

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

**New York Independent System
Operator, Inc.**

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Docket No. ER14-____-000

**PETITION FOR TEMPORARY WAIVERS OF TARIFF PROVISIONS
AND FOR EXPEDITED COMMISSION ACTION BY FEBRUARY 21, 2014**

The New York Independent System Operator, Inc. (“NYISO”) respectfully submits this petition pursuant to Rule 207¹ of the Commission’s Rules of Practice and Procedure for temporary waivers of certain tariff provisions related to determinations that the NYISO expects to make in the near future under the buyer-side capacity market power mitigation rules (“BSM Rules”). These determinations are for two NCZ Examined Projects² that are located in the G-J Locality and that are members of the completed 2011 Class Year (“CY 2011”) (collectively, the “Projects”). The relevant provisions of the Services Tariff involve: (i) the source of Load forecast data to be used in these determinations; (ii) a requirement that the NYISO make the determinations for the Projects “promptly” after the Commission’s acceptance of an Installed Capacity (“ICAP”) Demand Curve for the G-J Locality; and (iii) a requirement that the NYISO issue preliminary non-binding “indicative” determinations based on some different inputs, at the same time that it issues final and binding determinations for the Projects.

¹ 18 CFR § 385.207 (2013).

² Capitalized terms that are not defined herein have the meaning specified in the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”), as revised by the Commission’s acceptance of the NYISO’s filing to establish a New Capacity Zone and subsequent related filings in Docket Nos. ER12-360-001 and ER13-1380. *See* New York Independent System Operator, Inc., *Proposed Tariff Revisions to Establish and Recognize a New Capacity Zone and Request for Action on Pending Compliance Filing*, Docket No.ER13-1380-000 (April 30, 2013) (the “April 2013 NCZ Filing”) *and* New York Independent System Operator, Inc., *Initial Compliance Filing and Request for Shortened Comment Period and Expedited Action by July 1, 2013*, Docket No. ER12-360-001 (June 19, 2013).

As discussed below, the NYISO's requested temporary waivers are consistent with the Commission's waiver precedent. They are necessary to avoid unintended consequences that were not foreseen when the currently effective tariff provisions were introduced. The requested waivers are consistent with the efficient implementation of the BSM Rules. Finally, granting the requested waivers will address the unintended implications of existing tariff issues in the near-term, leaving the NYISO and its stakeholders with time to develop a future tariff filing to permanently resolve the issues. The NYISO is authorized to state that the independent Market Monitoring Unit ("MMU")³ supports the requested waivers.

Finally, as also discussed below, the NYISO respectfully requests that the Commission act expeditiously and, to the extent that it deems necessary adopt abbreviated comment procedures, so that it may issue an order granting the requested waivers by February 21, 2014.

I. DESCRIPTION OF AND REQUEST FOR WAIVERS

A. The Services Tariff Establishes a Requirement Concerning the Load Forecast Data to Be Used in Determinations Under the BSM Rules that Is Infeasible to Implement and Should Not Apply to the Projects

Paragraph 64 of the Commission's September 2011 *Order on Compliance Filing* (the "September 2011 Order") directed the NYISO to submit additional market power mitigation measures that were needed for New Capacity Zones ("NCZs").⁴ Subsequently, the NYISO made its June 29, 2012 compliance filing ("June 2012 Filing")⁵ to introduce supplier-side and buyer-side capacity market power mitigation measures for NCZs ("Mitigated Capacity Zones"). Due to the fact that Class Years may be in various stages at the time an NCZ is proposed pursuant to the triennial tariff schedule, there was a need to create a category of facilities to which certain limited adjustments to the BSM Rules would apply. Those facilities are NCZ Examined Projects. Of relevance to this request, the

³ The MMU for the NYISO is Potomac Economics, Ltd.

⁴ *New York Independent System Operator, Inc.*, 136 FERC ¶ 61,165 (2011).

⁵ *New York Independent System Operator, Inc., Further Compliance Filing* (filed June 29, 2012).

June 2012 Filing introduced Section 23.4.5.7.2.3 in order to allow the NYISO to make the required determinations.”⁶ Section 23.4.5.7.2.3.2 was added to “explain[] what the load forecast will be based on.”⁷ It states that:

The Load forecast shall be based on data used to develop the Indicative Locational Minimum Installed Capacity Requirement, and Special Case Resources based on data for the Mitigated Capacity Zone that is part of the Special Case Resource data set forth in the most-recently published Load and Capacity Data (Gold Book).

