

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

New York Independent System Operator, Inc.)

Docket No. ER23-____-000

**REQUEST FOR PROSPECTIVE TARIFF WAIVER, FOR EXPEDITED ACTION, AND
FOR WAIVER OF COMMENT PERIOD 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) (2022), the New York Independent System Operator, Inc. (“NYISO”), hereby respectfully requests a one-time prospective waiver of Section 5.13.1¹ of its NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”).

As described below, the NYISO discovered an unexpected failure just yesterday, *i.e.*, November 9, 2022, in the software (the “Auction Solver”) used to solve and produce the results of voluntary Monthly Auctions² for Installed Capacity. Despite the NYISO’s best efforts to address the problem with the Auction Solver the NYISO will not be able to determine valid results for the December Monthly Auction on time. The Services Tariff and the NYISO’s implementing procedures currently require that the results of the December Monthly Auction be posted by 5 p.m. today, November 10. This is because Section 5.13.1 of the Services Tariff directs the NYISO to ensure that there are at least four business days between the posting of the

¹ The NYISO believes that a waiver of Section 5.13.1 is the only waiver needed to address the issue described in this filing. Nevertheless, out of an abundance of caution and given the limited time that the NYISO had to prepare this filing, the NYISO also requests that the Commission grant a prospective waiver of any other tariff provision that might otherwise prevent the NYISO from delaying the posting of the December Monthly Auction results.

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

auction results and November 18, which is the date that Load Serving Entities (“LSEs”) are required to certify the Unforced Capacity they have procured for the December Obligation Procurement Period. This filing refers to Section 5.13.1’s requirement as the “four business day rule.”

The NYISO is requesting a prospective tariff waiver that would allow it to delay posting the December Monthly Auction results for up to two more business days, *i.e.* until November 15, 2022. That would give the NYISO additional time to correctly post valid December Monthly Auction results. Delaying the posting of the December Monthly Auction results would prevent capacity prices from being set at levels inconsistent with actual bids and offers in the auction. It would avoid LSEs having to incur additional costs in the ICAP Spot Auction to undo any unintended or inexplicable auction outcomes that deviated from offers and bids that LSEs and suppliers submitted. Postponement also would not prevent Market Participants from continuing to engage in bilateral capacity transactions in secondary markets and would not impact the upcoming December ICAP Spot Market Auction.³

As also discussed below, because the Auction Solver issue was identified just yesterday and because various auction deadlines are imminent, the NYISO must respectfully request that the Commission act expeditiously to grant the NYISO’s requested waivers no later than November 15, waive the normal comment period, and adopt the shortest possible comment deadline that will allow the Commission to act by that date.

³ It is important to note that the mechanics and software that solves the ICAP Spot Market Auction is separate and distinct from the Auction Solver used to solve the NYISO Monthly ICAP Auctions.

I. BACKGROUND

A. NYISO-Administered Installed Capacity Market Auctions and the Upcoming Auction Schedule

Ever since the NYISO was established, resource adequacy in New York State has been maintained through a series of related state-administered and Commission-jurisdictional NYISO tariff processes to set Installed Reserve Margins and Locational Minimum Installed Capacity Requirements. These mechanisms build on ICAP arrangements that were introduced decades earlier. The NYISO enables Load Serving Entities to satisfy their obligations by administering three types of auctions -- Capability Period Auctions (which are often referred to as “Strip Auctions”), Monthly Auctions that are held prior to the beginning of an upcoming month (an “Obligation Procurement”) and for any remaining months in the Capability Period, and ICAP Spot Market Auctions. The spot auctions are held immediately before a monthly Obligation Procurement Period and lock in LSEs purchases and ICAP Suppliers obligations to provide Installed Capacity for that period using the NYISO’s ICAP Demand Curves -- and by accounting for bilateral capacity transactions. The Strip and Monthly Auctions involve forward transactions that ultimately need to be certified immediately prior to the ICAP Spot Auction. Combined, these auctions are designed to send price signals to investors to build and retain capacity where and when it is needed. The ICAP Spot Market Auction ensures that the minimum capacity requirements in the NYCA and its Localities are being met to maintain grid reliability.

