



HUNTON & WILLIAMS LLP  
1900 K STREET, N.W.  
WASHINGTON, D.C. 20006-1109

TEL 202 • 955 • 1500  
FAX 202 • 778 • 2201

TED J. MURPHY  
DIRECT DIAL: 202 • 955 • 1588  
EMAIL: tmurphy@hunton.com

FILE NO: 55430.000072

August 12, 2010

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

**Re: New York Independent System Operator, Inc., Compliance Filing, Docket Nos.  
EL07-39-\_\_\_\_, ER08-695-\_\_\_\_\_**

Dear Ms. Bose:

Pursuant to the Federal Energy Regulatory Commission's ("Commission") May 20, 2010 order ("May 20 Order")<sup>1</sup> and July 29, 2010 *Notice of Extension of Time* in the above-captioned proceedings,<sup>2</sup> the New York Independent System Operator, Inc. ("NYISO") respectfully submits this compliance filing. This compliance filing includes a number of proposed revisions to Attachment H of the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff") that were directed by the May 20 Order.<sup>3</sup> In addition, this compliance filing includes a handful of conforming tariff revisions and the report that the NYISO was directed to submit explaining why an existing exemption in the definition of Pivotal Supplier in Attachment H should continue to remain in effect.

## **I. Documents submitted**

1. This filing letter;

---

<sup>1</sup> *New York Independent System Operator, Inc.*, 131 FERC ¶ 61,170 (2010) ("May 20 Order").

<sup>2</sup> *New York Independent System Operator, Inc., Notice of Extension of Time*, Docket Nos. EL07-39-004 and 005 and ER08-695-002 and 003 (issued July 29, 2010).

<sup>3</sup> Subsequent to the issuance of the May 20 Order, the NYISO submitted its "baseline" electronic tariff filing, which re-numbered the provisions of Attachment H. For convenience, in this filing the NYISO refers to tariff provisions as they are now numbered in Attachment H with the designations that were used in the May 20 Order cross-referenced in footnotes.



Ms. Kimberly D. Bose, Secretary  
August 12, 2010  
Page 2

2. Clean Attachment H Services Tariff sections reflecting the proposed changes in the current, electronic version of the NYISO's Services Tariff (*i.e.*, NYISO Tariffs, Market Administration and Control Area Services Tariff);<sup>4</sup>
3. Redline Attachment H Services Tariff sections reflecting the proposed changes in the current, electronic version of the NYISO's Services Tariff;
4. Clean Attachment H Services Tariff sheets reflecting the proposed changes in the prior, sheet-based version of the NYISO's Services Tariff (*i.e.*, New York Independent System Operator, Inc., FERC Electric Tariff, Original Volume No. 2, ISO Market Administration and Control Area Services Tariff);
5. Redline Attachment H Services Tariff sheets reflecting the proposed changes in the prior, sheet-based version of the NYISO's Services Tariff;
6. Clean and Redline sheets reflecting a proposed subsequent revised version of Sheet No. 476.04A with a blank effective date<sup>5</sup>; and
7. The Affidavit of Joshua A. Boles, Supervisor of Monitoring, Analysis, and Reporting for the Market Monitoring and Analysis Department.

## II. Communications

Copies of correspondence concerning this filing should be served on:

Robert E. Fernandez, General Counsel  
\*Gloria Kavanah, Senior Attorney  
New York Independent System Operator, Inc.  
10 Krey Boulevard  
Rensselaer, NY 12144  
Tel: (518) 356-6000  
Fax: (518) 356-4702  
rfernandez@nyiso.com  
gkavanah@nyiso.com

\*Ted J. Murphy  
Vanessa A. Colón  
Hunton & Williams LLP  
1900 K Street, NW  
Suite 1200  
Washington, DC 20006-1109  
Tel: (202) 955-1500  
Fax: (202) 778-2201  
tmurphy@hunton.com  
vcolon@hunton.com

---

<sup>4</sup> As further explained in Section VI below, the NYISO is submitting its proposed tariff modifications in both its prior and current tariff versions due to the need to reflect effective dates prior to June 30, 2010 (*i.e.*, the effective date of the NYISO's currently effective tariff).

<sup>5</sup> See Section IV.E.a, below.

Ms. Kimberly D. Bose, Secretary  
August 12, 2010  
Page 3

\* Persons designated for receipt of service.

### **III. Background**

The May 20 Order accepted the NYISO's October 30, 2008 compliance filing in these proceedings, and required the NYISO to file a number of new tariff revisions to the market power mitigation measures applicable to Installed Capacity ("ICAP") in New York City ("In-City"). Specifically, the Commission directed the NYISO to: (1) modify the calculation of the Offer Floor<sup>6</sup> applicable to ICAP Suppliers other than Special Case Resources ("SCRs"); (2) reduce the penalty for "physical withholding" of Mitigated UCAP by Pivotal Suppliers; (3) adopt a new conduct threshold for determining when exports by Pivotal Suppliers constitute physical withholding; (4) clarify that deadlines under the ex ante process for approving Pivotal Supplier exports would be established under the ISO Procedures; and (5) make various modifications to the market power mitigation rules applicable to SCRs.