Other than stressing the need for clarity in the tariff about which data sources would be used for Load forecast inputs,⁸ no party in any of the proceedings related to the September 2011 Order raised any substantive concerns regarding Section 23.4.5.7.2.3.2. The currently effective text of the provision was accepted by the Commission’s June 2013 Order.⁹

The NYISO has recently identified, with the assistance of the independent MMU, that Section 23.4.5.7.2.3.2 includes a drafting error. The error pertains to the data source to be used to establish the Load forecasts that are used in buyer-side capacity market power mitigation determinations for certain facilities located in a newly established Locality; *i.e.*, any “NCZ Examined Project that is in a completed Class Year¹⁰ and has received CRIS, unless exempt pursuant to section 23.4.5.7.6 or 23.4.5.7.7.”¹¹

⁶ June 2012 Filing at 12.

⁷ *Id.*

⁸ See, e.g. *Motions to Intervene and Joint Protest of Entergy Nuclear Power Marketing, LLC and the GenOn Parties* at 26; Appendix A, Affidavit of Mark D. Younger at P 56 (July 20, 2012). The NYISO notes that its proposal in this filing to turn to the Gold Book for Load forecast data appears to be consistent with what these parties proposed.

⁹ See *New York Independent System Operator, Inc.*, 143 FERC ¶ 61,217 (2013) (“June 2013 Order”).

¹⁰ To be in a Class Year at the time of its completion, such projects have accepted any Project Cost Allocation and posted any required security.

¹¹ See Services Tariff Section 23.4.5.7.2.1, which provides that “[p]romptly after Commission acceptance of the first ICAP Demand Curve to apply to a Mitigated Capacity Zone, the ISO shall make an exemption and Offer Floor determination for any NCZ Examined Project that is in a completed Class Year and has received CRIS, unless exempt pursuant to section 23.4.5.7.6 or 23.4.5.7.7.”

Specifically, Section 23.4.5.7.2.3.2 states that all Load forecasts for NCZ Examined Projects “shall be based on data used to develop the Indicative Locational Minimum Installed Capacity Requirement [“Indicative LCR”].”¹² The problem is that the determination that is made under the BSM Rules for an NCZ Examined Project in a completed Class Year, which is issued after the first ICAP Demand Curve for a new Mitigated Capacity Zone is accepted, as would be the case for the Projects, would not be an Indicative Buyer-Side Mitigation Exemption Determination (“Indicative BSM Determination”). It would instead be a final, binding determination. Basing Load forecasts on data used for the Indicative LCR could only be reasonable when the NYISO is making Indicative BSM Determinations.¹³ That is the scenario that Section 23.4.5.7.2.3.2 addresses. By contrast, Section 23.4.5.7.2.3.2 is not reasonably applicable to NCZ Examined Projects that are in a completed Class Year at the time the Commission accepts ICAP Demand Curves for a new Mitigated Capacity Zone.

In addition, the Load forecast used to develop the Indicative LCR is not a suitable data source for the determinations for these Projects because it is only developed for one Capability Year. Determinations under the BSM Rules are based on the three Capability Years that comprise the Mitigation Study Period.¹⁴ Thus, in addition to not being appropriate, it is also an incomplete data set. As a result, the current version of Section 23.4.5.7.2.3.2 is not practicably workable because the Load forecast data used to develop the Indicative LCR was only for the Capability Year 2014-2015, whereas the Mitigation Study Period for Class Year 2011 Projects is the three year period beginning May 1, 2014 through April 30, 2017. In addition, the NYISO does not develop future or multiple year forecasts by simply applying an escalation rate or other adjustment to the one year forecasts. Thus, it

¹² The Services Tariff requires the NYISO determine the Indicative NCZ LCR in a triennial filing by March 31 in an ICAP Demand Curve Reset Year in which it proposes a New Capacity Zone. *See* Services Tariff Section 5.16.3.

¹³ *See* Section 23.4.5.7.2.2. In addition, “[t]he Indicative Buyer-Side Mitigation Exemption Determination is for informational purposes only.”

¹⁴ *See* Services Tariff Section 23.4.5.7.3.

would not be reasonable to extrapolate a Load forecast from the one year forecast used to develop the Indicative LCR for the instant purposes.¹⁵

Instead, for the NCZ Examined Projects in completed Class Year 2011, it would be reasonable to use the Load forecast data that will be in the NYISO's 2014 *Load and Capacity Data*, i.e., the 2014 "Gold Book." The Load forecast for the first year of the Mitigation Study Period, the 2014-2015 Capability Year, has already been finalized and will be included in the 2014 Gold Book.¹⁶ The 2014 Gold Book will also include forecasted Load in the G-J Locality for future years, including the second and third years of the three-year Mitigation Study Period.

