

November 26, 2013

By Electronic Delivery

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

Re: *New York Independent System Operator, Inc., Compliance Filing and Alternative Request for Limited Waiver, Docket No. RM11-24-000, AD10-13-000, ER14-____-000*

Dear Ms. Bose:

The New York Independent System Operator, Inc. (“NYISO”) respectfully submits this compliance filing in response to the Commission’s Final Rule on *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies Order Conditionally Accepting Proposed Tariff Revisions*.¹ Order No. 784 revised certain aspects of the Commission’s currently effective market-based rate regulations, its ancillary services requirements under the *pro forma* open-access transmission tariff (“OATT”), and its accounting and reporting requirements.

I. DOCUMENTS SUBMITTED WITH THIS FILING

The documents submitted with this filing include:

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

II. BACKGROUND

¹ *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies Order Conditionally Accepting Proposed Tariff Revisions*, Order No. 784, 144 FERC ¶ 61,056 (2013) (“Order No. 784”).

Two of Order No. 784's directives are formally applicable to the NYISO.² Both directives are designed to provide greater transparency regarding reserve requirements for regulation service.³ First, each public utility transmission provider must amend Schedule 3 of its OATT, *i.e.*, the rate schedule that addresses regulation service under the *pro forma* OATT, to add a statement that the transmission provider will consider the speed and accuracy of regulation resources as it determines regulation service reserve requirements.⁴ As described below in Section III.A, the NYISO is proposing a revision to Schedule 3 of its Services Tariff to bring it into compliance with this directive.⁵

Second, Order No. 784 added section 37.6(k) to the Commission's open access same-time information system ("OASIS") regulations. It requires public utility transmission providers to post historical one-minute and ten-minute average Area Control Error ("ACE") data for the most recent calendar year. This data must be updated once annually.⁶ The Commission explained that this rule would provide an additional tool for a transmission customer to demonstrate to the public utility transmission provider that the resource(s) it selects for self-supply are comparable to those owned or controlled by the public utility transmission provider itself.⁷

² In its comments on the Notice of Proposed Rulemaking ("NOPR") that preceded Order No. 784, the NYISO argued that various requirements proposed in the NOPR should not apply to Independent System Operators or Regional Transmission Organizations ("ISOs/RTOs"), such as the NYISO, that already administered bid-based ancillary services markets and were subject to Order No. 755. *Frequency Regulation Compensation in the Organized Wholesale Power Markets*, Order No. 755, 76 FR 67,260 (Oct. 31, 2011), FERC Stats. & Regs. ¶ 31,324 (2011), *order denying reh'g*, Order No. 755-A, 138 FERC ¶ 61,123 (2012). Order No. 784 did not address these comments. As is discussed below, the NYISO continues to believe that the reforms adopted in Order No. 784 are more relevant to, and appear to be principally aimed at, non-centralized, non-ISO/RTO-administered ancillary services markets. Nevertheless, the NYISO is submitting this filing to ensure its full compliance with the Commission's regulations.

³ Order No. 784 at P 2.

⁴ *Id.* at 111.

⁵ The NYISO's OATT Rate Schedule 3 identifies the Transmission Customers that are obligated to purchase Regulation Service from the NYISO and describes how their charges are calculated. Rate Schedule 3 of the NYISO Services Tariff identifies eligible Regulation Service Suppliers and specifies how they are compensated. The NYISO made the compliance tariff revisions required by Order No. 755 to its Services Tariff rather than its OATT and this approach was accepted by the Commission. *See: New York Independent System Operator, Inc.*, 133 FERC ¶ 61,072 (2012). Accordingly, the NYISO believes that Order 784's compliance tariff language regarding accounting for the speed and accuracy of Regulation Suppliers when determining the amount of Regulation Service to purchase is likewise appropriately placed in its Services Tariff.

⁶ Order No. 784 at P 116.

⁷ Order No. 784 at PP 3, 4.

As is described in Section III.B, below, the NYISO's Transmission Customers⁸ are not authorized to meet their Regulation Service requirements through physical self-supply. All Regulation Service must be procured from the NYISO. The information the NYISO already provides is more relevant to purchasers and suppliers in the NYISO-administered Regulation Service markets than section 37.6(k) requires. Changing the NYISO's posting practices in accordance with section 37.6(k) would serve no useful purpose in the context of the NYISO but would require NYISO staff time and resources to implement. Accordingly, this compliance filing respectfully submits that the NYISO is already more than compliant with Order No. 784's posting requirements and should not be required to implement the specific requirements of section 37.6(k).

III. COMPLIANCE WITH ORDER NO. 784

A. Proposed Revisions to Rate Schedule 3 of the Services Tariff

Order No. 784 required transmission providers to amend Schedule 3 of the OATT to include a statement that the public utility transmission provider "will take into account the speed and accuracy of regulation resources in determining reserve requirements for Regulation and Frequency Response service, including when reviewing whether a self-supplying customer has made 'alternative comparable arrangements.'"⁹

The NYISO is proposing to insert Order No. 784-compliant language into section 15.3.1.1 of Rate Schedule 3 to its Services Tariff, as shown on Attachment II in blackline. The proposed compliance language states that the NYISO will take into account the speed and accuracy of regulation resources in determining reserve requirements.