The May 20 Order also directed the NYISO to report on whether the exclusion from Attachment H's definition of "Pivotal Supplier" applicable to participants that control less than 500 MW of Unforced Capacity ("UCAP") should be retained given Commission rulings interpreting the term "Control." For the reasons set forth in Section V, the NYISO is proposing to retain the existing 500 MW exemption.

### **IV. Summary and Discussion of Proposed Compliance Tariff Revisions**

#### **A. Revising the Definition of "Offer Floor"**

The May 20 Order granted a request for rehearing by the New York Transmission Owners ("NYTOs") regarding the calculation of the Offer Floor applicable to uneconomic entry by In-City ICAP Suppliers other than SCRs.<sup>7</sup>

The NYTOs had argued that Net CONE for purposes of the Offer Floor calculation should be equated to the cost of adding an LMS 100 peaking unit, *i.e.*, the type of peaking

---

<sup>6</sup> Capitalized terms that are not otherwise defined herein shall have the meaning specified in Attachment H, or if not defined therein, the Services Tariff.

<sup>7</sup> As explained in the NYISO's July 21, 2010 Answer in these proceedings, the definition of Offer Floor that the Commission directed the NYISO to revise, pertained to a prior definition of Offer Floor that did not encompass Special Case Resources, but applied to generators and UDRs. *See New York Independent System Operator Inc.*, Request for Leave to Answer and Answer of the New York Independent System Operator, Inc. at 3-4 and fn.9, Docket Nos. EL07-39-006 and ER08-695-004 and 001 (filed July 21, 2010) ("NYISO July 21 Answer").

Ms. Kimberly D. Bose, Secretary

August 12, 2010

Page 4

unit that was used to establish the currently effective In-City Demand Curve, less energy and ancillary services revenues . . . .” They noted that NYISO had proposed to comply with the March 2008 Order by setting the Offer Floor for In-City Generators at “a numerical value equal to 75 percent of the net CONE” which the NYISO had defined as the price on the In-City ICAP Demand Curve that corresponds to 100 percent of the In-City ICAP Requirement. The NYTOs asserted that this amount exceeded the estimated net cost of adding an LMS 100 peaking unit to the In-City market principally because it reflected an “adjustment” that the NYISO applied when calculating Net CONE during the previous triennial Demand Curve reset process. The NYTOs stated that the effect of this “adjustment” was to increase the NYISO’s measure of Net CONE so that the price on the In-City ICAP Demand Curve that corresponds to 100 percent of the In-City ICAP requirement no longer represented the net cost of adding In-City generation.

The NYTOs argued that because the approved Demand Curve assumed that the likelihood of the In-City ICAP requirement not being met was low, the “adjustment” increased the price on the currently effective In-City ICAP Demand Curve that corresponds to 100 percent of the In-City ICAP requirement to a level designed to ensure that a greater percentage of the In-City ICAP requirement would be provided, on average. They further contended that if the approved Demand Curve assumed that a greater percentage of the In-City ICAP requirement is provided on average, then the average price of In-City ICAP must be the price on the In-City ICAP Demand Curve that corresponds to the percentage of the In-City ICAP requirement that would be provided on average, not the price which corresponds to 100 percent of that requirement. For purposes of the currently effective In-City ICAP Demand Curve the adjusted percentage was set at 104 percent of the In-City ICAP Requirement. The NYISO may propose a different adjusted percentage (*e.g.*, 103 percent) in its upcoming ICAP Demand Curve reset filing.

The Commission agreed with the NYTOs and directed the NYISO to file appropriate tariff revisions. In compliance with this directive, the NYISO is proposing to add a new definition, “Mitigation Net CONE” to Attachment H, and to incorporate that term in the definition of “Offer Floor.” “Mitigation Net CONE” would be defined as “the capacity price on the currently effective In-City Demand Curve corresponding to the average amount of excess capacity above the In-City Installed Capacity requirement, expressed as a percentage of that requirement, that formed the basis for the In-City Demand Curve approved by the Commission.” In the context of the currently effective In-City Demand Curve, the use of this new defined term would result in the Offer Floor being set at a level equal to 75 percent of the capacity price determined at 104 percent of the In-City ICAP requirement, exactly as the Commission instructed. For future Demand Curves, which may be calculated using a different percentage of the In-City capacity requirement, the proposed definition would ensure that Offer Floors are calculated in the manner that the Commission approved. Under the

Ms. Kimberly D. Bose, Secretary

August 12, 2010

Page 5

NYISO's compliance proposal, it would not be necessary to revise the definition of "Mitigation Net CONE" each time that the Demand Curves are re-set.

