

May 23, 2018

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. ER16-120-_____, EL15-37-_____**

Dear Secretary Bose:

The New York Independent System Operator, Inc. (“NYISO”) hereby submits revisions to its Open Access Transmission Tariff (“OATT”) and its Market Administration and Control Area Services Tariff (“Services Tariff”) concerning its Generator Deactivation Process. The proposed revisions fulfill the directives of the Federal Energy Regulatory Commission (“Commission”) in its April 23, 2018, *Order on Clarification and Rehearing* in the above-captioned proceedings (“April 2018 Order”).¹ The NYISO respectfully submits that its proposed compliance tariff revisions fully comply with the directives of the April 2018 Order, are fully supported, are just and reasonable, and should be accepted without modification or condition.² The NYISO respectfully requests that the compliance tariff revisions proposed in this filing be permitted to become effective on July 23, 2018.

I. BACKGROUND

In an order issued February 19, 2015, the Commission determined that the NYISO is the appropriate entity to administer “reliability-must-run” (“RMR”) service in New York under its tariffs, with the option to enter into an RMR Agreement with a Generator if necessary (“Initial RMR Order”).³ The Initial RMR Order directed the NYISO to submit proposed tariff revisions to establish a process to govern “the retention of and compensation to generating units required

¹ *N.Y. Indep. Sys. Operator, Inc.*, Order on Clarification and Rehearing, 163 FERC ¶ 61,047 (2018) (“April 2018 Order”).

² Capitalized terms that are not defined in this filing letter have the meaning ascribed to them in Section 38.1 of the OATT or, if not defined therein, in Section 1 of the OATT or Section 2 of the Services Tariff.

³ *N.Y. Indep. Sys. Operator, Inc.*, Order Instituting Section 206 Proceeding and Directing Filing to Establish Reliability Must Run Tariff Provisions, 150 FERC ¶ 61,116 (2015) (“Initial RMR Order”).

for reliability, including procedures for designating such resources, the rates, terms and conditions for RMR service, provisions for the allocation of costs of RMR service, and a *pro forma* service agreement for RMR service.”⁴

In response to these directives, the NYISO has submitted three compliance filings to implement reliability-must-run requirements through a new Generator Deactivation Process located in Attachment FF of the OATT, along with related compensation and market monitoring requirements in the OATT and Services Tariff. The Commission has largely accepted these provisions in its First, Second and Third Compliance Orders.⁵

On December 18, 2017, Entergy Nuclear Power Marketing LLC (“Entergy”) filed a request for clarification or, in the alternative, rehearing of the Commission’s Second Compliance Order. Entergy sought clarification of the deadline by which the NYISO needed to complete its final physical withholding assessment for the Indian Point Energy Center Units 2 and 3 (“Indian Point”). The April 2018 Order granted, in part, and denied, in part, Entergy’s requested clarification. Paragraphs 16 and 17 of the April 2018 Order instructed the NYISO to submit a further Generator Deactivation Process compliance filing “to propose revisions to its OATT and/or Services Tariff to establish a timeline for completing final market power reviews (if needed) to provide greater transparency and certainty to deactivating generators and the NYISO-administered wholesale markets...”

Paragraph 17 of the April 2018 Order provided guidance on how the NYISO should develop its timeline for completing market power reviews.

17. ...In recognition of the variability in the amount of advance notice a generator may give of its planned deactivation, and the need to ensure that the data used in the market power review reasonably reflects the market conditions at the time of deactivation, NYISO should set a deadline for completing final market power reviews (if needed) working back from the proposed deactivation date rather than starting from the submission of a complete generator deactivation notice. This is because the final market power review may be less effective with data and assumptions too far removed from a generator’s actual deactivation date. If the data and assumptions do not reflect the market conditions close to the time of deactivation, NYISO will be unable to properly “assess whether the proposal or decision has a legitimate economic justification or is based on an effort to withhold Installed Capacity physically in order to affect prices.” [Footnotes omitted.]

The NYISO’s proposed Tariff revisions are fully consistent with the Commission’s guidance. There is one additional, related concern that factored heavily into the Tariff revisions

⁴ Initial RMR Order at P 11.

