

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

New York Independent System Operator, Inc.)

Docket No. ER25- -000

**REQUEST OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
FOR ONE-TIME TARIFF WAIVERS**

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 one-time waivers of Section 6.1.15 of the NYISO’s Open Access Transmission Tariff (“OATT”) and of Section 7.4 of the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”) (“Waiver Request”). OATT Section 6.1.15 describes how the NYISO charges Transmission Customers¹ for the recovery of the annual charges (“FERC fees”) that are assessed by the Commission to the NYISO and other public utilities under 18 C.F.R. §382. Services Tariff Section 7.4 sets forth explicit time periods for the NYISO and its customers to review, challenge, correct, and finalize settlement information. The purpose of these two sections, taken together, is to allow the NYISO to charge for the recovery of the annual FERC fee in a

¹ Capitalized terms that are not otherwise defined in this filing letter shall have the meaning specified in the Open Access Transmission Tariff or Services Tariff.

predictable manner that Transmission Customers can accommodate in their financial accounting and to facilitate the issuance of accurate and timely final invoices.

OATT Section 6.1.15.1 requires the NYISO to allocate 28% of the FERC fee charge that is assessed to physical activity to injection units, or energy injected by Suppliers, and the remaining 72% to withdrawal units, or energy withdrawn by Loads. The NYISO recently determined that an error was introduced into the calculation of FERC fee charges beginning on October 1, 2023. Beginning on October 1, 2023, the NYISO mistakenly charged injection units 72% and withdrawal units 28% of FERC fees, which is the reverse of the 28%/72% split prescribed in OATT Section 6.1.15.1. As a result, the allocation of the charge to injections and to withdrawals was inaccurate for a period of time. The NYISO corrected the identified error on November 18, 2024, allowing invoices to be corrected back to April 1, 2024, in accordance with the NYISO's ordinary billing procedures.² However, under Section 7.4 of the Services Tariff, the NYISO cannot fix the invoicing error for the billing months of October 2023 through March 2024 without a Commission order. For these six months, the FERC fee allocations remain uncorrected.

Granting this Waiver Request will enable the NYISO to correctly allocate the FERC fee charge to Suppliers and Loads, based on the correct 28%/72% split for the entire time that the error was in place, *i.e.*, for October 2023 to March 2024, not just from April 2024 forward. Therefore, the NYISO requests one-time waivers to allow the NYISO to correct the FERC fee charge for billing months October 2023 to March 2024. As discussed below, the NYISO is not

² See NYISO Invoicing Schedule, available at <https://www.nyiso.com/documents/20142/3023501/2025-2026-Monthly-Invoice-Schedule-updated-010625.pdf/ecb5b9c8-5b51-9265-74d9-e96442af1146>.

seeking an impermissible retroactive waiver because Section 7.4 of the Services Tariff provides the legal notice necessary for the Commission to revise otherwise finalized settlements.

I. Background

OATT Section 6.1.15 sets forth the rules governing the NYISO's allocation of FERC fees. The NYISO is subject to annual charges assessed by the Commission in accordance with Part 382 of the Commission's regulations. The NYISO, in turn, charges each Transmission Customer taking service under the NYISO Tariffs a portion of the FERC fee on the basis of its participation in physical market activity, pursuant to a formula established in OATT Section 6.1.15.1.

Ninety-four percent of the FERC fee is allocated to physical market activity. This portion is then split on a 28%/72% basis, with the 28% charged to injection units and the 72% charged to withdrawal units. When preparing the NYISO's settlement software to assess the FERC fee to Transmission Customers for the October 1, 2023 to September 30, 2024 federal fiscal year, the NYISO inadvertently instructed the settlement software to assess 28% to withdrawal units and 72% to injection units. This error persisted on monthly invoices for billing months October 2023 through October 2024. As a result, Suppliers were overcharged for their portion of the FERC fee and Loads were undercharged for their portion of the FERC fee.³ The percentages were corrected on November 18, 2024, and those corrected values were utilized for the November 2024 billing month.

Services Tariff Section 7.4 describes the mechanics of NYISO's settlements process. The NYISO is responsible for calculating customer settlements and for administering a multi-

³ While the allocation to Supply and Load was incorrect for this time period, the total FERC fee charged by the NYISO was accurate.

month, multi-round process for the review, correction, and finalization of customer invoices. These settlement rules permit and require the NYISO to correct the FERC fee percentage allocation to Transmission Customers through its ordinary review and correction mechanisms for the billing months April 2024 through October 2024. The NYISO corrected the FERC fee allocation for those months. At the same time, Services Tariff Section 7.4's settlement finalization deadlines prevent the NYISO from unilaterally correcting invoices for billing months October 2023 through March 2024. Those months had been finalized according to the Services Tariff's rules by the time that the NYISO discovered the FERC fee allocation error.

