

December 22, 2021

Submitted Electronically

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

Re: *New York Independent System Operator, Inc.*, Proposed Tariff Amendments to Modify the Mitigation Measures that Apply to Uneconomic Production and Uneconomic Withdrawal; Docket No. ER22-____-000.

Dear Ms. Bose:

The New York Independent System Operator, Inc. (“NYISO”) submits this filing pursuant to Section 205 of the Federal Power Act,¹ and Part 35 of the regulations of the Federal Energy Regulatory Commission (“Commission”), proposing amendments to the Market Power Mitigation Measures that are set forth in Section 23 of its Market Administration and Control Area Services Tariff (“Services Tariff”).² The proposed amendments will enhance the Market Power Mitigation Measures that apply to behavior classified as uneconomic production or uneconomic withdrawal.

The NYISO Management Committee approved the proposed revisions submitted with this filing on September 29, 2021.

I. List of Documents Submitted

The NYISO submits the following documents with this filing letter:

1. A clean version of the proposed revisions to the NYISO’s Services Tariff (“Attachment I”); and
2. A blackline version of the proposed revisions to the NYISO’s Services Tariff (“Attachment II”).

¹ 16 U.S.C. §824d.

² Capitalized terms not otherwise defined herein shall have the meaning specified in the Services Tariff.

II. Correspondence

All communications and correspondence concerning this filing should be directed to:

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III. Background and Justification

The Services Tariff requires the NYISO to monitor for and mitigate uneconomic production and uneconomic withdrawal. Uneconomic production is increasing the output of an Electric Facility to levels that would otherwise be uneconomic in order to cause, and obtain benefits from, a transmission constraint.³ Uneconomic withdrawal is Energy withdrawn at a price that is uneconomic for the Withdrawal-Eligible Generator and that causes or contributes to transmission congestion. Thresholds for identifying uneconomic production and uneconomic withdrawal are set forth in Section 23.3.1.3 of the Services Tariff. The NYISO uses reference levels to screen for conduct that may warrant mitigation, including to determine when injecting or withdrawing may be uneconomic. Dollar-denominated reference levels, such as start-up, minimum generation, and incremental energy reference levels, are generally intended to reflect a Generator's marginal cost of providing a service.⁴ There are also conduct thresholds that apply when a Market Party's Generator does not follow the NYISO's dispatch instructions.⁵ The NYISO imposes mitigation if conduct is detected that meets the criteria specified in Services Tariff Section 23.3.1.3 and causes a market impact that exceeds the thresholds specified in Services Tariff Section 23.3.2.1.

Based on a recommendation from Potomac Economics (NYISO's Market Monitoring Unit),⁶ the NYISO worked with stakeholders to develop this proposal to modify the mitigation measures applicable to uneconomic production and uneconomic withdrawal. The proposal

³ See Services Tariff Section 23.2.4.1.3.

⁴ See e.g., Services Tariff Sections 23.3.1.4.1.1(iii), 23.3.1.4.1.2(iv), 23.3.1.4.1.3, 23.4.2.1.

⁵ See e.g., Services Tariff Sections 23.3.1.3.1.2 and 23.3.1.3.2.2.

⁶ Potomac Economics recommended enhancing mitigation measures related to uneconomic production in its 2017 State of the Market report.

focuses on three primary areas. First, the proposal addresses the argument that some Market Parties have made that the NYISO is required to demonstrate intent to cause and obtain benefits from a transmission constraint prior to imposing mitigation for behavior that otherwise satisfies the conduct and impact thresholds. Second, the proposal modifies the applicable conduct and impact tests that trigger mitigation measures to better address the New York State Power System's evolution to more significant quantities of Intermittent Power Resources and the potentially low Energy reference levels and Energy prices that are expected as a result of the operating characteristics of these resources. Finally, the proposal amends the applicable mitigation measures to more thoroughly address guarantee payments to Market Parties and Affiliates that result from uneconomic production or uneconomic withdrawal.