The NYISO is proposing to adopt a new definition for "Mitigation Net CONE" distinct from the existing Attachment H definition of "Net CONE" because it has become apparent that using the same defined term for both In-City ICAP market power mitigation and Demand Curve purposes has engendered confusion.<sup>8</sup> Adopting separate terms will clarify the mitigation measures and avoid any implication that determinations in the In-City mitigation context regarding the definition of Mitigation Net CONE might have precedential effects on the Demand Curves. The NYISO is also proposing clarifying modifications to Sections 23.4.5.7.2<sup>9</sup> and 23.4.5.7.4<sup>10</sup> necessitated by the new "Mitigation Net CONE" term. The Commission has previously authorized the NYISO to include these kinds of limited, but necessary, clarifications in compliance filings and should follow that precedent here.<sup>11</sup>

## **B. Reducing the Penalty for Physically Withholding Uncommitted ICAP**

The May 20 Order concluded that the Attachment H penalty for Pivotal Suppliers that physically withhold by failing to offer all uncommitted ICAP into the market was too high and should be equivalent to the penalty for physical withholding through uneconomic exports. The NYISO was therefore directed to set "the penalty for physical withholding through a failure to offer all uncommitted ICAP into the NYISO markets in the amount of 1.5 times the difference between the clearing prices in the New York City Spot Market Auction with and without the amount (in MWs) deemed to be physically withheld from the In-City market."<sup>12</sup>

In compliance, the NYISO proposes to modify the penalty provision of Section 23.4.5.4.2<sup>13</sup> of Attachment H, as follows:

If Mitigated UCAP is not offered or sold as specified above, the Responsible Market Party for such Installed Capacity shall pay the ISO an amount equal to the product of (A) 1.5 times the difference between the Market-Clearing Price

---

<sup>8</sup> NYISO July 21 Answer at 7-8.

<sup>9</sup> Previously Section 4.5(g)(ii) of Attachment H.

<sup>10</sup> Previously Section 4.5(g)(iv) of Attachment H.

<sup>11</sup> See *New York Independent System Operator, Inc.*, 125 FERC ¶ 61,206 (2008), *reh 'g*, 127 FERC ¶ 61,042 (2009) (accepting proposed tariff revisions necessary to correct drafting errors or ambiguities).

<sup>12</sup> May 20 Order at P 38.

<sup>13</sup> Previously Section 4.5(d)(ii) of Attachment H.

Ms. Kimberly D. Bose, Secretary

August 12, 2010

Page 6

for the New York City Locality in the ICAP Spot Market Auction with and without the inclusion of the Mitigated UCAP and (B) the total of (1) the amount of Mitigated UCAP not offered or sold as specified above, and (2) all other megawatts of Unforced Capacity in the New York City Locality under common Control with such Mitigated UCAP. ~~and if the failure to offer was associated with~~ or the same period as the sale of External Sale UCAP, and the failure causes ~~or contributes~~ to an increase in UCAP prices in the New York City Locality of 15 percent or more, provided such increase is at least \$2.00/kilowatt-month, the Responsible Market Party for such Installed Capacity Supplier shall be required to pay to the ISO an amount equal to 1.5 times the lesser of (A) the difference between the average Market-Clearing Price for the New York City Locality in the ICAP Spot Market Auction for the relevant Comparison Period with and without the inclusion of the ~~Export~~ External Sale UCAP in those auctions, or (B) the difference between such average price and the clearing price in the External Reconfiguration Market for the relevant Comparison Period, times the total of (1) the amount of Mitigated UCAP not offered or sold as specified above, and (2) all other megawatts of Unforced Capacity in the New York City locality under common Control with such Mitigated UCAP.

The NYISO also proposes a conforming modification to the penalty calculation provisions in Section 23.4.5.6.<sup>14</sup> Absent a conforming revision, the effect of the May 20 Order would be to subject Pivotal Suppliers to potentially lower penalties than would apply to ICAP Suppliers that were not Pivotal Suppliers for similar conduct. The NYISO believes that this result would be inequitable and, presumably, was not intended by the Commission. The NYISO is therefore proposing the following conforming revisions to avoid the potential disparity.<sup>15</sup>

If the ISO determines that the proposal or decision constitutes physical withholding, and would increase Market-Clearing Prices in one or more ICAP Spot Market Auctions for the New York City Locality by five percent or more, provided such increase is at least \$.50/kilowatt-month, for each such violation of the above requirements the Market Participant shall be assessed an amount ~~up~~ equal to the product of (A) 1.5 times the difference between the ~~Market-~~

---

<sup>14</sup> Previously Section 4.5(f) of Attachment H.

<sup>15</sup> See *New York Independent System Operator, Inc.*, 125 FERC ¶ 61,206 at P 41 (2008) (accepting proposed tariff revisions as “appropriate because they are needed to implement the modifications directed in the [compliance order]”).

Ms. Kimberly D. Bose, Secretary

August 12, 2010

Page 7

~~e~~Clearing pPrice for the New York City Locality in the ICAP Spot Market Auctions with and without the inclusion of the withheld UCAP in those auctions for each month during which Installed Capacity was withheld, and (B) times the total of (1) the number of megawatts withheld in each month and (2) all other megawatts of Installed Capacity in the New York City Locality under common Control with such withheld megawatts.