While the NYISO administers three types of auctions that allow LSEs to procure UCAP, it is only through the ICAP Spot Market Auction that the NYISO ultimately confirms that LSEs have procured their Unforced Capacity obligations and assigns obligations to corresponding ICAP Supply that was procured to meet reliability requirements for that Obligation Procurement Period.

Capability Period Auctions are conducted for each seasonal six month “Capability Period” (winter and summer) for a given year. The current Capability Period for the winter 2022-23 season began on November 1 and runs through April. Participation in this auction is voluntary and any capacity purchases that result are financial obligations only. The NYISO previously complied with the Services Tariff’s requirement⁴ to conduct a Capability Period Auction no later than thirty days prior to November 1.

Monthly Auctions are conducted to allow parties to adjust their net position in the market for the upcoming month or any remaining month in the Capability Period. Participation in the Monthly Auctions is voluntary, with the results continuing to be financial in nature. Participants may bid or offer for any month remaining in the Capability Period, *i.e.*, the upcoming Monthly Auction for November may include monthly bids and offers for December through April. Monthly Auctions are held at least fifteen days prior to the start of an Obligation Procurement Period, *i.e.*, a calendar month. The auction matches bids and sellers and sets Market Clearing Prices for each calendar month.

Auction results from the Capability Period Auction or a Monthly Auction are converted into Capacity Obligations for the Obligation Procurement Period only when these transactions are certified by the parties just prior to the NYISO’s ICAP Spot Auction. In order to effectuate these purchases and sales to be converted into ICAP Obligations, Services Tariff Section 5.13.1 directs that:

[T]he ISO Procedures shall ensure that there are at least four business days between the time that auction results from monthly auctions are posted and the dates that LSEs are required to demonstrate the quantity of Unforced Capacity that has been obtained for the upcoming Obligation Procurement Period, pursuant to Section 5.11.2 of this Tariff. LSEs holding Unforced Capacity which they

⁴ See Services Tariff §5.13.2.

want credited against their LSE Unforced Capacity Obligations must certify such Unforced Capacity when submitting their Installed Capacity certifications.

Section 5.13.3 of the Services Tariff establishes that “Monthly Auctions will be held” but does not specify the exact date that they must occur. Instead, Sections 5.13.1 and 5.13.3 both leave it to the “ISO Procedures,” to set those dates, consistent with the general timing parameters established in the Services Tariff. In this context, the relevant “ISO Procedure” is the NYISO’s *Installed Capacity Manual* (“ICAP Manual”).⁵ Section 5.3 of the ICAP Manual states that the auction dates are to be specified in the “ICAP Event Calendar” posted on the NYISO’s website.⁶ The NYISO has discretion to revise the ICAP Event Calendar without stakeholder (or Commission) approval.

The current version of the ICAP Event Calendar requires the NYISO to post the results of the December Monthly Auction by 5:00 p.m. on November 10. Consistent with the four business day rule, the calendar also requires LSEs and Suppliers to make their certifications for the December Monthly Auction by 5:00 p.m. on November 18. Posting on or after Monday, November 14, which is the next business day after November 10, would encroach upon the four business day rule. Those certifications are fundamental to determining the market position for Suppliers and LSEs prior to the ICAP Spot Market Auction.

ICAP Spot Market Auctions are the third type of capacity auction conducted by the NYISO. Participation is mandatory for all LSEs. The ICAP Spot Market Auctions reflect positions previously taken in the Capability Period Auctions and Monthly Auctions as well as bilaterally contracted positions. ICAP Spot Market Auctions only address the single calendar

⁵ The current version of the ICAP Manual can be found at <https://www.nyiso.com/manuals-tech-bulletins-user-guides>.