⁵ See Letter Order in Docket Nos. ER16-120-005 and -006 (April 24, 2018) (“Third Compliance Order”); *N.Y. Indep. Sys. Operator, Inc.*, Order on Compliance and Rehearing, 161 FERC ¶ 61,189 at P 11 (2017) (“Second Compliance Order”); *N.Y. Indep. Sys. Operator, Inc.*, Order on Compliance and Rehearing, 155 FERC ¶ 61,076 at P 14 (2016) (“First Compliance Order”).

that the NYISO developed to comply with the Commission's instructions. The NYISO's experience in administering its Generator Deactivation Process has demonstrated that its ability to issue a final physical withholding determination within a specific timeframe is heavily dependent upon the relevant Market Participant's ability and willingness to timely provide the data and other information that the NYISO requires. When Market Participants are unable (due to contractual restrictions, or lack of personnel) or unwilling to timely provide necessary data or information it is not possible for the NYISO to timely produce an accurate physical withholding determination. In some cases, the NYISO has been forced to wait for months to obtain necessary information that it requested from a Market Participant. The NYISO's proposed Tariff revisions require that it receive sufficient information from the Market Participant as a precondition to the NYISO's obligation to issue a final physical withholding determination.

In response to the April 2018 Order's directives, the NYISO proposes the OATT and Services Tariff revisions described in Parts II through IV of this filing letter.

II. TIMELINE FOR COMPLETION OF MARKET POWER REVIEW

The Tariff revisions that specify the NYISO's proposed timeline for completing a physical withholding review under Section 23.4.5.6 of its Services Tariff are primarily set forth in proposed new Section 23.4.5.6.4 of the Services Tariff. The proposed timeline applies to Generators that enter the Generator Deactivation Process by submitting a Generator Deactivation Notice.⁶

Proposed Services Tariff Section 23.4.5.6.4 makes clear that its purpose is to provide an *opportunity* for a Market Participant to receive a final physical withholding determination from the NYISO before the Market Participant deactivates its Generator. A decision by the Market Participant not to avail itself of the opportunity to receive a final physical withholding determination in advance of deactivating a Generator will not prevent the NYISO from completed such an determination and imposing a physical withholding penalty if warranted under the NYISO's Tariffs.

Proposed Section 23.4.5.6.4.1 ties the NYISO's obligation to provide a final physical withholding determination in advance of a Generator's deactivation to the Market Participant's obligation to provide all of the information that the NYISO requires (a) to perform its duties under the Generator Deactivation Process, and (b) to perform the required physical withholding audit and review in accordance with Section 23.4.5.6 of the Services Tariff. It would not be appropriate for the NYISO to assume an obligation to issue a final physical withholding

⁶ See proposed Services Tariff Section 23.4.5.6.4. Section 23.4.5.6.2 of the Services Tariff contains the Commission-accepted rules that apply to the audit and review that the NYISO performs when a Generator transitions from a Forced Outage into an ICAP Ineligible Forced Outage ("IIFO"). The NYISO does not propose to alter the rules specified in Section 23.4.5.6.2 of the Services Tariff in this filing because the Generator Deactivation Process for such Generators does not start until the Generator is *in* an IIFO, so the transition from Forced Outage to IIFO has already occurred. See the definition of Initiating Generator in Section 38.1 of the OATT and Section 38.2 of the OATT.

determination until it possesses all of the information that it needs to complete the Tariff-required physical withholding audit and review process, and to complete the Generator Deactivation Process in accordance with Attachment FF to the OATT.

Once all of the above-described prerequisites have been met, proposed Sections 23.4.5.6.4.2.1 and 23.4.5.6.4.2.2 of the Services Tariff specify the two types of events that will trigger the NYISO's issuance of a final physical withholding determination. Section 23.4.5.6.4.2.1 addresses the simpler of the two scenarios. It gives a Market Participant the ability to obtain a final physical withholding determination at least 30 days before a Generator's deactivation date. To obtain the determination on this timeline, the Market Participant must submit its request and its updated date on which a Generator will enter a Mothball Outage or be Retired to the NYISO. The information must be submitted to the NYISO at least 60 days before the specified deactivation date. The NYISO is then required to provide its final physical withholding determination to the Market Participant at least 30 days before the timely⁷ deactivation date that the Market Participant specified in its notice. The NYISO's proposal is consistent with the Commission's instruction that "NYISO should set a deadline for completing final market power reviews (if needed) working back from the proposed deactivation date rather than starting from the submission of a complete generator deactivation notice."⁸ However, in cases where the Generator is seeking to deactivate in a very short timeframe (fewer than 120 days after its Generator Deactivation Assessment Start Date), the NYISO requires a minimum 90 days from the Generator Deactivation Assessment Start Date to finish its audit and review process and issue a final physical withholding determination.⁹