**C. Equalizing the Conduct and Impact Thresholds for Withholding by Pivotal Suppliers Through Exports**

The May 20 Order clarified that the conduct threshold for withholding through exports by Pivotal Suppliers should be set at the applicable impact threshold. That is, withholding penalties should apply only if the difference between estimated and actual prices for exports of UCAP and In-City sales was the greater of 15 percent or \$2/kW-month.<sup>16</sup> In compliance with the May 20 Order, the NYISO proposes to modify Section 23.4.5.4.1<sup>17</sup> of Attachment H, to make the conduct threshold the same as the impact threshold for identifying withholding through exports. Specifically:

External Sale ICAP shall be deemed to have been withheld from the New York City Locality if: . . . (2) the net revenues over the Comparison Period from sales in the New York City Locality of the External Sale UCAP that could have been made available for sale in that Locality would have been greater by 15% or more, provided that the net revenues were at least \$2.00/kilowatt-month more than the net UCAP revenues from that portion of the External Sale UCAP over the Comparison Period.

**D. Modifications to the Deadlines in the Pivotal Supplier Export *Ex Ante* Approval Process**

The May 20 Order accepted the NYISO's compliance filing instituting an *ex ante* approval process for Pivotal Supplier capacity exports that would allow exporters to request determinations of whether exports would be uneconomic and would therefore constitute physical withholding. The NYISO's proposal had included a provision that indicated that Market Parties could submit these requests "in accordance with the deadlines specified in the ISO Procedures...." In response to protests alleging that the NYISO should also be required to include a specific deadline for making the *ex ante* determinations in the Services Tariff, the

---

<sup>16</sup> May 20 Order at P 74.

<sup>17</sup> Previously Section 4.5(d)(i) of Attachment H.



Ms. Kimberly D. Bose, Secretary  
August 12, 2010  
Page 8

NYISO proposed, and the Commission accepted, alternative language that clarified that the requests and the NYISO's response to the requests would be made in accordance with deadlines to be specified in the ISO Procedures. Therefore, in compliance with the May 20 Order, the NYISO proposes to modify Section 23.4.5.4.3<sup>18</sup> as follows:

Reasonably in advance of the deadline for submitting offers in an External Reconfiguration Market ~~and in accordance with the deadlines specified in the ISO Procedures,~~ the Responsible Market Party for External Sale UCAP may request the ISO to provide a projection of ICAP Spot Auction clearing prices for the New York City Locality over the Comparison Period for the External Reconfiguration Market. Such requests, and the ISO's response, shall be made in accordance with the deadlines specified in the ISO Procedures.

**E. Changes to Attachment H Provisions Applicable to SCRs**

The May 20 Order directed several changes to tariff provisions establishing the In-City ICAP market power mitigation rules applicable to SCRs. In general, the Commission's determinations with respect to SCRs were based on the principle that SCRs should be subject to mitigation "in the same manner as" but "not necessarily identically to traditional large generators."<sup>19</sup> The NYISO has sought to adhere to that principle in its proposed compliance tariff revisions.

**a. Modifications to the Applicability and Duration of SCR Mitigation Rules**

The May 20 Order held that "new entry" by SCRs should be deemed to be limited to the initial participation of an SCR in the marketplace. It therefore rejected a NYISO proposal that would have treated an SCR that entered the market, left the market, but then returned after a year's absence as a "new entrant." SCRs are to instead be subject to mitigation for a single initial period, as is the case with traditional generators.

In addition, the May 20 Order directed the NYISO to modify its approach to determining the duration of mitigation for new SCRs. The Commission believed that a twelve calendar month mitigation period was not appropriate because it could allow SCRs that had not been proven to be economic, to suppress prices after the twelve months expired. The Commission directed the NYISO to modify its proposed tariff changes to provide that

---

<sup>18</sup> Previously Section 4.5(d)(iii) of Attachment H.

<sup>19</sup> See, e.g., May 20 Order at P 106.



Ms. Kimberly D. Bose, Secretary  
August 12, 2010  
Page 9

mitigation would apply “until the new SCR’s capacity has been accepted in the market at a price at or above its offer floor for a total of 12, not necessarily consecutive, months.”<sup>20</sup>

The Commission also directed the NYISO to provide for an exemption from the Offer Floor for SCRs consistent with the exemption for generation. The Commission directed the NYISO to provide an exemption for new SCRs where “for the first year after entry into the market, the market price is expected to exceed the SCR offer floor.”<sup>21</sup>

Therefore, in compliance with the above, the NYISO proposes to modify Section 23.4.5.7.5,<sup>22</sup> as follows:

