requirement for NYCA Generators to utilize the fuel cost adjustment functionality when submitting Bids that exceed \$1,000/MWh. This requirement even applies to Generators that do not consume fuel. The proposed Tariff revisions are discussed in Section IV.C of this filing letter.

Section 23.7.3.2: Addresses submission of cost information to support a change to a Generator's cost-based reference levels. Explains that only costs that have been validated and that are included in the Generator's reference level at the time of the relevant market close will be considered in the NYISO's commitment, dispatch and price setting. Costs that have not been validated and incorporated into the Generator's reference level by the time of market close may be eligible for inclusion in a BPCG calculation following an after-the-fact review in accordance with proposed Services Tariff Section 23.7.3.3. The proposed Tariff revisions are discussed in Section IV.C of this filing letter.

Section 23.7.3.3: Identifies the costs that are eligible for inclusion in a Generator's daily BPCG calculation following an after-the-fact review. The proposed Tariff revisions are discussed in Section IV.B of this filing letter.

Section 23.7.4: Introduces rules for (1) identification of Demand Side Resources that are eligible to submit Incremental Energy Bids and Minimum Generation Bids; (2) developing reference levels for Demand Side Resources; (3) submission of Incremental Energy Bids and Minimum Generation Bids that exceed \$1,000/MWh on behalf of Demand Side Resources; and (4) implementing verification requirements for Demand Side Resource Bids. The proposed Tariff revisions are discussed in Sections IV.B and IV.C of this filing letter.

Section 23.7.4.1: States that only DADRP and DSASP Demand Side Resources are eligible to submit Incremental Energy Bids (including incremental Curtailment Bids) and/or Minimum Generation Bids (including minimum Curtailment initiation Bids). This restriction is

consistent with the instruction in Paragraph 159 of the Final Rule that the reforms the Commission adopted “do not apply to capacity-only demand response resources that do not submit incremental energy offers in energy markets.”

Section 23.7.4.2: Addresses the development of reference levels for Demand Side Resources. States that only Demand Side Resources that have a reference level in place are eligible to submit Incremental Energy Bids and Minimum Generation Bids that exceed \$1,000/MWh. The proposed Tariff revisions are discussed in Section IV.C of this filing letter.

Section 23.7.4.3: Addresses the prerequisites for Demand Side Resources to be eligible to submit Incremental Energy Bids or Minimum Generation Bids that exceed \$1,000/MWh. Includes a requirement that supporting cost information must be submitted to the NYISO by no later than 9:00 a.m. on the day before the close of the relevant Day-Ahead Market day or Real-Time Market hour. The proposed Tariff revisions are addressed in detail in Section IV.C of this filing letter.

Section 23.7.4.4: States that if the deadlines for submitting supporting cost information specified in Section 23.7.4.3 are not met, then a Demand Side Resource’s Bids shall be restricted to a maximum of \$1,000/MWh. The proposed Tariff revisions are discussed in Section IV.C of this filing letter.

Section 23.7.4.5: Restates an existing Tariff rule that DSASP Demand Side Resources are not eligible to recover costs associated with providing Energy.³⁴

Section 23.7.4.6: Identifies the costs that are eligible for inclusion in a DADRP Demand Side Resource’s daily BPCG calculation following an after-the-fact review. The proposed Tariff revisions are discussed in Section IV.B of this filing letter.

Section 23.7.5: Imposes an obligation for a Market Party to respond promptly to a NYISO request for information about an Incremental Energy Bid or Minimum Generation Bid that exceeds \$1,000/MWh or about information supporting such a Bid or supporting a proposed change to the associated reference level.

Section 23.7.6: Authorizes NYISO to impose a financial penalty if a Market Party submits inaccurate information to the ISO to support or justify an Incremental Energy Bid or a

³⁴ DSASP providers submit Bids to indicate when they are available to be converted from providing regulation or reserves to producing Energy. However, these resources are not paid to provide Energy. *See New York Independent System Operator, Inc.*, Mar. 24, 2008 compliance filing in Docket No. ER04-230-034 at 9 (“[T]he NYISO is not proposing to pay Demand Side Resources an energy settlement (the LBMP market clearing price) for any load reduction the Demand Side Resource provides in response to a NYISO instruction to either convert its ancillary services schedule to energy or to produce energy in real-time.”) accepted for filing by the Commission at 123 FERC ¶ 61,203 (2008). *See also*, Services Tariff Sections 4.6.6.10 and 18.11 (DSASP resources are not eligible to recover Incremental Energy or Minimum Generation costs).