Taking this approach would align with the BSM Rules' requirement for Examined Facilities in an established Mitigated Capacity Zone.¹⁷ For those projects, the NYISO is to use "[t]he load forecast ... as set forth in the most-recently published Load and Capacity Data (Gold Book)."¹⁸

The NYISO anticipates that the necessary final Load forecast data for the 2014 Gold Book will very likely be available by March 15, 2014, and is virtually certain it will be available by March 31, i.e., before the 2014 Gold Book itself is completed and published.¹⁹ The NYISO therefore requests that the Commission grant the requested temporary waiver of Section 23.4.5.7.2.3.2 so that the NYISO

¹⁵ Among other issues described herein which the NYISO intends to address with its stakeholders, the NYISO intends to address the Load forecast data to be used for Indicative BSM Determinations.

¹⁶ See "2014 New York Control Area Peak Load Forecast (MW)." This posting includes the 2014 load forecast for the G-J Locality of 16,291.4 MW, which will be used to set the ICAP Demand Curves for the 2014/2015 Capability Year. It is available at: <http://www.nyiso.com/public/webdocs/markets_operations/market_data/icap/Announcements/Info_and_Announcements/Info_and_Announcements/2014_ICAP_Final.pdf>.

¹⁷ The substance of this provision is the same as it existed for determinations for In-City projects; i.e., before Attachment H was amended to establish the Mitigated Capacity Zone rules. See Services Tariff Section 23.4.5.7.3.2, which states in pertinent part: "The ISO shall compute the reasonably anticipated ICAP Spot Market Auction forecast price based on ... [t]he load forecast and Special Case Resources as set forth in the most-recently published Load and Capacity Data (Gold Book)."

¹⁸ See Section 23.4.5.7.3.2.

¹⁹ The Load forecasts for the Capability Years in the Mitigation Study Period are included in the inputs that the NYISO posts on its website prior to issuing BSM rule determinations. See Services Tariff Section 23.4.5.7.2.4.

may conduct the determinations under the BSM Rules for the Projects using the Load forecast data described above.

B. The Services Tariff Requirement that the NYISO “Promptly” Issue BSM Rule Determinations Should Be Waived for the Projects

The Services Tariff requires the NYISO to make certain determinations under the BSM Rules for projects located in the G-J Locality “promptly” after the applicable ICAP Demand Curve is accepted.²⁰ The proposed ICAP Demand Curve for the G-J Locality, a Mitigated Capacity Zone, is currently pending in Docket No. ER14-500. If the Commission were to accept that filing by the date requested therein, *i.e.*, by January 29, 2014, the NYISO would be required to make determinations “promptly” after that date under the BSM Rules for the Projects. If the Commission were to act by that date, however, the NYISO would not have the Load forecast data needed to make the determinations for the Projects. As noted above, it would be approximately six to eight weeks, *i.e.*, by March 31 at the latest, that the necessary data would become available. After the forecast becomes available, the NYISO would then need a brief period (anticipated to be no more than two weeks) to finalize and issue the determinations. While the Services Tariff does not specify what “prompt” action entails in this context, the NYISO is concerned that taking two or more months to complete the determinations might not be consistent with the requirement.

Accordingly, the NYISO respectfully requests a waiver of this tariff requirement to the extent necessary to permit it to complete the determinations for the Projects “promptly” after both: (i) the Commission’s acceptance of the ICAP Demand Curve for the G-J Locality; and (ii) the availability of the Load Forecast data to be included in the 2014 Gold Book.

C. The Services Tariff Requirement that the NYISO Issue Indicative BSM Determinations Should Not Apply to the Projects

²⁰ See Services Tariff Section 23.4.5.7.2.1.

The June 2012 Filing proposed Services Tariff revisions that would allow the NYISO to make an Indicative BSM Determination for a project in a new Mitigated Capacity Zone that is part of a Class Year that is not yet completed and before the Commission accepts the ICAP Demand Curve for that New Capacity Zone. The Indicative BSM Determination would provide a developer with an indication of whether it might be exempt and an estimate of the Offer Floor that might apply to the project. The tariff revisions made clear that the Indicative BSM Determination is “for informational purposes only” and is not the actual determination that would apply to the project, and that the final determination would be made using the applicable Commission-accepted ICAP Demand Curve.²¹

In the June 2013 Order, the Commission found that NYISO’s proposed revisions to its definition of Mitigation Net CONE did not clearly provide for the Indicative BSM Determinations. Paragraph 100 of that Order instructed the NYISO to make two additional revisions to the Services Tariff.