The proposed compliance language does not, however, include a reference to NYISO Transmission Customers making "alternative comparable arrangements" for self-supply. This is because, as mentioned above, the NYISO's Commission-approved tariff and market design does not provide for the traditional "physical" form of self-supply contemplated by Order Nos. 888 and 890. NYISO Transmission Customers may enter into financial hedging arrangements that are the functional economic equivalent of self-supply. But the NYISO tariffs do not include a mechanism under which customers would physically "opt out" of the centralized Regulation Service market by identifying and providing Regulation Service from individually contracted-for resources.¹⁰ The Commission has previously accepted the deletion of the self-supply option

⁸ Capitalized terms that are not otherwise defined in this filing letter shall have the meaning specified in the NYISO's tariffs.

⁹ Order No. 784 at P 114.

¹⁰ Pursuant to the NYISO's OATT Rate Schedule 3, Section 6.3, the NYISO provides Regulation Service. Pursuant to Section 6.3.1. Load Serving Entities ("LSE) purchase this service from the NYISO. Section 6.3.2 establishes a rate that is assessed to each LSE based on its Actual Energy Withdrawals each hour to serve its Load. There are no alternative Regulation Service procurement arrangements available under the OATT. An LSE entering into a financial self-supply or hedging contract would do so outside the NYISO's tariffs and such contract would not impact the LSE's continuing obligation to continue to purchase its Regulation Service from the NYISO.

from the NYISO tariffs in recognition of the fact that physical self supply was not available in the NYISO market.¹¹ The NYISO therefore respectfully submits that the compliance tariff language that it has proposed here should likewise be accepted as “consistent with or superior to” the language specified by Order No. 784.¹²

B. The NYISO’s Existing Regulation Service Market Arrangements and Data Posting Practices Already Surpass What New Section 37.6(k) Requires

As the NYISO has explained in other proceedings,¹³ its transmission service model differs substantially in multiple respects from the model contemplated by the *pro forma* OATT. The model uses location based marginal pricing (“LBMP”) to manage congestion and to operate bid-based spot markets instead of the *pro forma* OATT physical reservation system. Under the LBMP framework, Energy and Ancillary Service prices are established in the bid-based LBMP Day-Ahead Market and also in the real-time spot market which prices imbalance Energy and sets the price for various ancillary services, including Regulation Service, on a “real-time” basis. The NYISO sends AGC Base Point Signals to regulation resources every six seconds. Every five minutes, the NYISO calculates and posts real-time Regulation Capacity Market Prices and, in compliance with Order No. 755, Regulation Movement Market Prices. These prices are archived for several years and are available to any interested entity.

As was noted above, Schedule 3 of NYISO’s OATT,¹⁴ which was approved by the Commission, does not provide NYISO Transmission Customers with a *pro forma* OATT-like option to self-supply Regulation Service by making “alternative comparable arrangements.” Instead, Transmission Customers must purchase Regulation Service from the NYISO, which

¹¹ See: *New York Independent System Operator, Inc.*, Docket No. ER11-4257-000, *Filing Letter* at 3-4 (“the NYISO proposes to amend Sections 6.3 and 6.3.1 to clarify that physical self-supply of Regulation Service is not available. The nature of Regulation Service precludes Transmission Customer self-supply, and the contradictory language in these sections will be deleted.”) and Letter Order Accepting Amendments (9/28/2011).

¹² The NYISO acknowledges that Order No. 784 did not expressly invite public utility transmission providers to propose alternative language under the “consistent with or superior to” standard. Nevertheless, the Commission has often accepted such language in other generic rulemaking proceedings. See: e.g. *New York Independent System Operator, Inc.*, 134 FERC 61,255 (2011) and *New York Independent System Operator, Inc.*, ER11-2048-003 and 004 (unpublished letter order issued 6/6/2011). It would be unreasonable, would not serve the purpose of Order No. 784, and would not benefit Transmission Customers or other stakeholders in New York to preclude the NYISO from proposing alternative compliance language for Section 6.3 of Rate Schedule 3 that satisfies the “consistent with or superior to” standard.

¹³ See, e.g., *Central Hudson Gas & Electric Corp. et. al.*, 86 FERC ¶ 61,062 (1999) (generally accepting NYISO’s “financial” LBMP-based transmission services model); and *New York Independent System Operator, Inc.*, 130 FERC 61,104 (2010) (accepting certain waivers requested by the NYISO, finding that the regulations were incompatible with the transmission services provided under NYISO’s current tariff.)

¹⁴ OATT Rate Schedule 6.3.

procures all necessary Regulation Service from providers in New York through centralized market mechanisms.¹⁵ “Self-supply” only occurs via third party financial arrangements.