Minimum Generation Bid that exceeds \$1,000/MWh and explains how the penalty will be calculated.³⁵

VI. Stakeholder Input

The NYISO posted its draft Tariff revisions for stakeholder review on April 19, 2017 and presented the draft Tariff provisions to its stakeholders at a Market Issues Working Group (“MIWG”) meeting that was held on April 24, 2017. The NYISO made several changes to its Tariff revisions in response to comments NYISO received from its stakeholders at MIWG. The NYISO then posted the revised Tariff provisions (on April 28th and May 1st) that addressed the stakeholder’s comments and invited stakeholders to submit additional comments in writing. The NYISO has not received any written comments from its stakeholders addressing the updated Tariff language that NYISO posted for review. However, in its final review of the proposed Tariff rules the NYISO made clarifying revisions to the version of Section 23.7.3.2 of the Services Tariff that it posted for stakeholder review. The Section 23.7.3.2 language that the NYISO submitted with this filing is not the same as the language that the NYISO posted for review by its stakeholders. The revised language that the NYISO filed is set forth below:

23.7.3.2 Submission of cost information to support Incremental Energy Bids and Minimum Generation Bids that exceed \$1,000/MWh. In order for an Incremental Energy Bid or a Minimum Generation Bid that exceeds \$1,000/MWh to be considered verified, cost information sufficient to justify the Bids must be submitted to the ISO and included by the ISO in the Generator’s cost-based reference level for the relevant Day-Ahead or Real-Time Market hour.

VII. Effective Date

The NYISO requests a waiver of the Commission’s regulations to allow the NYISO to make the Tariff revisions submitted with this filing effective more than 120 days after the date of this filing.³⁶ Implementing the Commission’s offer cap requirement requires significant changes to the software NYISO uses to: (a) calculate settlements (including BPCG payments); and (b) determine reference levels and apply the appropriate reference level to each Resource’s offer. The NYISO must also make changes to its procedures and practices to implement the new rules. It is not possible for NYISO to implement the significant changes that are required to achieve compliance with the Final Rule in 120 days. The NYISO instead requests a flexible effective date between October 1, 2018 and December 31, 2018 for its proposed Tariff revisions.

The NYISO proposes to submit a second compliance filing at least two weeks in advance of its intended effective date, specifying the date on which the Tariff revisions submitted in this compliance filing will take effect. Consistent with Commission precedent,³⁷ the NYISO’s

³⁵ See NYISO’s explanation of proposed Services Tariff Section 23.4.3.2 above.

³⁶ See 18 C.F.R. § 35.3(a)(1).

³⁷ *New York System Operator, Inc.*, 106 FERC ¶ 61,111 at PP 5, 10 (2004) (“We will allow NYISO to implement parts of the filing prior to September 2004, as such parts become ready for implementation,

submission of a second compliance filing will provide adequate notice to the Commission and to Market Participants of the NYISO's implementation date for the offer cap revisions. The NYISO will not be able to provide a more precise effective date until the software changes needed to implement the proposed Tariff revisions are ready for deployment and testing is complete.

For the reasons explained in Section IV.A above and in the NYISO Clarification Request, if the Commission requires the NYISO to develop the capability to use verified Incremental Energy Bids and Minimum Generation Bids that exceed \$2,000/MWh to determine merit order dispatch, then NYISO will require additional time to develop the software and processes that are necessary to comply with this requirement. The NYISO will either need to delay the effective date proposed in this filing letter, or NYISO will need to propose a multi-stage implementation of the requirements of the Final Rule.

No Market Participant will be prejudiced by this request because it is not possible to implement the new rules in 120 days and NYISO will work diligently to implement the new requirements in 2018. Furthermore, as explained above, the NYISO will provide at least two weeks prior notice before it implements the proposed offer cap Tariff revisions.

VIII. Service

The NYISO will send an electronic link to this filing to the official representative of each party to this proceeding, 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.

IX. Conclusion

The NYISO respectfully requests that the Commission accept the NYISO's proposed Tariff revisions without modification, grant waiver of the Commission's notice requirement,³⁸ and permit the Tariff revisions to take effect on a flexible effective date that is determined consistent with Section VII of this filing letter.

Respectfully submitted,

/s/ Alex M. Schnell

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³⁸ 18 C.F.R. § 35.3(a)(1).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 8th day of May, 2017.

/s/ *Mohsana Akter*

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