An In-City Installed Capacity Supplier that is a Special Case Resource shall be subject to an Offer Floor ~~for (A) beginning with the month of its initial offer to supply Installed Capacity, and until its offers of Installed Capacity have been accepted in the ICAP Spot Market Auction at a price at or above its Offer Floor for a total of twelve, not necessarily consecutive, months. (B) its initial offer to supply Installed Capacity following a period of one year or more in which it did not offer to supply Installed Capacity. Responsible Interface Parties shall identify to the ISO any Special Case Resources shall be exempt from the that is subject to an Offer Floor if the ISO projects that the ICAP Sport Market Auction price will exceed, in accordance with ISO Procedure T the Special Case Resource’s Offer Floor for the first twelve months that the Special Case Resource reasonably anticipated to offer to supply UCAP, shall continue to be subject to an Offer Floor for the following 11 months, for a total for 12 months.~~

The NYISO must have certain data from Responsible Interface Parties (“RIPs”)<sup>23</sup> in order to make the SCR Offer Floor exemption determination that is required under the May 20 Order. Without the necessary data,<sup>24</sup> the NYISO could not inform the RIP of the SCR’s Offer Floor. The NYISO likewise could not apply the revised twelve month test (described above) for determining the duration of a mitigated SCR’s mitigation period.

---

<sup>20</sup> *Id.* at PP 106-107.

<sup>21</sup> *Id.* at P 108.

<sup>22</sup> Previously Section 4.5(g)(v) of Attachment H.

<sup>23</sup> A Responsible Interface Party is an aggregator of Special Case Resources that is authorized by the NYISO to be the Installed Capacity Supplier for Special Case Resources.

<sup>24</sup> Necessary data would not include data on payments and other benefits from New York State programs that are excluded from the Offer Floor calculation, consistent with the description in Section IV.E.b.i of this filing letter.

Ms. Kimberly D. Bose, Secretary  
August 12, 2010  
Page 10

If the NYISO receives SCR data from RIPs by a certain date (to be specified) prior to the Spot Market Auction, the NYISO could provide the RIPs with determinations of whether the SCR was exempt and, if not, the price of the SCR's Offer Floors. This information will enable RIPs with new SCRs to avoid a shortfall charge for certifying SCR capacity subject to an Offer Floor against Capability Period Auctions Monthly Auctions, or bilateral sales (*i.e.*, for selling capacity subject to an Offer Floor in other than a Spot Market Auction). RIPs would also know with certainty and in advance the Spot Market Auction the level of the new SCR's Offer Floor (if applicable) so that its offers into the Spot Market Auction may be at or above the SCR's Offer Floor, thereby avoiding potential penalties.

By contrast, if a RIP fails to provide the necessary data, the RIP would not have the benefit of this information. Moreover, the NYISO would be unable to inform it of the SCR's Offer Floor in advance and could not determine, in accordance with the revised provision regarding the twelve months of cleared UCAP at or above the offer floor, when an SCR would no longer be subject to its Offer Floor. RIP failures to provide data would therefore interfere with the NYISO's ability to comply with the May 20 Order requirement that the duration of the Offer Floor be twelve (not necessarily consecutive) months; the NYISO would not have the data to know the Offer Floor so it would not know the number of months the new SCR was subject to the Offer Floor.

To avoid this outcome, the NYISO is proposing to further revise Section 23.4.5.7.5<sup>25</sup> to specify that SCRs for which the NYISO has not received all of the required Offer Floor information by a deadline to be specified in the ISO Procedures will not be eligible to offer or sell capacity until the required information is provided.<sup>26</sup> Because the deadline to enroll new SCRs for the August auction for the September Spot Market Auction is fast approaching, and the manner in which the NYISO's Demand Response Information System operates requires a lag period between enrollment of SCRs and the running of the Spot Market Auction each month, the NYISO respectfully requests that the Commission not make this proposed requirement effective until thirty days after the issuance of an order accepting it.

---

<sup>25</sup> As was noted in footnote 15, the Commission has previously allowed the NYISO to include limited tariff changes that are necessary to implement the Commission's mandates in compliance filings even when those necessary implementation-related changes were not expressly directed by the Commission. *See New York Independent System Operator, Inc.*, 125 FERC ¶ 61,206 at P 41 (2008).

<sup>26</sup> The NYISO's Demand Response Information System ("DRIS"), which was not in place at the time that the filings addressed by the May 20 Order were made, will permit the NYISO to identify an SCR's enrollment status as "under review", so that the SCR cannot participate in the market, including offering into the Spot Market, or have sales allocated to it. The DRIS first became available for Market Participations on July 17, 2010.

Ms. Kimberly D. Bose, Secretary  
August 12, 2010  
Page 11

Granting the later effective date would allow SCRs for which required data have not been submitted to offer and sell into the Spot Market Auctions for which the SCR is enrolled prior to the issuance of the Commission's Order accepting tariff language preventing them from doing so. This later effective date should ameliorate any possible concerns about lack of notice or harm to the capacity market. To the extent necessary, the NYISO also respectfully requests a waiver of its obligation, with respect to SCRs for which data were not provided, to compute the mitigation duration period until such time as a data submission mandate is included in the Services Tariff.

