

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New York Independent System Operator, Inc.) Docket No. ER20- -000

**REQUEST FOR TARIFF WAIVER, SHORTENED COMMENT PERIOD,
AND EXPEDITED COMMISSION ACTION
OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rule 207(a)(5) of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure, 18 C.F.R. § 385.207(a)(5), the New York Independent System Operator, Inc. (“NYISO”), hereby respectfully requests a waiver of the timing requirement in Section 6.1.2.5 of its Open Access Transmission Tariff (“OATT”) that revenue from non-physical market activity be used to recover a Rate Schedule 1 shortfall up to an amount equal to the lower of NYISO’s actual or budgeted costs for the “immediately preceding calendar year.” The waiver would allow the NYISO to use such revenue to recover the expected 2020 Rate Schedule 1 shortfall beginning in the current year. Granting this waiver is necessary so that the NYISO can immediately begin retaining revenues from non-physical activity to offset an expected significant 2020 Rate Schedule 1 shortfall resulting from the impacts of the COVID-19 emergency, rather than waiting until 2021 to begin offsetting this Rate Schedule 1 shortfall as Section 6.1.2.5 would provide. This waiver will mitigate the impact of the COVID-19 emergency on the NYISO’s finances and help to ensure that the NYISO has sufficient funding to support the NYISO’s key initiatives and necessary business operations. The NYISO requests this waiver to be in effect from the date of the Commission’s approval of this waiver request through the conclusion of the NYISO’s current fiscal year on December 31, 2020.

Consistent with the Commission’s April 2, 2020 Policy Statement in Docket No. PL20-5-000 (“Policy Statement”), the NYISO asks that the Commission act as expeditiously as possible on this request. The NYISO will not begin retaining the non-physical revenues until the Commission issues an order approving the waiver, so an expedited decision will maximize the amount of the expected 2020 Rate Schedule 1 shortfall that can be mitigated by retaining non-physical revenues.

I. BACKGROUND

A. Rate Schedule 1 Recovery Mechanism

The NYISO’s Rate Schedule 1, *i.e.*, Section 6.1 of the OATT, sets forth the mechanism through which the NYISO recovers its annual budgeted costs. Each year the NYISO estimates its costs that are recoverable under Section 6.1.2 of the OATT to set the budget for the upcoming year. These estimated costs are evaluated by stakeholders in the NYISO’s shared governance process, and the budget is ultimately approved by the NYISO’s Board of Directors. The Rate Schedule 1 charge is calculated by allocating that budget on an estimated per-MW hour basis across anticipated withdrawals from Transmission Customers that participate in physical market activity.¹ Whether there is a budget underrun or overrun each year will depend on the NYISO’s actual spending and the actual Rate Schedule 1 recoveries based on actual MW hour of physical activity.

Transmission Customers participating in non-physical market activity—which includes those engaging in Virtual Transactions, purchasing Transmission Congestion Contracts, and participating in the Special Case Resources program—are also charged for their activity based on

¹ OATT Section 6.1.2.2.

calculated rates.² The revenues from non-physical activity are refunded to the participants in the physical market in each Billing Period to offset some of their costs under Rate Schedule 1.

In the event that actual Rate Schedule 1 recoveries are lower than both the NYISO's annual budgeted costs and actual costs for that year, Section 6.1.2.5 provides a mechanism to bring the NYISO's Rate Schedule 1 recoveries back into balance. Specifically, in the subsequent year, the NYISO retains revenue collected pursuant to Section 6.1.2.4, which as referenced above sets forth the charges for non-physical market activity, until it has recovered the lower of its annual budgeted costs or actual costs for the prior year. After that point, the NYISO "shall distribute each Billing Period for the remainder of the calendar year any additional revenue collected pursuant to Section 6.1.2.4 of [Rate Schedule 1] to each Transmission Customer that participates in physical market activity" according to the calculation in Section 6.1.2.4. Because the NYISO did not experience a Rate Schedule 1 shortfall in 2019, the NYISO does not need to retain revenues from non-physical activity in 2020 to cover costs from 2019 and is distributing them to Transmission Customers under Section 6.1.2.5.

B. Impact of COVID-19 Emergency on the 2020 Budget and Rate Schedule 1 Recoveries

While the mechanism in Section 6.1.2.5 can help to close any gap between Rate Schedule 1 recoveries and the lower of actual or budgeted costs, it will not begin doing so until the year following the shortfall because of the retrospective nature of Section 6.1.2.5. Under normal economic circumstances, the fact that Section 6.1.2.5 would not begin to cover a shortfall until the following year would not generally pose a significant problem for the NYISO's finances. This is because historical Rate Schedule 1 shortfalls have been at a level that could be managed during the course of the year, after which Section 6.1.2.5 would operate to compensate

² OATT Section 6.1.2.4.

for the shortfall. However, the NYISO projects that the COVID-19 emergency will significantly reduce Rate Schedule 1 recoveries below forecasted levels, while also increasing the NYISO's actual costs, resulting in an unusually large budget deficit for 2020.