The first prong of NYISO's proposal is to remove the suggestion that the Market Party engaged in the uneconomic production or uneconomic withdrawal *in order to cause and obtain benefits from* a transmission constraint.⁷ This subjective standard makes it unduly burdensome for the NYISO to impose mitigation for uneconomic production and uneconomic withdrawal behavior that exceeds the relevant conduct and impact thresholds. The subjective language in Section 23.2.4.1.3 of the Services Tariff is inconsistent with the tariff-prescribed mitigation measures for Energy market physical withholding and economic withholding, which require an objective demonstration that the Market Party's conduct violated the relevant conduct threshold (\$ or MW) and caused a market impact (a change to Locational Based Marginal Price ("LBMP") revenues or guarantee payments), in order to impose mitigation.⁸ The NYISO proposes to delete the language suggesting that a Market Party acted in order to cause and obtain benefits from a transmission constraint. Instead, the NYISO proposes to define uneconomic production and uneconomic withdrawal as operating in a manner that "would not be in the economic interest of the Market Party or its Affiliates in the absence of market power." This more objective approach will align the uneconomic production and uneconomic withdrawal mitigation measure with the parallel measures for physical withholding and economic withholding.⁹

The second prong of the NYISO's proposal is to revise the conduct and impact thresholds applicable to uneconomic production and uneconomic withdrawal. The current mitigation measure does not effectively address situations when reference levels or Energy prices are low or negative, or when the Generator behavior leads to a decrease in the Energy price; a situation which is anticipated to occur more frequently as the New York fleet transitions to meet the policy requirements of New York State.¹⁰ Low reference levels and/or Energy prices result in extremely tight conduct thresholds that can be triggered by minimal changes in locational price or guarantee payment that may not be related to the exercise of market power, which reduces the

⁷ See Services Tariff Section 23.2.4.1.3.

⁸ See Services Tariff Sections 23.3.1.1 and 23.3.1.2.

⁹ See e.g., Services Tariff Sections 23.2.3.2 and 23.2.4.1.1 ("In general, the ISO shall consider a Market Party's or its Affiliates' conduct to be inconsistent with competitive conduct if the conduct would not be in the economic interest of the Market Party or its Affiliates in the absence of market power.")

¹⁰ The New York State Climate Leadership and Community Protection Act ("CLCPA") mandates that 70% of Load be served by energy generated from renewable resources by 2030 and that 100% of the energy serving Load be zero emission by 2040. See Chapter 106 of the Laws of the State of New York of 2019.

overall effectiveness of the mitigation measures. These conditions may become increasingly prevalent as more Intermittent Power Resources and Energy Storage Resources connect to the electric system and drive LBMPs to low or negative levels during many hours of the day. Therefore, the NYISO proposes conduct and impact thresholds that will function properly when reference levels and/or Energy prices are low or negative, and when the market impact of the Market Party's behavior is an increase or decrease in LBMP. The proposed conduct test enhancement will better address low and negative reference levels by evaluating behavior when Energy is scheduled at an LBMP that is less than the applicable reference level minus the greater of \$25 per MWh or 80% of the applicable reference level. Introducing the proposed \$25 minimum threshold avoids thresholds that are triggered by minimal changes, which are unlikely to relate to the exercise of market power. Also, by describing the conduct threshold calculation as "the applicable reference level minus the greater of . . .," the proposed Services Tariff language avoids potential confusion stemming from interpretation of when a negative number is less than another negative number (*i.e.*, either more negative or closer to zero). The proposed impact test revisions also address the potential for negative Energy prices by relying on the absolute value of the change in Energy price or the Congestion Component of the Energy price that results from the conduct failing behavior. These enhancements are important to address uneconomic production that artificially drives LBMPs lower and may necessitate backing down other generation.

The third and final prong of the NYISO's proposed tariff revisions refines the financial penalty to be applied when a Generator violates the conduct and impact thresholds for uneconomic production and uneconomic withdrawal. The proposed revisions clarify that Market Parties will be subject to a financial sanction when they engage in uneconomic production or uneconomic withdrawal that violates the specified conduct and impact thresholds. The proposed financial sanction calculation is defined in the Services Tariff revisions to be one and a half times the product of the absolute value of the Congestion Component of LBMP and the MW meeting the standards for mitigation or one and a half times the increase in Bid Production Cost guarantee payments or Day-Ahead Margin Assurance Payments. The proposed penalty calculation enhances the more generic penalty calculation in Services Tariff Section 23.4.3.3 to address the uneconomic production or uneconomic withdrawal by specifically targeting the system impact resulting from the uneconomic conduct or the increase in guarantee payments actually received by the Generator. The Congestion Component of LBMP will increase in magnitude in response to the uneconomic conduct as opposed to the actual LBMP, which could increase or decrease in response to the behavior. This penalty calculation aligns with the unjust benefit a Market Party will receive from engaging in uneconomic production or uneconomic withdrawal and is consistent with the financial sanctions imposed for other mitigation measures, *e.g.*, physical withholding.