Therefore, the NYISO proposes to insert the following sentence at the end of the above-proposed modified Section 23.4.5.7.5, as follows:

If a Responsible Interface Party fails to provide SCR data that the ISO needs to conduct the calculations described in the two preceding sentences by the deadline established in ISO Procedures, the SCR will not be eligible to offer or sell Installed Capacity.

Finally, the May 20 Order found that existing language in Attachment H specifying that all market power mitigation measures would expire after six months was inconsistent with the accepted mitigation duration periods for both In-City Generator and SCRs and required clarification. The NYISO therefore proposes to modify, Section 23.4.8,<sup>27</sup> to insert in the beginning of the first sentence "Except as specified in Section 23.4.5 of this Attachment H," thereby excepting the In-City Generator and SCR mitigation periods from the otherwise applicable six-month limit.

**b. Modifications to the SCR Offer Floor**

The May 20 Order accepted, subject to modifications, the NYISO's proposed Offer Floor for SCRs in Section 23.4.5.7.5, which set the Offer Floor as:

equal to the minimum monthly payment for providing ICAP by its Responsible Interface Party, plus the monthly value of any payments or other benefits the Special Case Resource receives from a third party for the providing of Installed Capacity, or that is received by the Responsible Interface Party for the provision of Installed Capacity by the Special Case Resource

---

<sup>27</sup> The May 20 Order directed the NYISO to revise Section 4.7 of Attachment H. Due to the submission of its baseline eTariff, this Section has been renumbered to 23.4.8.

Ms. Kimberly D. Bose, Secretary  
August 12, 2010  
Page 12

The May 20 Order's modifications included a substantive change regarding the exemption of certain payments or other benefits from the Offer Floor and other clarifications, as further discussed below.

**i. Proposed Approach to Determine Whether Payments and Benefits Received By SCRs Should be Included in the Offer Floor Calculation**

The May 20 Order held that “subsidies or other benefits designed to encourage SCRs” should be included in the NYISO’s SCR Offer Floor calculations, but simultaneously noted that it did not intend to “interfere with state programs that further specific legitimate policy goals.”<sup>28</sup> It concluded that it would be appropriate to exclude payments to SCRs under the two programs that were previously discussed in these proceedings, namely, the New York State Energy Research and Development Authority rebates and the Consolidated Edison Company of New York, Inc. Distribution Load Relief Program, from SCR Offer Floor calculations.<sup>29</sup> With respect to other state programs, the Commission directed the NYISO to develop tariff language governing whether payments or other benefits under them should be excluded from the Offer Floor calculation. To make it easier for SCRs to calculate their Offer Floors in advance, the NYISO was ordered to post “on its website a complete list of programs whose subsidies and other benefits are to be included in the offer floor, as well as all programs whose subsidies or benefits are to be excluded . . . .”<sup>30</sup>

For the reasons specified in its June 21, 2010 *Request for Clarification* in these proceedings the NYISO does not believe that the Commission could have intended for it to pass judgment on the “legitimacy” of individual state programs. The NYISO assumes that the Commission would agree that state programs should be presumed to be aimed at serving valid public policy goals. The NYISO therefore interprets the May 20 Order as directing it to consider the potential for payments or other benefits received by SCRs to cause uneconomic entry that would harm the capacity markets. The NYISO does not believe that any of the programs of which it is aware that are currently administered or approved by New York State, or a governmental instrumentality thereof, are currently causing uneconomic entry that would harm the capacity markets. The NYISO is therefore proposing to exclude all payments and the other benefits to SCRs under state programs from the Offer Floor calculation. The NYISO has discussed this proposal with its Independent Market Monitor who agreed that it represented a reasonable approach at this time.

---

<sup>28</sup> May 20 Order at P 137.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at P 138.

Ms. Kimberly D. Bose, Secretary  
August 12, 2010  
Page 13

The NYISO is therefore proposing compliance revisions to Section 23.4.5.7.5 specifying that all payments and other benefits an SCR receives for offering or supplying Installed Capacity in the NYISO's In-City capacity market will be included in the computation of its Offer Floor if the payment or other benefit is not provided under a program administered or approved by New York State, or a governmental instrumentality of New York State. The criterion requiring that the payment or other benefit be tied to the SCR's participation in the Installed Capacity market will distinguish payments and other benefits that may facilitate an SCR's ability to suppress Installed Capacity prices, from those that do not (*e.g.*, payments towards energy efficiency improvements). The NYISO believes that no additional criteria are necessary at this time.

Therefore, in compliance with the above, the NYISO proposes to modify Section 23.4.5.7.5, as follows:

The Offer Floor calculation shall include any payment or the value of other benefits that are awarded for offering of supplying In-City Capacity, except for payments or the value of other benefits provided under programs administered or approved by New York State or a government instrumentality of New York State.

