

March 6, 2012

By Electronic Filing

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: *New York Independent System Operator, Inc.*, Docket No. ER12-____ - ____
Proposed Tariff Clarifications Regarding Day-Ahead Margin Assurance
Payments to Gas Turbines and Request for Waivers**

Dear Ms. Bose:

The NYISO submits this filing to propose revisions to its Market Administration and Control Area Services Tariff (“Services Tariff”), pursuant to Section 205 of the Federal Power Act,¹ to align the Services Tariff with the NYISO’s settlement code and market design. The NYISO discovered it was making certain supplemental payments to Gas Turbines (“GT”) in a manner that did not strictly comply with the provisions of Attachment J of its Services Tariff. The payment, although inconsistent with NYISO’s Services Tariff, is consistent with NYISO’s intended market design. In this filing, the NYISO explains the market rationale behind providing this payment and why it is equitable and appropriate to conform the Services Tariff to this practice. Specifically, the NYISO seeks to clarify the eligibility provisions for Day-Ahead Margin Assurance Payments (“DAMAP”) in order to continue making these payments to eligible Suppliers.

This filing also requests a waiver, to the extent necessary, from the application of Attachment J of its Services Tariff to open customer invoices.² As of the date of this filing, the

¹ 16 U.S.C. §824d (2000).

² For the purposes of this filing, “open service months” are those months in which the invoices are not yet finalized and thus subject to further correction and revision. Under Section 7.4 of the Services Tariff, settlement information is subject to review, comment, challenge, correction or adjustment at any time for up to five months from the date of the initial invoice for the month in which the service was rendered. Finalized or closed customer invoices are those that are no longer subject to correction or adjustment under this provision. The Commission has previously indicated that the NYISO is not required, without Commission direction, to open for

open customer invoices are for the service months of June, 2011, through the date that Federal Energy Regulatory Commission (“FERC” or “Commission”) reaches a decision on this tariff amendment. The NYISO proposes that a waiver is the correct remedy in this situation because these payments were appropriate under our market and they avoid financial harm otherwise wrongly imposed on Market Participants when following NYISO instruction. The GTs received these payments through no fault of their own. The loads that were charged for these payments received the economic benefit of these units on the system. The waiver is also being requested to avoid potential market uncertainty by affirming that the NYISO will not be required to make retroactive changes to prices or settlements. The NYISO believes retroactive changes are not warranted in this circumstance as it is proposing tariff amendments which are consistent with the NYISO’s settlement code, and proposes to continue these payments as they have been processed going forward. NYISO Market Participants expect certainty and finality in settlements after a certain pre-determined time period. These payments conform to the NYISO’s intended market design and the failure of the NYISO to update the tariff language to reflect this was inadvertent.

Finally, as discussed in Section III.b below, the NYISO is requesting a waiver of the 60-day notice period and early effective dates for the tariff revisions proposed herein. Market Participants have been on notice since early January that the NYISO was expecting to make this tariff filing with the FERC. In addition, the NYISO self-reported this inconsistency between its tariff language and settlement code to the FERC Office of Enforcement on January 4, 2012. This tariff amendment has been approved by the NYISO’s Management Committee and the NYISO’s Board of Directors.

I. Documents Submitted

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

II. Background

Attachment J of the NYISO’s Services Tariff provides a supplemental payment to Resources, as necessary, to recover the difference between their accepted Day-Ahead offer price

correction invoices for service months no longer available for review. *See, Notification of Tariff Implementation Error and Request for a Limited Tariff Waiver*, 128 FERC ¶61, 086, ¶¶1, 19-20 (2009).

and the Day-Ahead LBMP (their “Day-Ahead Margin”) when the NYISO has directed that they reduce their real-time output and such reduction has exposed them to balancing obligations that erode their Day-Ahead Margin. Known as a DAMAP, its purpose is to encourage Suppliers to maintain flexible economic offers in the Real-Time Market by ensuring that to do so does not expose them to financial harm. All Generators, including Gas Turbines, are eligible to receive a DAMAP when they have a Day-Ahead Energy or NonSync Reserves schedule, bid flexibly, and are online and dispatched in real-time.

While a variety of scenarios can result in the need for a DAMAP, the subject of this filing is the situation that the NYISO’s Services Tariff does not provide DAMAP eligibility for Day-Ahead scheduled GTs that are directed by the NYISO’s economic evaluation not to run in real-time, although the NYISO’s settlement code has been treating them as if they were eligible since 2005. DAMAPs are intended to compensate Suppliers losing Day-Ahead Margin because they followed NYISO instructions. Day-Ahead scheduled GTs that do not operate in real-time, at the direction of the NYISO, face the same potential for financial harm from complying with NYISO instructions and the NYISO believes they should also be DAMAP eligible.