⁶ See http://icap.nyiso.com/ucap/public/evt_calendar_display.do.

month encompassed be an Obligation Procurement Period. LSEs are required to cover any remaining capacity requirements in the ICAP Spot Market Auctions which also provide an opportunity for parties to sell or resell UCAP and to cover any ICAP Supplier Shortfall. ICAP Suppliers that clear the Spot Auction or that have certified forward auction or bilateral sale of Unforced Capacity prior to the Spot Auction are obligated as Installed Capacity Suppliers for the entirety of that month and may be subject to penalties and sanctions if they cannot fully comply with these obligations. ICAP Spot Market Auction results are determined by bids that the NYISO “submits” on behalf of LSEs using the ICAP Demand Curves. As with the Monthly Auctions, the exact dates for ICAP Spot Market Auctions are set in the ICAP Event Calendar. Currently, the offer period for the December ICAP Spot Market Auction opens at 8:00 AM on November 22 and ends at 5:00 PM on November 23. The NYISO is required to post December ICAP Spot Market Auction results by 5:00 PM on November 29.

B. The Auction Solver Has Failed to Produce a Timely Solution for the December Monthly Auction that Could be Posted in Time to Satisfy the Four Business Day Rule

The Auction Solver is a specialized third-party software application that matches bids and offers and calculates market-clearing prices for Monthly Auctions. The NYISO has previously used the same Auction Solver system application, as it has evolved over time, for years with no issues.

However, on November 9, 2022, the NYISO identified a failure in the results that the Auction Solver generated for the December Monthly Auction. Bids and offers were not matched and the resulting prices did not reflect the interplay of bids and offers for the month of December. The results for the other months encompassed by the December Monthly Auction appeared to have been calculated correctly. But the unexpected and not yet understood failure of

the Auction Solver for the month of December creates concern that there might undiscovered issues with the Auction Solver results for January through April. It is also possible that problems could recur in subsequent Monthly Auctions.

C. The NYISO Believes that it Will Be Able to Post Valid December Monthly Auction Results in Just a Few More Days

Immediately after discovering the Auction Solver's failure for the month of December the NYISO launched a concerted effort to determine its cause. But given that the problem was only detected on November 9, it has not been possible to identify, let alone correct, the issue in the time remaining before the current deadline for posting the December Monthly Auction. A key difficulty is that the NYISO has limited visibility into the internal workings of the Auction Solver.

Nevertheless, the NYISO has been working quickly to try to miss the deadline by as little as possible. The NYISO currently anticipates that it will be able to generate valid December Monthly Auction results after, at most, a few more days of work.

The NYISO has flexibility to change dates on the ICAP Event Calendar. But the NYISO would need a waiver of the four business day rule to delay the posting of December Monthly Auction results beyond November 10. Unless, November 11, which is a state and federal holiday, is treated as a "business day," there are only four business days between November 10 and November 18.

II. REQUEST FOR PROSPECTIVE TARIFF WAIVER

The NYISO respectfully requests a prospective⁷ waiver of Section 5.13.1's four business day rule so that it may take two up to more business days to post valid December Monthly Auction results.⁸ If the requested waiver is granted the NYISO would then be required to post the December Monthly Auction results no later than November 15. The NYISO would do everything practicable to finalize the posting sooner. If the NYISO posted on November 15 there would still be two business days for Market Participants to make their certifications under Section 5.13.1.

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."⁹ The NYISO respectfully submits that its requested prospective waiver is fully consistent with all of these criteria.

The NYISO has acted in good faith. Immediately after discovering the Auction Solver's failure with respect to results for the December Monthly Auction the NYISO attempted to identify and remedy the problem. The NYISO very quickly determined that the software issue could not be resolved in time and that non-automated alternatives could not be implemented before the current deadline for posting results. The NYISO moved as quickly as possible to develop and file this waiver request. The NYISO also promptly informed Market Participants of

⁷ This request is prospective, not retroactive, because the four business day notice period required under Section 5.13.1 has not yet begun and will not end until November 17.