First, the Commission ordered the NYISO to:

file a revised definition to provide a new term “Indicative Mitigation Net CONE” containing [the NYISO’s] proposed revisions to make clear that the new revisions are only to provide for an indicative, *i.e.*, informational only, Mitigation Net CONE calculation for purposes of indicative, informational only, buyer-side mitigation exemption determinations made prior to the effectiveness of a new capacity zone’s Demand Curves.²²

The July 2013 Compliance Filing responded to the first directive by proposing the following new definition for the term “Indicative Mitigation Net CONE”:

For purposes of Section 23.4.5 of this Attachment H, “Indicative Mitigation Net CONE” shall mean the capacity price calculated by the NYISO for informational purposes only if there is not an effective ICAP Demand Curve and the Commission (i) has accepted an ICAP Demand Curve for the Mitigated Capacity Zone that will become effective when the Mitigated Capacity Zone is first effective, in which case, the Indicative Mitigation Net CONE shall mean be the capacity price on such ICAP Demand Curve for the Mitigated Capacity Zone

²¹ See Services Tariff Section 23.4.5.7.2.2; *see also*, June 2012 Further Compliance Filing at 11-12.

²² June 2013 Order at P 100.

corresponding to the average amount of excess capacity above the Indicative NCZ Locational Minimum Installed Capacity Requirement, as applicable, expressed as a percentage of that requirement that formed the basis for the ICAP Demand Curve accepted by the Commission; or, (ii) has not accepted an ICAP Demand Curve for the Mitigated Capacity Zone, but the ISO has filed an ICAP Demand Curve for the Mitigated Capacity Zone pursuant to Services Tariff Section 5.14.1.2.11, in which case the Indicative Mitigation Net CONE shall mean be the capacity price on such ICAP Demand Curve corresponding to the average amount of excess capacity above the Indicative NCZ Locational Minimum Installed Capacity Requirement, expressed as a percentage of that requirement, that formed the basis for such ICAP Demand Curve.²³

The NYISO has now recognized that subsection (i) would incorrectly require it to issue an Indicative BSM Determination for a project in a completed Class Year after the Commission accepts the applicable ICAP Demand Curve. Moreover, the subsection is in direct contrast to the explicit requirement in Section 23.4.5.7.2.1 that the NYISO issue final determinations under the BSM Rules after the approval of the applicable ICAP Demand Curve.

Paragraph 100's second directive required the NYISO to revise Section 23.4.5.7.2.2, which provides for the Indicative BSM Determination "to accommodate the two effective date scenarios reflected in the foregoing proposed revisions to the definition of Mitigation Net CONE."²⁴

The NYISO responded to this directive by proposing in the July 2013 Compliance Filing to insert subsection (i), underlined and in bold below, into Section 23.4.5.7.2.2:

The ISO shall make an "Indicative Buyer-Side Mitigation Exemption Determination" for any NCZ Examined Project if **(i) the Commission has accepted an ICAP Demand Curve for the Mitigated Capacity Zone that will become effective when the Mitigated Capacity Zone is first effective,** or (ii) if the Commission has not accepted the first ICAP Demand Curve to apply specifically to the Mitigated Capacity Zone in which the NCZ Examined Project is located, provided the ISO has filed an ICAP Demand Curve pursuant to Services Tariff Section 5.14.1.2.11.

As written, subsection (i) would appear to require the NYISO to make an Indicative Buyer-Side Mitigation Exemption Determination based on the ICAP Demand Curve for the G-J Locality as

²³ July 2013 Compliance Filing at 5-6.

²⁴ *Id.*

proposed in November plus the Load forecast data for the Indicative LCR. Such a requirement would, at a minimum, provide useless information, and would likely also create confusion for developers and unnecessary work for the NYISO. It would be preferable for the NYISO to only use the most recently accepted ICAP Demand Curve, as the Services Tariff provides, for the final determination.²⁵

Accordingly, the NYISO respectfully requests the Commission waive these provisions with respect to the Projects. There is no reason to require the NYISO to issues simultaneous indicative and final determinations under the BSM Rules.

II. FUTURE TARIFF ENHANCEMENTS

As noted above, the NYISO intends to work with its stakeholders to develop tariff revisions that will correct and clarify the tariff issues identified in this filing in advance of the next triennial ICAP Demand Curve Reset Filing Year. The NYISO anticipates introducing comprehensive tariff language that would specifically address when it would issue indicative and final BSM determinations for projects based on both the status of the Class Year process and stage of the triennial ICAP Demand Curve reset. Adding such language to the tariff, after stakeholder discussion and input, would make the NYISO's administration of the BSM Rules clearer and more transparent to the Commission, and to developers and stakeholders.