Most Resources that receive a Day-Ahead schedule are designated to run at no less than their designated Minimum Generation level in real-time, and are known as must run units. GTs, however, do not receive must run status as their ability to start quickly offers the NYISO the opportunity to reevaluate the economic merit of operating the unit throughout the day. Hourly evaluations of the economics of operating GTs provide the NYISO with an increased level of flexibility in responding to changing real-time conditions. Having flexibly-offered GTs and other 10 and 30-minute units with Day-Ahead schedules in the Real-Time Market facilitates efficient real-time market outcomes. Providing DAMAP eligibility will ensure that remaining flexibly offered in real-time will not bring such Resources financial harm.

III. Request for Waivers

In this filing the NYISO is seeking a waiver from FERC for all open service months to allow Suppliers that received a DAMAP under these circumstances to retain their payments. The NYISO is also seeking a waiver of the 60-day notice and comment period. Finally, the NYISO is proposing tariff revisions to authorize it to make these payments going forward.

a. Waiver of Services Tariff for All Open Months

The NYISO respectfully requests that the Commission grant the NYISO a limited waiver, to the extent necessary, of the tariff provisions regarding the settlement of DAMAP for the open service months from June, 2011, until the date FERC rules on this tariff amendment.³

³ The NYISO respectfully requests, that to the extent the Commission determines that a tariff waiver is necessary for the closed service months, the Commission grant such a waiver of the DAMAP eligibility provisions.

The Commission has previously evaluated a number of factors in determining whether to authorize a tariff waiver to alleviate the effects of an implementation error. These include whether (i) the underlying error was made in good faith; (ii) the waiver is of limited scope; (iii) a concrete problem that needs to be remedied; and (iv) the waiver will not have undesirable consequences, such as harming third parties.⁴ The NYISO proposes that this situation meets these criteria for the following reasons.

The NYISO made these settlements in good faith. In keeping with a new version of its market design software introduced in 2005, the settlement code was revised to expand DAMAPs in order to hold generators harmless to the balancing obligations they may otherwise face as a result of following NYISO direction. The omission in the tariff language to cover holding offline GTs equally harmless was completely inadvertent. Notwithstanding the tariff inconsistency, the NYISO is seeking to allow the payment to stand rather than require the NYISO to recover DAMAP payments made under these conditions.

The scope of this waiver is limited in nature. This payment inconsistency impacted only 80 Suppliers out of approximately 400 Suppliers on the NYISO system. Further, the total financial impact of this issue is small and it does not have market-wide effects. The NYISO estimates that the financial impact of this error to be approximately \$10,000/month during 2011. Moreover, the impact of the error represents only approximately \$120,000/year out of the total NYISO energy markets, which paid approximately \$4 billion dollars to generators in 2011.

The discrepancy between the units' settlements and the tariff language for historic periods needs to be remedied. Customers expect finality in the NYISO's invoicing process.⁵ Although these payments were inconsistent with NYISO's Services Tariff, they were appropriate to the intended market design that these units should be made whole for the flexibility in dispatch they offer the NYISO. The NYISO and its Market Participants have agreed to tariff amendments, proposed below, to revise the tariff consistent with the settlement code.

The waiver will not have undesirable consequences. However, a denial of a waiver would require the NYISO to reclaim energy revenues previously paid for an error the NYISO is proposing a permanent tariff solution. The GTs received these payments through no fault of their own and the loads that were charged for these payments received the economic benefit of the flexibility.

⁴ See e.g., *Wisvest-Connecticut*, 101 FERC ¶ 61,372 at 62,551 (2002); *Great Lakes Gas Transmission Limited Partnership*, 102 FERC ¶ 61,331 (2003); *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330 (2003).

⁵ The Commission has consistently indicated that unanticipated retroactive price corrections and resettlements should be avoided when possible.

b. Waiver of 60-day Notice and Comment Period

The NYISO respectfully requests that the Commission waive the 60-day notice requirement and permit the tariff revisions proposed herein to become effective on March 7, 2012, one day after this filing, in order to allow the NYISO to continue these payments. The Commission has discretion to waive the sixty-day notice period and make tariff revisions effective as soon as the day after a filing is made when good cause is shown.⁶ Good cause for such a waiver exists in this proceeding because the NYISO's current market design encourages flexible bidding by providing a financial hold-harmless provision to ensure generator operation in conformance to the NYISO's dispatch signals. The NYISO is not proposing changes to that design, only conforming tariff revisions. All NYISO stakeholders have been on notice that the NYISO would make this filing at least as far back as the Management Committee's approval of the tariff revisions on January 25, 2012 and the January 5, 2012 Market Issues Working Group Meeting when the issue and tariff language was first presented to stakeholders. Finally, as is noted below, the proposed tariff revisions enjoy unanimous stakeholder support. The NYISO Market Participants agree that encouraging flexible bidding is a good market design and that it is appropriate to encourage this design by holding generators harmless to potential balancing obligations in order to ensure the market design works as intended.