The NYISO’s understanding is that Order No. 784’s directive that transmission providers post historical one-minute and ten-minute average ACE data was designed to provide greater transparency to transmission customers as they evaluate the *pro forma* OATT self-supply option.¹⁶ Because physical self-supply is not available in New York, information on one-minute and ten-minute average ACE data provides no value to NYISO’s transmission customers, even those using financial self-supply contracts.

On the other hand, the information that the NYISO already makes available to all of its customers provides a great deal of value to them, including those interested in Regulation Service financial self-supply. That is, the absence of the *pro forma* self-supply option does not mean that customers in New York are disadvantaged relative to customers taking service under the *pro forma* OATT. To the contrary, the NYISO markets are as transparent, and provide transmission customers with as much information as is available, under any other Commission-jurisdictional tariff. The NYISO provides customers with a wealth of market and transmission system information that goes far beyond what the OASIS regulations, including section 37.6(k) require. This includes the detailed and highly granular Regulation Service price information described above. No NYISO customer has questioned the transparency of these market arrangements. In the context of the NYISO-administered markets the NYISO does not believe that OASIS postings of one-minute and ten-minute average ACE data would be of any value to its customers.¹⁷

Moreover, making the system and software changes that would be needed to post the information identified by section 37.6(k) would be burdensome for the NYISO. The NYISO provides six-second ACE data to the North American Electric Reliability Corporation but does not translate this data into one-minute and ten-minute blocks. Nor does it post any ACE information on OASIS. Posting such one- and ten-minute ACE values would be another software project.¹⁸ Requiring the NYISO to make the postings required by Section 37.6(k) would thus require a financial and resource commitment on the NYISO, and by extension on its

¹⁵ Providers must verify they are capable of responding to six second Automatic Generator Control (“AGC”) Base Points and can perform within the tolerance level of AGC base points. The current providers of Regulation Service in New York include non-traditional technologies such as fly-wheels. Demand Side Resources can also qualify to provide this service.

¹⁶ Order No. 784 at P 3.

¹⁷ If a transmission customer sought this information, the NYISO has made available the six-second ACE data that it provides to the North American Electric Reliability Corporation.

¹⁸ Posting this data could be considered for the NYISO’s new “Maps and Graphs” project being designed in 2014 with the anticipation it would be in place in 2015. This could allow streaming of ACE data.

customers, without providing them any corresponding benefit.¹⁹ Accordingly, the Commission should issue an order in response to this compliance filing clarifying that the information that the NYISO currently posts is sufficient to satisfy section 37.6(k) given the nature of the NYISO's transmission model and markets.

C. Alternative Request for Waiver

To the extent that the Commission deems it necessary for compliance with Order No. 784, the NYISO respectfully seeks a waiver of section 37.6(k)'s requirements. The Commission has granted the NYISO waivers of many other OASIS posting regulations that are "incompatible with the transmission services" that the NYISO provides or are otherwise practically inapplicable.²⁰

Under established precedent, in similar circumstances, the Commission has granted tariff waivers when the waiver is of limited scope, a concrete problem will be remedied by granting the requisite waiver, and the waiver does not have undesirable consequences, such as harming third parties.²¹ Each prong of the waiver analysis would be satisfied in this instance. The NYISO would be acting in good faith. The waiver would be limited in scope to a single regulation. It would avoid the "concrete problem" of requiring the NYISO to expend time and resources developing software posting functionality and related procedures that would neither be necessary nor beneficial to NYISO stakeholders. For the same reason, it would not have undesirable consequences or harm third parties.

IV. EFFECTIVE DATE

The NYISO respectfully requests that the tariff revisions proposed in this compliance filing become effective on November 27, 2013 as required in Order 784.

V. SERVICE

This filing will be posted on the NYISO's website at www.nyiso.com. In addition, the NYISO will e-mail an electronic link to this filing to the official representative of each party to this proceeding, to 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.

¹⁹ *Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,253 (1999)

²⁰ *New York Independent System Operator, Inc.*, 133 FERC ¶ 61,208 (2010). *See also* *Central Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,253 (1999) (waiving many OASIS regulations around the time that the NYISO's financial reservation model commenced operations); *New York Independent System Operator*, 130 FERC ¶ 61,104 (2010) (granting additional waivers from OASIS regulations revised or introduced by Order Nos. 676, 889 and 890).

²¹ *See, e.g., Midcontinent Independent System Operator, Inc.*, 145 FERC ¶ 61,070 (2013) (granting the requested tariff waiver and noting that the fourth criterion often considered by the Commission, where there was an underlying good faith error, was not relevant to its decision).

VI. COMMUNICATIONS

Copies of correspondence concerning this filing should be served on:

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VII. CONCLUSION

For the reasons specified above, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this compliance filing.

Respectfully submitted,

/s/ Mollie Lampi
Mollie Lampi
Assistant General Counsel
New York Independent System Operator, Inc.

Dated: November 26, 2013

cc:	Michael A. Bardee	Michael McLaughlin
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	Gregory Berson	Morris Margolis
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²² Waiver of the Commission's regulations (18 C.F.R. § 385.203(b)(3) (2012)) is requested to the extent necessary to permit service on counsel for the NYISO in both Miami, FL and Washington, DC.