The COVID-19 emergency has significantly decreased energy demand in New York State. For the month of March, energy use in the New York Control Area was down approximately one million MW hours below the NYISO's estimate (11.7 million actual MW hours versus 12.6 budgeted MW hours), which resulted in a reduction in Rate Schedule 1 revenues of \$1 million in that month alone. The NYISO anticipates lower demand levels for the remainder of the year³ and currently projects a Rate Schedule 1 revenue recovery shortfall of over \$10 million as compared with the revenues anticipated in the NYISO's 2020 budget.

Moreover, the NYISO's current estimate of the increased costs that are resulting from the emergency is approximately \$7 million. The leading drivers for increase are the unanticipated costs of sequestering NYISO system operators and support staff to ensure reliability of the bulk electric system. The result of these additional expenses and lower Rate Schedule 1 revenues is an estimated total 2020 budget shortfall of approximately \$17 million currently.⁴

Since recognizing the magnitude of the impact of the COVID-19 emergency on the NYISO's finances, the NYISO has been evaluating approaches for reducing the expected budget impacts. For example, rather than using funds remaining from the 2019 budget cycle to pay down outstanding debt as planned, the NYISO, with stakeholder support, is applying these funds to the expected 2020 budget shortfall. Also, the NYISO has comprehensively reviewed its 2020

³ The NYISO presented its estimated impacts on demand and Rate Schedule 1 forecasts to the Budget and Priorities Working group on April 30, 2020, and will be updating its analysis regularly. <https://www.nyiso.com/documents/20142/12270400/05%20COVID19%20DemandBudgetImpactEstimates.pdf/b6f35b6a-04b8-cecc-b64a-fd7190874997>

⁴ The NYISO's approved 2020 budget was \$168.0 million.

budget and is acting to reduce or eliminate costs while ensuring such reductions do not negatively impact the NYISO's ability to reliably operate the bulk electric system and meet its important project commitments. These measures have significantly reduced the expected shortfall, but even with these measures, the NYISO expects that a significant 2020 shortfall will remain. Given the uncertainty surrounding the course of the COVID-19 emergency and resulting economic fallout, the NYISO is concerned that this expected shortfall could grow over the course of the year.

The NYISO also evaluated other potential alternatives for reducing the remaining 2020 budget shortfall. First, the NYISO will continue identifying cost savings, but further cost reductions sufficient to eliminate the remaining shortfall could require significant reductions in or elimination of spending on key project initiatives that are of importance to stakeholders. Second, the NYISO considered drawing on its Working Capital Fund to offset the shortfall, but the OATT requires that the Working Capital Fund be used to “offset temporary imbalances in ISO cash flow.”⁵ Given the nature of the COVID-19 emergency, the NYISO does not expect that the reduction in Rate Schedule 1 revenues to be temporary or to be offset by increased Rate Schedule 1 recoveries in the near future. Finally, the NYISO evaluated increasing the Rate Schedule 1 charge in the current calendar year. While the 2020 budget shortfall may ultimately be so significant that such an increase is unavoidable, the NYISO believes that retaining non-physical revenues is a more modest approach that may allow the NYISO to mitigate the shortfall without the impact on Transmission Customers of a mid-year Rate Schedule 1 increase. The NYISO presented the proposal to retain non-physical revenues to offset the expected 2020 shortfall and discussed these alternatives with stakeholders at the Budget and Priorities Working

⁵ OATT Section 28.1.

Group meeting on April 30, 2020.⁶ Certain stakeholders voiced support for the proposed waiver, and no stakeholder objected.

While without this waiver Section 6.1.2.5 would eventually operate to mitigate the expected 2020 budget shortfall, those benefits would not be realized until 2021. The estimated amount of 2020 non-physical revenues that the NYISO expects to retain if this waiver is granted is approximately \$2.0 – \$4.0 million from June 1 through the end of 2020, which would aid in mitigating a portion of the expected budget shortfall.

The extraordinary circumstances of the COVID-19 emergency have resulted in a significant projected shortfall that must be addressed this year to avoid adverse impacts on funding for key NYISO initiatives and to assist in maintaining cash flow liquidity. The NYISO therefore requests that the Commission grant the requested waiver to allow the NYISO to retain non-physical revenues to offset any 2020 budget shortfall beginning this year rather than waiting until next year, and therefore mitigate the impact of the COVID-19 emergency on the NYISO's finances.