The May 20 Order instructed the NYISO "to monitor SCR participation in its capacity market to evaluate whether SCRs are being used to suppress capacity market clearing prices below a competitive level despite bidding at or above the offer floor under NYISO's proposal, and, if so, to propose further changes to its mitigation rules to address such issues."<sup>31</sup> The NYISO will continue to monitor the impact of payments and other benefits from state programs, and to consider any stakeholder concerns that such programs may individually, or collectively, be promoting uneconomic entry. In the event that the NYISO determines that the exemption from the Offer Floor computation of payments and other benefits from state programs appears that it may or has become harmful to the capacity market, it will propose whatever tariff changes may be appropriate given the circumstances at that time. More generally, the NYISO offers the following observation. Since the SCR mitigation provisions were added to Attachment H, the level of new SCRs sold by any one RIP has not exceeded the impact threshold. Therefore, even if every new SCR added by a single RIP was offered in an ICAP Auction at a level below the SCRs' respective Offer Floors, including payments and other benefits from state programs, the currently-defined SCR uneconomic impact threshold would not be reached.

---

<sup>31</sup> *Id.* at P 134.

Ms. Kimberly D. Bose, Secretary  
August 12, 2010  
Page 14

As directed by the Commission, the NYISO will post on its website the names of the two programs identified by the Commission, and other known state programs, that would be exempt from the Offer Floor calculation. It will likewise identify any other programs that provide for payments and other benefits that would be excluded from or included in the calculation of an SCR's Offer Floor, consistent with the tariff language included in this filing. The NYISO also will invite stakeholders to inform it of programs that are not posted on its website that should be included in or excluded from an Offer Floor determination.

## **ii. Additional Clarifying Tariff Revisions**

The Commission also directed several clarifying modifications to the SCR Offer Floor provisions. First, the Commission agreed with the NYISO that mitigated SCRs can be assigned separate point identifiers so that an Offer Floor could be set for them while still permitting Responsible Interface Parties to aggregate other SCRs. The Commission, however, found that the NYISO's additional proposal, that offers at a point identifier can be comprised of separate points, was not clearly reflected in its tariff language and directed that the NYISO revise it to "specifically state that offers can comprise a specified set of points at which prices can vary with the quantity offered, and that if this set includes MW from an SCR subject to mitigation, then at least that number of MW must be offered at the offer floor applicable to that SCR."<sup>32</sup> The NYISO therefore proposes to modify Section 23.4.5.7.5 to clarify that:

Such offers may comprise a set of points for which prices may vary with the quantity offered. If this set includes megawatts from a Special Case Resource(s) with an Offer Floor, then at least that many megawatts in the offer associated with each Special Case Resource must be offered at or above the Special Case Resource's Offer Floor.

Additionally, the May 20 Order accepted the NYISO's proposal to subject Responsible Interface Parties to SCR mitigation penalties, but directed the NYISO to promptly inform such Responsible Interface Parties of a breach of the Offer Floor and price impact threshold and the penalty to be assessed. The NYISO, therefore, proposes to modify Section 23.4.5.7.5 to state that:

If an offer is submitted below the applicable Offer Floor, the ISO will notify the Responsible Market Party and the notification will identify the offer, the

---

<sup>32</sup> *Id.* at P 135.

Ms. Kimberly D. Bose, Secretary

August 12, 2010

Page 15

Special Case Resource, the price impact, and the penalty amount. The ISO will provide the notice reasonably in advance of imposing such penalty.

The May 20 Order also directed the NYISO to replace the word “exceeding” to “below” in Section 23.4.5.7.5 regarding the calculation of the penalty. The NYISO has made the directed revision.

#### **F. Ministerial Correction**

Additionally, the NYISO is taking the opportunity to correct the numbering of Section 23.4.5.8, which should be numbered 23.4.5.7.7. The NYISO is also correcting minor typographical errors in Sections 23.4.5.7.7 (*i.e.*, deleting an extra space between the words “remain” and “subject”) and 23.4.5.7.5 (*i.e.*, replacing the word “an” with “a”). The Commission has previously accepted such ministerial corrections in compliance filings.

#### **V. Report on the NYISO’s Evaluation of the 500 MW Exemption for Pivotal Suppliers**

The May 20 Order rejected, on procedural grounds, arguments by the NYISO and the New York State Public Service Commission calling on the Commission to accept a broader definition of Control under Attachment H. The NYISO had expressed concern that excluding the retention of revenue or other financial benefits from the scope of the definition, and focusing solely on whether an entity had decision-making power with respect to price and volume, could create a loophole that would result in unjust and unreasonable capacity prices. In response, the May 20 Order observed that the combination of the definition of “Control” it had established in the market-based rate context in Order No. 697<sup>33</sup> and then-existing NYISO tariff language excluding sellers with less than 500 MW of UCAP from the definition of “Pivotal Supplier” might allow such sellers to exercise market power. It therefore directed the NYISO to review the merits of the existing mitigation exemption and report back on whether it should be preserved.<sup>34</sup>

In compliance with the May 20 Order, the NYISO has conducted its review and determined that the existing 500 MW exemption should be retained even with the current,

---

<sup>33</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 176, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh’g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055 (2008), *order on reh’g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh’g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh’g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010).

<sup>34</sup> May 20 Order at P 23.