IV. Description of Proposed Revisions to the Services Tariff

A. Services Tariff Section 23.2.4.1.3

The proposed Services Tariff revisions remove the requirement that the Electric Facility increase its output to levels that would otherwise be uneconomic in order to cause, and obtain benefits from, a transmission constraint. Instead, the Services Tariff will define uneconomic production as increasing output to levels that would not be in the economic interest of the Market Party or its Affiliates in the absence of market power. The revisions also propose defining uneconomic withdrawal as withdrawing Energy that would not be in the economic interest of the Market Party or its Affiliates in the absence of market power.

B. Services Tariff Section 23.3.1.3

The NYISO proposes to revise the conduct thresholds set forth in Section 23.3.1.3.1.1 for uneconomic production and uneconomic withdrawal. The proposed conduct threshold triggers when Energy is scheduled at an LBMP that is lower than the applicable reference level by the greater of \$25/MWh or 80% of the applicable reference level. The NYISO will not evaluate resources for uneconomic production when they operate during intervals with an LBMP that is greater than \$25/MWh because uneconomic production is unlikely when LBMPs exceed \$25/MWh. The proposed \$25/MWh threshold is the reciprocal of the Services Tariff provision that permits NYISO to not evaluate economic withholding conduct when an Energy offer is below \$25/MWh.¹¹

The NYISO also proposes to remove a reference to “causing or contributing to transmission congestion” from Services Tariff Section 23.3.1.3.2.1. The proposed deletion will make the language in Section 23.3.1.3.2.1 consistent with the proposed revisions to Services Tariff Section 23.2.4.1.3.

C. Services Tariff Section 23.3.2.1

The NYISO proposes two new Services Tariff provisions (23.3.2.1.1.1 and 23.3.2.1.2.1) detailing the market impact thresholds that will apply to potential uneconomic production and uneconomic withdrawal.

First, under this proposal, the NYISO would consider uneconomic production or uneconomic withdrawal conduct to have market impact if the uneconomic production or uneconomic withdrawal conduct described in Services Tariff Sections 23.3.1.3.1.1 or 23.3.1.3.2.1 changes the hourly Day-Ahead LBMP, the real-time LBMP, the Day-Ahead congestion component of LBMP, or the real-time congestion component of LBMP, by at least 200 percent or \$100/MWh, whichever is lower. When reviewing uneconomic production and

¹¹ See Services Tariff Section 23.3.1.2.1.1. Incremental Energy or Minimum Generation Bids below \$25 per MWh shall be deemed not to constitute economic withholding when evaluating Bids to produce Energy.

uneconomic withdrawal, the NYISO does not propose to allow a change of less than \$25/MWh to have a market impact. Change is defined as the absolute value of the difference between (a) the prices or congestion components that resulted from the Market Party's uneconomic production or uneconomic withdrawal behavior, and (b) the prices or congestion components that would have occurred if the Market Party had operated in a competitive manner, consistent with its reference levels.

Second, the NYISO proposes considering uneconomic production or uneconomic withdrawal conduct to have market impact if the conduct described in Services Tariff Sections 23.3.1.3.1.1 or 23.3.1.3.2.1 increases Bid Production Cost guarantee ("BPCG") payments or Day-Ahead Margin Assurance Payments ("DAMAP") to a Market Party or an Affiliate by 200%, or by 50% for Generators in a Constrained area.

D. Services Tariff Section 23.4

The NYISO proposes a series of revisions to Services Tariff Section 23.4 to clarify that a Market Party that engages in uneconomic production or withdrawal will be subject to a financial sanction. When a Market Party and/or its Affiliates have engaged in uneconomic production or uneconomic withdrawal, the NYISO proposes to apply a financial sanction equal to:

- One and a half times the absolute value of the congestion component of the LBMP times the MW meeting the standards for uneconomic production or uneconomic withdrawal for the conduct-failing Market Party; or
- One and a half times the increase in guarantee payment(s), BPCG or DAMAP, to the conduct-failing Generator and all affiliated Generators.

This penalty calculation aligns with the unjust benefit a Market Party is expected to receive from engaging in the behavior. The proposed penalty calculation addresses the uneconomic production or uneconomic withdrawal by specifically targeting the system impact resulting from the uneconomic conduct, *i.e.*, the Congestion Component of LBMP, or the increase in guarantee payments actually received by the Generator.