II. WAIVER REQUEST

The NYISO requests a one-time, temporary waiver of the requirement in Section 6.1.2.5 that revenue from non-physical market activity be used to recover a Rate Schedule 1 shortfall up to an amount equal to the lesser of actual or budgeted costs for the “immediately preceding calendar year” and allow the NYISO to begin using such revenue to recover the expected shortfall in Rate Schedule 1 recoveries for the 2020 calendar year in 2020 rather than waiting until 2021. The NYISO requests this waiver to be in effect from the date of the Commission's

⁶ The referenced presentation can be found at:
<https://www.nyiso.com/documents/20142/12270400/06%20Proposal%20to%20Recover%202020%20RS1%20Shortfall.pdf/f496cb06-cc99-5260-58ec-385468da40d6>

approval of this waiver request until December 31, 2020.⁷ After December 31, 2020, when the waiver expires, the normal operation of Section 6.1.2.5 would resume: if a shortfall in budgeted or actual costs remains for 2020, the NYISO would use non-physical revenues to recover that shortfall, after which point the NYISO would distribute the revenues to Transmission Customers participating in physical market activity under the calculation in Section 6.1.2.5.

The Commission traditionally grants a “waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.”⁸ The NYISO respectfully submits that the circumstances here are fully consistent with these criteria.

The NYISO has acted in good faith in evaluating the expected impacts of the COVID-19 emergency on the NYISO’s costs and Rate Schedule 1 recoveries. The NYISO applied funds remaining from the 2019 budget cycle to the expected shortfall, comprehensively reviewed its 2020 budget and is acting to reduce or eliminate costs where possible. It also evaluated alternatives for eliminating the remaining expected budget shortfall. The proposed waiver request seeks to mitigate the impacts of the COVID-19 emergency on NYISO finances while minimizing the impact on Transmission Customers and important NYISO projects. The NYISO has brought this matter to the Commission’s attention as rapidly as practicable.

The requested waiver is of limited scope because the NYISO is requesting that Section 6.1.2.5 operate as it normally does, but that the provision operate earlier than provided

⁷ In the unlikely event that the NYISO projects, before expiration of the waiver on December 31, 2020, that the 2020 budget shortfall will be eliminated, the NYISO would stop retaining non-physical revenues and resume distributing them under the terms of Section 6.1.2.5.

⁸ See, e.g., *New York Independent System Operator, Inc.*, 171 FERC ¶ 61,042 (2020); *Citizens Sycamore-Pensaquitos Transmission LLC*, 169 FERC ¶ 61,263 at P 14 (2019).

for in the OATT to mitigate the expected significant 2020 Rate Schedule 1 shortfall this year. The amount of 2020 non-physical revenues that the NYISO would retain under the requested waiver is estimated to be \$2.0 - \$4.0 million. The NYISO also seeks the waiver for a limited duration—through the end of 2020, which aligns with the conclusion of the NYISO’s current fiscal year—after which point Section 6.1.2.5 would provide that non-physical revenues would either be used to recover any remaining 2020 Rate Schedule 1 shortfall or be distributed to Transmission Customers if the costs have already been recovered through Rate Schedule 1.

The waiver addresses the concrete problem that the COVID-19 emergency has resulted in significantly lower projected Rate Schedule 1 recoveries and higher costs than the NYISO and its stakeholders expected, or could have reasonably anticipated. The proposed waiver will allow the NYISO to apply non-physical revenues to reduce the gap between the NYISO’s budgeted Rate Schedule 1 recoveries and budgeted costs in 2020, helping to ensure that the NYISO has necessary funding to continue to perform core functions and to pursue important initiatives.

Finally, the waiver will not have undesirable consequences and will not harm third parties. To the contrary, the waiver could help to avoid or mitigate undesirable consequences, such as the NYISO reducing funding for important initiatives.

III. REQUEST FOR EXPEDITED COMMISSION ACTION AND FOR PROCEDURAL WAIVERS

The NYISO respectfully requests the Commission act expeditiously and grant the requested waiver by May 18, 2020, consistent with the Policy Statement’s determination that the Commission will give its “highest priority to processing filings made for the purpose of

assuring the business continuity of regulated entities' energy infrastructure during this time.”⁹

The NYISO also requests the Commission either waive or shorten to the maximum extent possible any notice and comment periods that would otherwise apply to this request, to the extent necessary for the Commission to issue an order by the requested date and make the temporary waiver effective as of the dates specified above. The NYISO does not intend to begin retaining the revenue until the Commission issues an order approving the waiver, so an expedited decision will maximize the amount of the expected 2020 Rate Schedule 1 shortfall that can be mitigated by retaining non-physical revenues.

IV. COMMUNICATIONS

Communications regarding this proceeding should be sent to:

Robert E. Fernandez, Executive Vice President &
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⁹ *Business Continuity of Energy Infrastructure*, Docket No. PL20-5-000, *Statement of Policy* (April 2, 2020).

V. CONCLUSION

WHEREFORE, for the reasons specified above, the New York Independent System Operator, Inc., respectfully requests the Commission grant this request for an expedited waiver of the timing requirement in Section 6.1.2.5 of the OATT as of the date of the Commission's approval of this request and continuing until December 31, 2020, so that the NYISO may begin retaining non-physical revenues to offset the expected 2020 budget shortfall in 2020 rather than 2021.

Respectfully submitted,

/s/ Amie Jamieson

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Dated May 4, 2020

cc: Anna Cochrane
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Jette Gebhart
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