In order for the Market Participant to be able to rely on the final physical withholding determination that the NYISO provides, its Generator must deactivate no more than five days before, and no more than ten days after the deactivation date that the Market Participant specified in its request to the NYISO. This requirement is consistent with the Commission's determination that "the final market power review may be less effective with data and assumptions too far removed from a generator's actual deactivation date. If the data and assumptions do not reflect the market conditions close to the time of deactivation, NYISO will be unable to properly 'assess whether the proposal or decision has a legitimate economic justification or is based on an effort to withhold Installed Capacity physically in order to affect prices.'"¹⁰

The second, more complex, scenario arises when Market Participants must make irrevocable deactivation-related decisions well in advance of the date on which a Generator

⁷ The NYISO will determine whether a generator deactivation is "timely" in accordance with Section 38.14.1 of Attachment FF to the OATT.

⁸ April 2018 Order at P 17.

⁹ See the "Exception" that is proposed in Sections 23.4.5.6.4.2.1 and 23.4.5.6.4.2.2.1.

¹⁰ April 2018 Order at P 17.

actually deactivates.¹¹ A decision not to timely procure the fuel that would be necessary to refuel a nuclear powered generator is one example of a potentially irrevocable decision that must be made well in advance of deactivation. Proposed Services Tariff Section 23.4.5.6.4.2.2 and sub-sections 23.4.5.6.4.2.2.1 through 23.4.5.6.2.2.3 were developed to enable Market Participants to receive final physical withholding determinations in advance of making irreversible decisions related to a Generator's deactivation.

Proposed Section 23.4.5.6.4.2.2 of the Service Tariff explains the process by which a Market Participant identifies one or more specific events (which may include a failure to act) that it believes will have a consequence that will make the Generator's deactivation essentially and practicably irreversible.¹² The NYISO, in consultation with the Market Monitoring Unit, will consider the events that the Market Participant identified as having irreversible consequences and inform the Market Participant, in writing, of the first (in time) act, decision not to act, or other event that the NYISO agrees will have an irreversible consequence. The NYISO's notice will identify an event (which may include a failure to act), not a date.

At least sixty days before the Market Participant determines the NYISO-specified event will occur or come to pass, it may notify the NYISO of the date on which the event with irreversible consequences will occur (the "trigger date") and request that the NYISO issue a final physical withholding determination. The Market Participant's notice must explain why the Market Participant expects that the irreversible event will occur on the trigger date it specified. If the NYISO determines that the specified trigger date is reasonable, then the NYISO shall issue a final physical withholding determination at least 30 days prior to the trigger date.¹³

If the NYISO determines that the trigger date that the Market Participant specified in its written notice to the NYISO is *not* reasonable, then the NYISO shall promptly inform the Market Participant in writing why it is rejecting the trigger date. The Market Participant then has two business days to submit additional information to support its proposed trigger date. If the NYISO is convinced by the additional information that the Market Participant provides, then it will change its decision and issue a final physical withholding determination at least 30 days prior to the trigger date.¹⁴

Under proposed Section 23.4.5.6.4.2.2.3 the NYISO's final physical withholding determination shall only be valid if (a) the event (or non-event) with irreversible consequences occurs no more than five days before, and no more than ten days after the trigger date that the

¹¹ The "irrevocable action or inaction" rules proposed in Section 23.4.5.6.4.2.2 of the Services Tariff were developed and are intended to be utilized when a Generator submits a Generator Deactivation Notice significantly in advance of the date on which it intends to deactivate. The proposed rules are expected to be of little practical consequence if a Market Participant intends to deactivate its Generator 180 days or less after its Generator Deactivation Assessment Start Date.