V. Effective Date

The NYISO respectfully requests that the proposed Services Tariff revisions become effective on February 21, 2022 (*i.e.*, the day after the end of the statutory 60-day notice period).

VI. Stakeholder Discussion and Approval

The NYISO's Management Committee approved, with one vote in opposition, the proposed Services Tariff Revisions on September 29, 2021. The NYISO Board of Directors approved the proposed tariff revisions on November 16, 2021.

During discussions with stakeholders on the changes proposed in this filing, the NYISO and stakeholders reviewed a number of existing Services Tariff provisions that will interact with the mitigation for uneconomic production or uneconomic withdrawal, as proposed in this filing. The NYISO committed to reflect the following stakeholder areas of concern in its filing letter.

Generator reference levels are developed to reflect the Bids a Market Party would submit for its Generator if it faced workable competition.¹² The NYISO compares Bids to reference levels to evaluate conduct in the Day-Ahead and Real-Time Markets.¹³ Following discussions with stakeholders on this proposal, the NYISO understands that Market Parties with Intermittent Power Resources ("IPR") and Energy Storage Resources ("ESR") are concerned that Bid-based reference levels¹⁴ and LBMP-based reference levels¹⁵ may not accurately reflect a Resource's marginal costs. Current and accurate reference levels allow the NYISO's market mitigation measures to work efficiently and protect Market Parties from reviewing and consulting with the NYISO regarding potential mitigation that, in the end, is not appropriate or necessary. Market Parties that are responsible for IPRs and ESRs may consult with the NYISO to develop reference levels that are a more appropriate reflection of an IPR's or ESR's marginal operating costs.¹⁶

When the NYISO determines that mitigation may be warranted for uneconomic production or uneconomic withdrawal, consistent with the thresholds proposed in this filing, the existing Services Tariff provides an opportunity for consultation before mitigation is imposed.¹⁷ When the NYISO determines mitigation may be warranted, NYISO staff contacts the Market Party responsible for the identified conduct to request an explanation.¹⁸ Through the consultation process, the NYISO will consider demonstrations from the Market Party that the questioned conduct was consistent with competitive behavior. Consultations provide an opportunity for Market Parties to demonstrate, for example, that their behavior was justified due to the anticipated opportunity cost of an ESR providing Energy now instead of later, when LBMPs are expected to be higher, or that the Generator was performing required testing. If the Market Party's explanation of the reasons for its bidding indicates to the satisfaction of the NYISO, after review and comment by the Market Monitoring Unit, that the questioned conduct

¹² See Services Tariff Section 23.4.2.

¹³ *New York System Operator, Inc.*, 132 FERC ¶ 61,270 (2010); *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER10-2062-001 (Dec. 21, 2010); *New York Independent System Operator, Inc.*, Letter Order, Docket Nos. ER14-1735-000 and ER14-1735-001 (June 27, 2014).

¹⁴ See Services Tariff Section 23.3.1.4.1.1.

¹⁵ See Services Tariff Section 23.3.1.4.1.2.

¹⁶ See Services Tariff Section 23.3.1.4.1.3.

¹⁷ See Services Tariff Section 23.3.3.1.

¹⁸ See Services Tariff Section 23.3.3.1.1.

was consistent with competitive behavior, no further action will be taken.¹⁹ By maintaining up-to-date reference levels and, when necessary, employing the mitigation consultation process, Market Parties can demonstrate to the NYISO that their actions were consistent with competitive behavior and do not warrant mitigation.

VII. Service List

A complete copy of this filing will be posted on the NYISO's website at www.nyiso.com. The NYISO will send an electronic link to this filing to the official representative of each of its customers and to each participant on its stakeholder committees. In addition, the NYISO will send an electronic copy of this filing to the New York State Public Service Commission and to the New Jersey Board of Public Utilities.

VIII. Conclusion

The NYISO respectfully requests that the Commission accept the proposed Services Tariff revisions without modification.

Respectfully submitted,

/s/ James H. Sweeney

James H. Sweeney, Senior Attorney
New York Independent System Operator, Inc.

cc:	Janel Burdick	Matthew Christiansen
	Jignasa Gadani	Jette Gebhart
	Leanne Khammal	Kurt Longo
	Robert Fares	David Morenoff
	Douglas Roe	Frank Swigonski
	Eric Vandenberg	Gary Will

¹⁹ See Services Tariff Section 23.3.3.1.3.