III. COMPLIANCE WITH THE COMMISSION'S WAIVER PRECEDENT

The Commission has traditionally granted tariff waiver requests when: (i) the underlying error (if any) was made in good faith; (ii) the waiver request is limited in scope; (iii) a concrete problem

²⁵ The NYISO has also identified other scenarios not applicable to the determinations it is required to issue promptly after the Commission's acceptance of the proposed ICAP Demand Curve, for which the tariff could benefit from further clarity. For example, scenarios based on whether or not a Class Year Project Cost Allocation process is on-going and whether the NYISO has filed a proposed ICAP Demand Curve for a new Mitigated Capacity Zone. As described in Section II, the NYISO plans to work with stakeholders on tariff revisions to more specifically address when an Indicative BSM Rule Determination and when a final determination is to be made.

needed, or needs, to be remedied, and (iv) the request did not have undesirable consequences such as harming third parties.

All of these criteria are satisfied in this proceeding.²⁶ The requested waivers address unforeseen and unintended drafting issues in Services Tariff provisions that were prepared in good faith. The NYISO is bringing this matter to the Commission's and stakeholders' attention as soon as practicable after discovering it in order to promote market transparency and certainty. In addition, as noted above, the requested waivers would only apply to the Projects. The NYISO is planning to work with its stakeholders to develop improved tariff language to govern NCZ Examined Projects in a possible future New Capacity Zone. Thus, the requests are limited in scope. There clearly is a "concrete problem" since, absent a waiver, the NYISO would be required to conduct two upcoming determinations under the BSM Rules using rules that are practically unworkable and sub-optimal. Finally, there will be no undesirable consequences, such as harming third parties, since the requested waivers will only ensure that the relevant tariff provisions function efficiently and as intended.²⁷

IV. STAKEHOLDER REVIEW

As indicated above, the NYISO only recently identified these issues and endeavored to promptly seek this limited waiver given its tariff obligation to promptly issue determinations after the Commission's acceptance of an ICAP Demand Curve for the G-J Locality. In an effort to balance an opportunity for the stakeholders and the Commission to consider the matter, the NYISO provided stakeholders with a description of the requested waivers on January 15, 2014 and asked for input. As of the time of this filing on January 21, 2014, the NYISO has not received any comments.

²⁶ *PJM Interconnection, L.L.C.*, 125 FERC ¶ 61,279 (2008).

²⁷ *New York Independent System Operator, Inc.*, 125 FERC ¶ 61,005 (2008).

V. REQUEST FOR COMMISSION ACTION BY FEBRUARY 21, 2014

The NYISO respectfully requests that the Commission issue an order granting the requested waivers by February 21, 2014. The NYISO also requests that, to the extent that the Commission deems necessary, it act expeditiously and establish an abbreviated comment period, so that it may issue an order by that date. Commission action within that time frame will permit the NYISO to proceed in an orderly fashion to make final determinations under the BSM Rules for the Projects “promptly” after the acceptance of new ICAP Demand Curves and the availability of complete Load forecast information.

VI. 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 in Docket No. ER12-360, 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.

VII. COMMUNICATIONS

Copies of correspondence concerning this filing should be served on:

Robert E. Fernandez, General Counsel
Ray Stalter, Director of Regulatory Affairs
*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
rstalter@nyiso.com
gkavanah@nyiso.com

*Ted J. Murphy
Hunton & Williams LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037-1701
Tel: (202) 955-1500
Fax: (202) 778-2201
tmurphy@hunton.com

*Noelle J. Coates
Hunton & Williams LLP
1100 Brickell Ave.
Miami, FL 33131
Tel: (305) 536-2734
Fax: (305) 810-1635
ncoates@hunton.com

*persons designated to receive service

VIII. CONCLUSION

For the reasons specified above, the New York Independent System Operator, Inc. respectfully petitions the Commission to expeditiously issue an order granting the temporary waivers requested herein by February 21, 2014.

Respectfully submitted,

/s/ Gloria Kavanah

Gloria Kavanah

Senior Attorney

New York Independent System Operator, Inc.

Dated: January 21, 2014

cc: Michael Bardee
Gregory Berson
Anna Cochrane
Jignasa Gadani
Jesse Hensley
Morris Margolis
Michael McLaughlin
David Morenoff
Daniel Nowak

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 21st day of January, 2014.

/s/ Mohsana Akter

Mohsana Akter
New York Independent System Operator, Inc.
10 Krey Blvd.
Rensselaer, NY 12144
(518) 356-7560