Invoices for October 2023 through March 2024 may only be corrected if ordered by the Commission. Specifically, Section 7.4 states that "[f]or purposes of Section 7.4, 'finalized' data and invoices shall not be subject to further correction, including by the [NY]ISO, except as ordered by the Commission or a court of competent jurisdiction."

During the period of October 2023 through March 2024, *i.e.*, the period that is closed to unilateral NYISO corrections, approximately \$3.8 million was inaccurately allocated to Suppliers when it should have been changed to Loads, *i.e.*, withdrawal billing units. One-time waivers of OATT Section 6.1.15 and Services Tariff Section 7.4 would allow the NYISO to correctly allocate the FERC fee charges to Suppliers and Loads for that period. Rebalancing the FERC fee charges, pursuant to the formula and percentage allocation prescribed in OATT Section 6.1.15, would effectuate the intent and expectation of the FERC fee allocation tariff language as accepted by the Commission and maintain an equitable outcome for all parties involved. There is no reason to allow the obvious, and readily correctible, misallocation of FERC fees to stand.

II. Request for Waiver

The Commission has broad discretion to grant prospective tariff waivers. It may also grant retroactive tariff waivers when there is sufficient notice that a filed rate is subject to change.⁴ The Commission has previously held that waiver requests that seek to correct or update billing data outside of the time limitations set forth in the Services Tariff are retroactive in nature.⁵ However, the Commission has also repeatedly found that the language from Services Tariff Section 7.4 that is quoted above “provides sufficient notice to customers that finalized . . . data could be subject to further correction by order of the Commission outside of the otherwise applicable time bar.”⁶ In fact, the Commission has previously recommended that other Regional Transmission Organizations and Independent System Operators adopt “safety valve” tariff provisions like Section 7.4 so that the Commission will be able to grant waivers of settlement time limits in order to avoid inequities.⁷ The Commission should follow its precedent here and conclude that the Waiver Request is permissible.

⁴ As a general rule, the filed rate doctrine precludes the Commission from granting retroactive tariff waivers. *See Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821, 824-25 (D.C. Cir. 2021) (“Once a tariff is filed, the Commission has no statutory authority to provide equitable exceptions or retroactive modifications to the tariff.”); *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1230 (D.C. Cir. 2018) (“The filed rate doctrine and the rule against retroactive ratemaking leave the Commission no discretion to waive the operation of a filed rate or to retroactively change or adjust a rate for good cause or for any other equitable considerations.”).

⁵ *See Consol. Edison Co. of N.Y., Inc.*, 187 FERC ¶ 61,047, at P 24 (2024) (“As an initial matter, because Con Edison seeks to correct and update metering data outside of the time limitations set forth in the Services Tariff, Con Edison’s waiver request is retroactive.”).

⁶ *Id.*; *see also NRG Power Mktg. LLC*, 178 FERC ¶ 61,055, at P 10 (2022) (granting waiver to allow NYISO to correct metering data beyond the invoice correction time bar, consistent with section 7.4 of the Services Tariff); *Consol. Edison Co. of N.Y., Inc.*, 168 FERC ¶ 61,047, at P 11 (2019) ; *see also Niagara Mohawk Power Corp.*, 123 FERC ¶ 61,314, at PP 24-25 (2008) (directing NYISO to correct metering invoices from three years prior, pursuant to section 7.4 of the Services Tariff).

⁷ *See Southwest Power Pool, Inc.*, 166 FERC ¶61,160 at P 53, n. 151 (2019) (Referencing Section 7.4 of the Services Tariff and noting by contrast that “[t]he SPP Tariff does not contain language that allows the Commission to order the reopening of an invoice after it is considered finalized, pursuant to a time bar provision.”); *see also id.* (Glick, Comm’r, concurring at P 3) (“I urge all RTOs and ISOs to consider whether to revise any billing limitations in their tariffs in order to ensure that they provide the flexibility needed to prevent the inequitable result in today’s order. In particular, I urge them to consider an approach similar to that in the New York Independent System Operator, Inc.’s (NYISO) Tariff, which permits the Commission to order the reopening of invoices that