IV. Description of and Justification for Proposed Tariff Revisions

The NYISO proposes to amend Attachment J of its Services Tariff to expand the eligibility criteria to include not only units that are on-line and dispatched, but also those that are available for commitment by NYISO. Since the NYISO introduced a new version of its market design software in 2005 ("SMD2") the settlement code has been compensating these units consistently with the market design presented to stakeholders at the time. During this conversion, the NYISO intended to compensate these units when they did not receive their Day-Ahead Margin because the NYISO had directed that they reduce their real-time output. The Services Tariff currently compensates units in a variety of situations under the same rationale.⁷

⁶ See e.g. *California Independent System Operator Corp.*, 113 FERC ¶61,287 at PP 48-50 (2005); *Brownsville Power I, L.L.C.*, 111 FERC ¶ 61,398 at PP 11-13 (2005).

⁷ Currently, the following categories of Resources are eligible to receive a DAMAP "(i) all Self-Committed Flexible and ISO-Committed Flexible Generators that are online and dispatched by RTD; (ii) Demand Side Resources committed to provide Operating Reserves or Regulation Service; (iii) any Resource that is scheduled out of economic merit by the ISO...; (iv) any Resource internal to the NYCA that is derated or decommitted by the ISO...(v) Energy

Through an oversight in drafting its tariff language, the NYISO neglected to consider the situation where GTs receive a Day-Ahead schedule, but, due to their flexible nature, are later decommitted by the ISO in favor of more economic Resources in real-time. The NYISO wants to encourage these units to bid flexibly which allows more efficient dispatch of the system. Without DAMAP eligibility, a unit that bids flexible could be financially harmed when the NYISO directs that they reduce their real-time output and such reduction exposes them to balancing obligations that erode their Day-Ahead Margin. The DAMAP provides an incentive to the Market Participant to bid flexibly while also avoiding the risk of a buyout obligation that will erode their Day-Ahead Margin.

Section 25.2.1 of the Services Tariff lists the general eligibility requirements for Suppliers to Receive Day-Ahead Margin Assurance Payments. Specifically, the NYISO proposes to amend this Section to read:

25.2.1 General Eligibility Requirements for Suppliers to Receive Day-Ahead Margin Assurance Payments

Subject to Section 25.2.2 of this Attachment J, the following categories of Resources bid by Suppliers shall be eligible to receive Day-Ahead Margin Assurance Payments: (i) all Self-Committed Flexible and ISO-Committed Flexible Generators that are either online and dispatched by RTD or available for commitment by RTC; (ii) Demand Side Resources committed to provide Operating Reserves or Regulation Service; (iii) any Resource that is scheduled out of economic merit order by the ISO in response to an ISO or Transmission Owner system security need or to permit the ISO to procure additional Operating Reserves; (iv) any Resource internal to the NYCA that is derated or decommitted by the ISO in response to an ISO or Transmission Owner system security need or to permit the ISO to procure additional Operating Reserves; and (v) Energy Limited Resources with an ISO-approved real-time reduction in scheduled output from its Day-Ahead schedule.

Amending this Section in this manner will ensure that all units receive a DAMAP when they are decommitted in real-time by the NYISO after receiving a Day-Ahead schedule. This is the only tariff amendment the NYISO is proposing in this filing.

Limited Resources with an ISO-Approved real-time reduction in schedules output from its Day-Ahead schedule.” See NYISO Services Tariff, Attachment J, §25.2.1.

V. Effective Date

The NYISO requests an effective date of March 7, 2012, the day after this filing is made, for its proposed amendments to the Services Tariff because good cause exists for the Commission to waive its 60-day notice provision.

VI. Requisite Stakeholder Approval

The NYISO's Management Committee unanimously approved these tariff amendments on January 25, 2012. The Board of Directors approved these tariff amendments February 13, 2012.

VII. Communications and Correspondence

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

Robert E. Fernandez, General Counsel

Raymond Stalter, Director, Regulatory Affairs

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VIII. Service

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

IX. Conclusion

Wherefore, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this filing to be effective March 7, 2012.

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Respectfully submitted,

/s/ Kristin A. Bluvas

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