Ms. Kimberly D. Bose, Secretary

August 12, 2010

Page 16

narrower definition of “Control.” The NYISO has discussed its determination with its Independent Market Monitoring Unit (“MMU”) and confirmed that its MMU supports this determination.

The 500 MW exemption was originally based on an analysis demonstrating that 500 MW was approximately the minimum size of the portfolio that an In-City ICAP Supplier would need to have in order to profitably withhold capacity.<sup>35</sup>

The NYISO re-examined the merits of the existing 500 MW exemption using updated Demand Curve parameters and prices from May 2008 through June 2010. Over that twenty-six month period, the average required size for profitable withholding was 575.8 MW and the median size was 676.5 MW.<sup>36</sup> The size for profitable withholding was above 500 MW in summer months and below 500 MW in winter months. Withholding in winter months is not as much of a concern because In-City capacity prices are usually set by the overall New York Control Area price, which makes the potential opportunity to benefit from withholding absent or otherwise less predictable. This analysis confirms that the 500 MW value continues to be an appropriate level of the point at which ICAP Suppliers that could benefit from withholding are properly identified as Pivotal Suppliers.

The NYISO continues to believe that the risk of market abuses with the combination of the current definition of “Control” and the 500 MW exemption is greater, than with the narrower proposed definition. It also believes, however, that the advantages of retaining the exemption outweigh the disadvantages, even after accounting for the heightened risk. The NYISO will be vigilant for signs that Suppliers that qualify for the exemption might be engaging in market abuses. If the NYISO uncovers suspicious conduct it would refer the matter to the Independent Market Monitoring Unit and consider proposing tariff revisions to address any issues.<sup>37</sup> Finally, the NYISO intends to provide greater transparency into potential withholding behavior by including the amounts of unoffered, and offered but unsold, capacity in the New York City Locality in its Installed Capacity Demand Curves Report that is filed annually with the Commission.<sup>38</sup>

---

<sup>35</sup> *New York Independent System Operator Inc.*, Compliance Filing of the New York Independent System Operator, Inc. Regarding the New York City ICAP Market Structure at 27, Docket No. EL07-39-000 (filed October 4, 2007).

<sup>36</sup> See the Affidavit of Mr. Joshua A. Boles which describes the withholding analysis and methodology.

<sup>37</sup> Market Administration and Control Area Services Tariff Attachment O at Section 30.6.2.1.

<sup>38</sup> *New York Independent System Operator, Inc.*, 130 FERC ¶ 61,237 at P 4 (2010).

Ms. Kimberly D. Bose, Secretary  
August 12, 2010  
Page 17

## **VI. Requested Effective Dates and Request for Waiver**

Consistent with the ordering paragraph (B) of the May 20 Order, the NYISO is requesting a November 1, 2008 effective date for all of its proposed compliance tariff revisions, with one exception. For the reasons specified in Section IV.E.a, above, the NYISO is requesting an effective date thirty days after the issuance of an order accepting its proposed language in Section 23.4.5.7.5 prohibiting SCRs from offering or selling UCAP if certain data are not provided to the NYISO in a timely manner.

Given that the requested effective dates for nearly all of the proposed compliance language precedes the eTariff baseline date of June 30, 2010, the NYISO is submitting clean and redline versions of the proposed tariff modifications on the prior, sheet-based version of the Services Tariff. The submission of the sheet-based version complies with Order No. 614<sup>39</sup> and the Commission's requirements that proposed modifications be submitted in all tariff versions where the proposed revisions would be effective,<sup>40</sup> and will advance the completion of the record in the prior dockets (Docket Nos. EL07-39, *et al.* and ER08-695, *et al.*). Reflecting the changes in the prior version of the tariff also may aid parties and stakeholders in their understanding of the tariff changes and the dates of their effectiveness.

To the extent necessary, the NYISO is requesting a waiver of the requirements that it provide a paper version of the tariff sheets as they would have been filed under Order No. 614. The attached clean and redlined files comply with the Commission's requirements and incorporate the changes directed by the Commission's order in the instant docket. However, should the Commission wish to complete the "paper" record, the NYISO can provide those sheets upon request.

## **VII. 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 electric utility regulatory agency of New Jersey. In addition, the complete filing will be posted on the NYISO's website at [www.nyiso.com](http://www.nyiso.com).

---

<sup>39</sup> New York Independent System Operator, Inc., FERC Electric Tariff, Original Volume No. 2, ISO Market Administration and Control Area Services Tariff.

<sup>40</sup> See, e.g., *Midwest Independent Transmission System Operator, Inc. and American Transmission Company, LLC*, 127 FERC ¶ 61,169 at P 76 (2009) (requiring that revisions be made in both the currently effective version of the tariff and the prior version of the tariff that was in effect when the compliance filing was made).



Ms. Kimberly D. Bose, Secretary  
August 12, 2010  
Page 18

#### **VIII. Conclusion**

Wherefore, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this filing to be effective as specified above.

Respectfully submitted,

/s/Ted J. Murphy

Ted J. Murphy

Counsel to

the New York Independent System Operator, Inc.