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 fully satisfy these criteria and that granting the Waiver Request would be consistent with Commission precedent in similar cases involving the re-opening of finalized settlements to avoid inequities.⁹

The NYISO has acted in good faith in its administration of OATT Section 6.1.15 and Services Tariff Section 7.4. The NYISO inadvertently reversed the percentage allocation between charges to Suppliers and charges to Loads when preparing for the October 2023 to September 2024 federal fiscal year. When the NYISO became aware of the discrepancy between the NYISO’s entry and OATT Section 6.1.15 following discussions with a Market Participant, it acted diligently to address the issue. The NYISO began correcting all invoices that remained open for unilateral correction by the NYISO under Services Tariff Section 7.4. The NYISO also implemented new controls to prevent the issue in the future¹⁰ and is submitting this Waiver Request.

This Waiver Request is of limited scope because it involves the NYISO’s process to charge a single fee under its Commission-accepted tariffs. Specifically, the waiver would simply return the FERC fee charge allocation back to the percentage split established in the NYISO tariffs. The Waiver Request only applies to the period from October 2023 to March 2024, the

would otherwise be subject to a time bar. A safety valve of that type could go a long way toward avoiding a repeat of the unfortunate outcome here.”) (footnote omitted).

⁸ *Citizens Sycamore-Pensquitos Transmission LLC*, 169 FERC ¶ 61,263 at P 14 (2019).

⁹ See *supra* n. 7.

¹⁰ The NYISO embedded the FERC fee allocation percentages into the invoicing system to avoid having to enter them each fiscal year.

NYISO already had tariff authority to unilaterally correct the error for later months. The Requested Waiver would also only impact \$3.8 million in fees divided across all Suppliers and Loads in the NYISO region. The scope of the requested waiver is thus limited and should be clearly understandable to all NYISO Market Participants. The NYISO requests one-time waivers to facilitate the correction of this invoicing error. Accordingly, the NYISO requests that the Commission allow the NYISO to correct past FERC fee charges for the period from October 2023 to March 2024 on the monthly invoice issued after the Commission grants this Waiver Request.

The requested waiver is necessary to address a concrete problem – *i.e.*, the inadvertent reversal of the 28%/72% allocation in the NYISO’s billing system. The waiver would allow the NYISO to correct the allocation split and to charge Transmission Customers based on the percentage allocation they should have been subjected to in the first instance under the express and unambiguous terms of the NYISO OATT. The NYISO respectfully submits that a \$3.8 million error constitutes a “concrete problem” even though, as noted above, the financial impact on individual stakeholders will be relatively limited. There is no economic justification for allowing the reversed FERC fee allocations to remain in place, especially when the error is being corrected for the period after March 2024.

Finally, the NYISO does not expect the waiver to adversely impact any party because the waiver will address an issue that impacted all Transmission Customers that engage in physical market activity and each party should be assessed its correctly allocated portion of FERC fee charges. All stakeholders were on notice that the NYISO was supposed to be applying the 28%/72% allocation ratio set forth in OATT Section 6.1.15. The NYISO also routinely provides

stakeholders with information regarding the anticipated level of FERC fees¹¹ which only reinforces expectations that the 28%/72% ratio would be applied. Moreover, the FERC Fee charges can be corrected without impacting parties that were or are not subject to FERC Fee allocations. By contrast, denying the waiver would needlessly require the NYISO to leave the incorrect settlements in place and Transmission Customers could be forced to accept the inaccurate settlements.

III. Communications

Communications regarding this proceeding should be sent to:

Robert E. Fernandez, Executive Vice President,
Chief Compliance Officer & General Counsel
Karen G. Gach, Deputy General Counsel
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IV. Conclusion

For the reasons specified above, the NYISO respectfully requests that the Commission grant this request for one-time waivers of OATT Section 6.1.15 and Services Tariff Section 7.4

¹¹ See, e.g., Estimated FERC Fee Recovery. NYISO Presentation to Budget & Priorities Working Group (Aug. 13, 2024) at <https://www.nyiso.com/documents/20142/46294476/02%20Estimated%20FERC%20Fee%20Recovery.pdf/cc67ed00-7472-71c2-ea81-5db6d7aed7c2>.

to permit the NYISO to correct and re-settle the FERC Fee charge, *i.e.*, the allocation between Suppliers and Loads, for the billing months of October 2023 through March 2024.

Respectfully submitted,

/s/ James H. Sweeney

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cc: Janel Burdick
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Jignasa Gadani
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