⁸ As noted in footnote 1 above, the NYISO is also seeking any incidental additional tariff waivers that, if any exist, it has not been able to identify due to the press of time that might be necessary to authorize delaying posting auction results.

⁹ See, e.g., *New York Independent System Operator, Inc.*, 171 FERC ¶ 61,042 (2020); *Citizens Sycamore-Pensacuitos Transmission LLC*, 169 FERC ¶ 61,263 at P 14 (2019).

the issue, and that it would be seeking this waiver, on November 10. This step was meant to give Market Participants so that they would have as much notice as possible to make any necessary adjustments to their plans.

The requested waiver is of limited scope because it is the narrowest practicable solution to the problem created by the Auction Solver's failure for the month of December. Market Participants will still have at least two business days to make their certifications. In addition, because the number of participants in the December Monthly Auction is relatively small, the NYISO plans to reach out to them individually to assist in their preparation for the December ICAP Spot Market Auction if needed.

The requested waiver addresses a concrete problem. As explained above, the Auction Solver has not produced valid results for the December Monthly Auction. The NYISO has been unable to correct the software problem, or turn to an alternative non-automated solution, in the time available. Furthermore, although the Auction Solver results for January, February, March and April appear to be valid the NYISO cannot yet be certain that they are. Allowing the NYISO a brief additional time to ensure that the December Monthly Auction results are valid will solve this problem.

Finally, the requested waiver will not have undesirable consequences. Market participants would have less time to make their certifications but would still have at least two business days. They will be on notice that the NYISO is delaying the posting starting today, which is seven calendar days before the November 18 certification deadline. Market Participants' ability to engage in bilateral transactions before the December ICAP Spot Market Auction will not be diminished. The NYISO's requested waiver would also allow the December ICAP Spot Market Auction to move forward as scheduled and to incorporate information from

the December Monthly Auction. Any practical difficulties that may be caused by having fewer than four business days to make certifications would be far outweighed by the harm and market uncertainty that could result if Market Participants were to make decisions based on invalid December Monthly Auction results. This is especially true given that the NYISO plans to reach out to assist Market Participants that may receive awards from the December Monthly Auction

III. REQUEST FOR EXPEDITED COMMISSION ACTION AND FOR PROCEDURAL WAIVERS

The NYISO respectfully requests the Commission act expeditiously and grant the requested waiver by November 15, 2022. The NYISO also requests that the Commission either waive entirely, or shorten to the greatest extent possible, the notice and comment period applicable to its waiver request, so that the Commission may issue an order by the NYISO's requested date.

As discussed above, expedited procedures are necessary here. Deadlines for the NYISO to post the December Monthly Auction results, for Market Participants to certify, and for the NYISO to hold the ICAP Spot Market Auctions are imminent. Because time is so short the NYISO intends to delay posting the December Monthly Auction results on November 10.¹⁰ The NYISO will not know if it is out of compliance with the Services Tariff until the Commission acts on this request. Market Participants will likewise not know that status of the auctions with certainty until the Commission acts.

¹⁰ If the NYISO is able to validate and post results on the evening of November 10, i.e., after the Commission's filing deadline today, it will make a new filing to withdraw this waiver request as no longer necessary.

IV. COMMUNICATIONS

All communications, pleadings, and orders with respect to this proceeding should be directed to the following individuals:

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V. CONCLUSION

WHEREFORE, for the reasons specified above, the New York Independent System Operator, Inc., respectfully requests the Commission grant the procedural waivers described in Section III and expeditiously grant the NYISO's request for a prospective waiver of Section 5.13.1 of the Services Tariff's four business day rule, and any incidental tariff waivers that might be necessary, no later than November 15, 2022.

Respectfully submitted,

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