¹² A purely economic consequence will not satisfy this standard.

¹³ See proposed Services Tariff Section 23.4.5.6.4.2.2.1.

¹⁴ See proposed Services Tariff Section 23.4.5.6.4.2.2.2.

Market Participant specified in its notice to the NYISO, and (b) the Generator timely deactivates, consistent with the requirements of Section 38.14.1 of Attachment FF to the OATT.

Proposed Section 23.4.5.6.4.3 of the Services Tariff imposes an affirmative obligation on the Market Participant to promptly rescind a notice that it submitted to the NYISO specifying a deactivation date for its Generator, or a trigger date for an event with irreversible consequences, if the Market Participant determines that the deactivation date or trigger date it submitted is no longer accurate.

Finally, the NYISO proposes to revise re-numbered Section 38.3.7 of Attachment FF to the OATT to state that its issuance of a final physical withholding determination shall occur in accordance with Section 23.4.5.6 of Attachment H to its Market Services Tariff.

III. ENHANCED DATA SUBMISSION REQUIREMENTS

The April 2018 Order recognizes that it is necessary for the NYISO to “ensure that the data used in the market power review reasonably reflects the market conditions at the time of deactivation.” The Order further states “If the data and assumptions do not reflect the market conditions close to the time of deactivation, NYISO will be unable to properly ‘assess whether the proposed decision has a legitimate economic justification or is based on an effort to withhold Installed Capacity physically in order to affect prices.’”¹⁵

Since October of 2015 the NYISO has gained experience implementing its Generator Deactivation Process, primarily with regard to Generators that submitted Generator Deactivation Notices to initiate the process, but also including a small number of Generators that entered an ICAP Ineligible Forced Outage.¹⁶ The single most significant stumbling block the NYISO has identified to completing market power assessments within a definite time period is the inability or reluctance of some Market Participants to timely provide cost data, contracts and other information that the NYISO requires to complete a physical withholding assessment in accordance with the requirements of Section 38.4.5.6 of Attachment H to its Services Tariff. Until it has the necessary data, the NYISO cannot issue a final physical withholding determination to a deactivating Generator.

To enable the NYISO to comply with the Commission’s directive that the NYISO set a deadline for completing market power reviews, the NYISO proposes the following revisions to its OATT and Market Services Tariff:

The NYISO proposes to add to Section 38.3.1.4 of Attachment FF to the OATT authority to require submission of information that is necessary to perform physical withholding analysis

¹⁵ April 2018 Order at P 17 *quoting* NYISO Services Tariff, Attachment H § 23.4.5.6.1.

¹⁶ The complete Generator Deactivation Notices that the NYISO has received since October 20, 2015 are posted in the planning section of the NYISO’s web site under “Planned Generation Retirements.” Link:

http://www.nyiso.com/public/markets_operations/services/planning/documents/index.jsp

before NYISO determines that a Generator Deactivation Notice is “complete.” This requirement is necessary to permit the NYISO to obtain the information and data it requires to issue final physical withholding determinations for Generators that intend to deactivate shortly after their Generator Deactivation Notice is determined to be complete. For example, if a Generator submits a Generator Deactivation Notice that indicates it intends to be Retired 91 days after its Generator Deactivation Notice is determined to be complete, then under the rules proposed in this filing the Generator will be entitled to receive a final physical withholding determination on day 90. In order for NYISO to be able to issue a final market power determination in such an abbreviated timeframe, it must be able to require Market Participants that have submitted Generator Deactivation Notices to begin providing necessary information before their Generator Deactivation Notice is determined to be complete.

The NYISO proposes to replace Section 38.3.1.6 of Attachment FF to the ISO OATT with new Section 38.3.3. The proposed new language more clearly applies to all types of Initiating Generators and requires the NYISO to promptly review each response that a Market Participant provides and inform the Market Participant of any additional information that the NYISO requires. The NYISO has successfully used the ten day review process described in proposed Section 38.3.3 to review Generator Deactivation Notices under Section 38.3.1.5 of attachment FF to the OATT. The ISO proposes to continue employing the ten day review process after a Generator Deactivation Notice is determined to be complete.

The NYISO also proposes two enhancements to Section 38.7 of Attachment FF to its OATT, which address the NYISO’s verification of Market Participant-provided cost information:

First, proposed new Section 38.7.3 of Attachment FF to the OATT clearly and unambiguously gives the NYISO authority to require Market Participants to provide information that the NYISO determines it requires to assess the possible market power impacts of a Generator deactivation. Adding this clear Tariff requirement should reduce the difficulty that the NYISO has encountered in obtaining the information it requires to perform physical withholding analyses under Section 23.4.5.6 of the Services Tariff and information that it requires to comply with the RMR Generator and Interim Service Provider Energy and Ancillary Service Market Participation Rules that are set forth in Section 23.6 of the Services Tariff.

Second, proposed Section 38.7.4 of Attachment FF to the OATT adds a new written notification that the NYISO will provide to the Market Participant when the NYISO has received all of the information it requires to perform its duties in administering the Generator Deactivation Process and to perform its market monitoring responsibilities. The NYISO’s issuance of this notice enables the Market Participant to request a final physical withholding determination under Section 23.4.5.6.4.1 of the Market Services Tariff.

Proposed Sections 38.7.4.1 and 38.7.4.2 of Attachment FF to the OATT state that even after the NYISO issues notice that it has all of the information it requires under Section 38.7.4 to perform its duties, the Market Participant remains obligated (a) to update the information it

submitted if a material change in facts or circumstances occurs, and (b) to respond to the NYISO's information requests.

IV. MARKET MONITORING UNIT DUTIES

The NYISO proposes to add a new requirement to consult with the Market Monitoring Unit to Section 23.4.5.6.4.2.2 of its Services Tariff. That obligation is described in Part II of this filing letter. Because all Market Monitoring Unit duties are required to be set forth in the NYISO's Market Monitoring Plan (Section 30 of its Services Tariff), the NYISO proposes the corresponding addition of a new Section 30.4.6.2.12 to its Services Tariff. The addition of Section 30.4.6.2.12 requires the re-numbering of many other sections of the Services Tariff.

V. EFFECTIVE DATE

The NYISO respectfully requests that the Commission accept the tariff revisions proposed in this compliance filing with a July 23, 2018 effective date.

VI. COMMUNICATIONS

Communications and correspondence regarding this filing should be directed to:

Robert E. Fernandez, General Counsel
Raymond Stalter, Director of Regulatory Affairs
*Karen G. Gach, Deputy General Counsel
*Alex M. Schnell, Assistant General Counsel,
Registered Corporate Counsel
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-6000
Fax: (518) 356-4702
rfernandez@nyiso.com
rstalter@nyiso.com
kgach@nyiso.com
aschnell@nyiso.com

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

*Persons designated to receive service

VII. DOCUMENTS SUBMITTED

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

1. A clean version of the proposed revisions to the NYISO OATT ("Attachment I");
2. A blacklined version of the proposed revisions to the NYISO OATT ("Attachment II");

3. A clean version of the proposed revisions to the NYISO Services Tariff (“Attachment III”); and
4. A blacklined version of the proposed revisions to the NYISO Services Tariff (“Attachment IV”).

VIII. SERVICE

The NYISO will send an electronic copy of 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 the New Jersey Board of Public Utilities. In addition, the complete public version of this filing will be posted on the NYISO’s website at www.nyiso.com.

IX. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. requests that the Commission accept this compliance filing without requiring any modifications and determine that the NYISO has fully complied with the directives in the April 2018 Order.

Respectfully submitted,

/s/ Alex M. Schnell

Alex M. Schnell, Assistant General Counsel/
Registered Corporate Counsel
New York Independent System Operator, Inc.

cc: Anna Cochrane
James Danly
Jette Gebhart
Kurt Longo
David Morenoff
Daniel Nowak
Larry Parkinson
J. Arnold Quinn
Douglas Roe
Kathleen Schnorf
Gary Will

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 23rd day of May 2018.

/s/ Joy A. Zimmerlin

Joy A. Zimmerlin
New York Independent System Operator, Inc.
10 Krey Blvd.
Rensselaer, NY 12144
(518) 356-6207